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SENATE BILL NO. 152

Offered January 11, 2006

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A BILL to amend and reenact § 46.2-1571 of the Code of Virginia, relating to motor vehicle dealers; warranty obligations.

Patrons—Norment; Delegate: Jones, S.C.

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-1571 of the Code of Virginia is amended and reenacted as follows:****§ 46.2-1571. Warranty obligations.**

A. Each motor vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motor vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable. Warranty parts compensation shall be stated as a percentage of markup, which shall be an agreed reasonable approximation of retail markup and which shall be uniformly applied to all of the manufacturer's or distributor's parts unless otherwise provided for in this section. If the dealer and manufacturer or distributor cannot agree on the warranty parts compensation markup to be paid to the dealer, the markup shall be determined by an average of the dealer's retail markup on all of the manufacturer's or distributor's parts as described in subdivisions 2 and 3 of this subsection.

2. For purposes of determining warranty parts and service compensation paid to a dealer by the manufacturer or distributor, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers. For purposes of determining labor compensation for warranty body shop repairs paid to a dealer by the manufacturer or distributor, internal and insurance-paid repairs shall not be considered in determining amounts charged by the dealer to retail customers.

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts.

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years.

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motor vehicles which constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes. Warranty and sales incentive audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis,

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59 and dealer claims for warranty or sales incentive compensation shall not be denied except for good
60 cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or
61 misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or
62 distributor for processing the claim shall not constitute grounds for the denial of the claim or reduction
63 of the amount of compensation to the dealer as long as reasonable documentation or other evidence has
64 been presented to substantiate the claim. Claims for dealer compensation shall be paid within thirty days
65 of dealer submission or within thirty days of the end of an incentive program or rejected in writing for
66 stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right
67 to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation.
68 Any chargebacks for warranty parts or service compensation and service incentives shall only be for the
69 twelve-month period immediately following the date of the claim and, in the case of chargebacks for
70 sales compensation only, for the eighteen-month period immediately following the date of claim.
71 However, such limitations shall not be effective in the case of intentionally false or fraudulent claims. A
72 dealer shall not be charged back or otherwise liable for sales incentives or charges related to a motor
73 vehicle sold by the dealer to a purchaser other than a licensed, franchised motor vehicle dealer and
74 subsequently exported or resold, provided the dealer can demonstrate that he exercised due diligence and
75 that the sale was made in good faith and without knowledge of the purchaser's intention to export or
76 resell the motor vehicle.

77 B. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor
78 branch to:

- 79 1. Fail to perform any of its warranty obligations, including tires, with respect to a motor vehicle;
- 80 2. Fail to assume all responsibility for any liability resulting from structural or production defects;
- 81 3. Fail to include in written notices of factory recalls to vehicle owners and dealers the expected date
82 by which necessary parts and equipment will be available to dealers for the correction of defects;
- 83 4. Fail to compensate any of the motor vehicle dealers licensed in the Commonwealth for repairs
84 effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier
85 is designated by the manufacturer, factory branch, distributor, or distributor branch;
- 86 5. Fail to compensate its motor vehicle dealers licensed in the Commonwealth for warranty parts,
87 work, and service pursuant to subsection A of this section, or for legal costs and expenses incurred by
88 such dealers in connection with warranty obligations for which the manufacturer, factory branch,
89 distributor, or distributor branch is legally responsible or which the manufacturer, factory branch,
90 distributor, or distributor branch imposes upon the dealer;
- 91 6. Misrepresent in any way to purchasers of motor vehicles that warranties with respect to the
92 manufacture, performance, or design of the vehicle are made by the dealer, either as warrantor or
93 co-warrantor;
- 94 7. Require the dealer to make warranties to customers in any manner related to the manufacture,
95 performance, or design of the vehicle; or
- 96 8. Shift or attempt to shift to the motor vehicle dealer, directly or indirectly, any liabilities of the
97 manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle
98 Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission
99 by the dealer.

100 C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle
101 manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its
102 motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating
103 to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by
104 the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer,
105 including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor
106 branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the
107 dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor
108 branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which
109 come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer
110 franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to
111 incorporate provisions consistent with the requirements of this subsection.

112 D. On any new motor vehicle, any uncorrected damage or any corrected damage exceeding three
113 percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233,
114 as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory
115 mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule
116 when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever
117 a new motor vehicle is damaged in transit, when the carrier or means of transportation is determined by
118 the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to
119 the new motor vehicle dealer, the new motor vehicle dealer shall:

- 120 1. Notify the manufacturer or distributor of the damage within three business days from the date of

121 delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time
122 specified in the franchise; and

123 2. Request from the manufacturer or distributor authorization to replace the components, parts, and
124 accessories damaged or otherwise correct the damage, unless the damage to the vehicle exceeds the three
125 percent rule, in which case the dealer may reject the vehicle within three business days.

126 E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within
127 ten days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the
128 three percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor,
129 and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such
130 motor vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or
131 any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing
132 to the buyer and an acknowledgement by the buyer is required. If there is less than three percent
133 damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work
134 shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the
135 selling dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for
136 revocation of the buyer order, provided that, within thirty days of purchase, the motor vehicle is
137 returned to the dealer with an accompanying written notice of the grounds for revocation. In case of
138 revocation pursuant to this section, the dealer shall accept the vehicle and refund any payments made to
139 the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the
140 vehicle as defined in § 59.1-207.11. *Nothing in this section shall be construed to exempt from the*
141 *provisions of this section damage to a new motor vehicle that occurs following delivery of the vehicle to*
142 *the dealer.*

143 F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch
144 and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either
145 party may petition the Commissioner in writing, within thirty days after either party has given written
146 notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on
147 the parties, subject to rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.)
148 of Title 2.2. However, nothing contained in this section shall give the Commissioner any authority as to
149 the content or interpretation of any manufacturer's or distributor's warranty.

150 **2. That the provisions of this Act are declaratory of existing law.**