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HOUSE BILL NO. 370

Offered January 20, 1994

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

Patrons—Hall, Abbitt, Dickinson, Giesen and Harris; Senators: Houck, Quayle, Trumbo and Waddell

Referred to Committee on Roads and Internal Navigation

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; ~~shall~~ 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.

2. For purposes of determining warranty parts and service compensation, 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.

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 subdivision 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, nor does it apply to compensation for parts used in warranty repair of motorcycles. Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent

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60 claims.

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

63 1. Fail to perform any of its warranty obligations, including tires, with respect to a motor vehicle;

64 2. Fail to assume all responsibility for any liability resulting from structural or production defects;

65 3. Fail to include in written notices of factory recalls to vehicle owners and dealers the expected date
66 by which necessary parts and equipment will be available to dealers for the correction of defects;

67 4. Fail to compensate any of the motor vehicle dealers licensed in the Commonwealth for repairs
68 effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier
69 is designated by the manufacturer, factory branch, distributor, or distributor branch;

70 5. Fail to compensate its motor vehicle dealers licensed in the Commonwealth for warranty parts,
71 work, and service pursuant to subsection A of this section, or for legal costs and expenses incurred by
72 such dealers in connection with warranty obligations for which the manufacturer, factory branch,
73 distributor, or distributor branch is legally responsible or which the manufacturer, factory branch,
74 distributor, or distributor branch imposes upon the dealer;

75 6. Misrepresent in any way to purchasers of motor vehicles that warranties with respect to the
76 manufacture, performance, or design of the vehicle are made by the dealer, either as warrantor or
77 co-warrantor;

78 7. Require the dealer to make warranties to customers in any manner related to the manufacture,
79 performance, or design of the vehicle; or

80 8. Shift or attempt to shift to the motor vehicle dealer, directly or indirectly, any liabilities of the
81 manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle
82 Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission
83 by the dealer.

84 C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle
85 manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its
86 motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating
87 to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by
88 the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer,
89 including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor
90 branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the
91 dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor
92 branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which
93 come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer
94 franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to
95 incorporate provisions consistent with the requirements of this subsection.

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

104 1. Notify the manufacturer or distributor of the damage within three business days from the date of
105 delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time
106 specified in the franchise; and

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

110 E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within
111 ten days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the
112 three percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor,
113 and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such
114 motor vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or
115 any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing
116 to the buyer and an acknowledgement by the buyer is required. If there is less than three percent
117 damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work
118 shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the
119 selling dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for
120 revocation of the buyer order, provided that, within thirty days of purchase, the motor vehicle is
121 returned to the dealer with an accompanying written notice of the grounds for revocation. In case of

revocation pursuant to this section, the dealer shall accept the vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

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