

1 Introduced by Committee on Transportation

2 Date:

3 Subject: Motor vehicles; motor vehicle dealers; motor vehicle manufacturers;

4 Motor Vehicle Manufacturers, Distributors, and Dealers Franchising

5 Practices Act

6 Statement of purpose of bill as introduced: This bill proposes to amend

7 provisions of the Motor Vehicle Manufacturers, Distributors, and Dealers

8 Franchising Practices Act.

9 An act relating to the Motor Vehicle Manufacturers, Distributors, and
10 Dealers Franchising Practices Act.

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 **Sec. 1. 9 V.S.A. § 4086 is amended to read:**

13 § 4086. WARRANTY AND PREDELIVERY OBLIGATIONS TO NEW

14 MOTOR VEHICLE DEALERS

15 (a) Each new motor vehicle manufacturer shall specify in writing to each of

16 its new motor vehicle dealers licensed in this State the dealer’s obligations for

17 predelivery preparation and warranty service on its products, shall compensate

18 the new motor vehicle dealer for such service required of the dealer by the

19 manufacturer, and shall provide the dealer the schedule of compensation to be

1 paid the dealer for parts, work, and service in connection therewith, and the
2 time allowance for the performance of the work and service.

3 (b) A schedule of compensation shall not fail to include reasonable
4 compensation for diagnostic work as well as for repair service and labor. Time
5 allowances for the diagnosis and performance of predelivery and warranty
6 service shall be reasonable and adequate for the work to be performed. The
7 hourly rate paid to a new motor vehicle dealer shall not be less than the rate
8 charged by the dealer to customers for nonwarranty service and repairs. Each
9 manufacturer shall compensate each of its dealers for parts used to fulfill
10 warranty, predelivery, and recall obligations of repair and servicing at amounts
11 not less than the retail amounts customarily charged by the dealer to its retail
12 customers for like parts for nonwarranty work. The amounts established by a
13 dealer to its retail customers for labor and like parts for nonwarranty work are
14 deemed to be fair and reasonable compensation; provided, however, a
15 manufacturer may rebut such a presumption by showing that such amount so
16 established is unfair and unreasonable in light of the practices of at least four
17 other franchised motor vehicle dealers in the vicinity offering the same line-
18 make or a similar competitive line-make. A manufacturer may not otherwise
19 recover all or any portion of its costs for compensating its motor vehicle
20 dealers licensed in this State for warranty parts and service either by reduction

1 in the amount due to the dealer or by separate charge, surcharge, or other
2 imposition.

3 (c)(1) For purposes of this section, the “retail amounts customarily
4 charged” by the franchisee for parts ~~may~~ or labor rate, or both, shall be
5 established by submitting to the manufacturer 100 sequential nonwarranty
6 customer-paid service repair orders or 60 days of nonwarranty customer-paid
7 service repair orders, whichever is less ~~in terms of total cost~~, covering repairs
8 made ~~no~~ not more than 180 days before the submission and declaring the
9 average percentage markup for parts or labor rate, or both. The average
10 percentage markup for parts or labor rate, or both, so declared is the retail
11 amount, which goes into effect 30 days following the declaration, subject to
12 audit of the submitted repair orders by the manufacturer and adjustment of the
13 average percentage markup based on that audit. ~~Only~~ All retail sales ~~not~~
14 involving shall be considered in calculating the average percentage markup,
15 except for:

16 (A) warranty repairs, ~~not involving state inspection, not involving;~~

17 (B) State inspections;

18 (C) routine maintenance ~~such as changing the oil and oil filter,~~

19 including the replacement of bulbs, fluids, filters, batteries, and belts that are

20 not provided in the course of, or related to, a repair;

1 (D) factory special events, specials, or promotional discounts for
2 retail customer repairs;

3 (E) parts sold, or repairs performed, at wholesale;

4 (F) factory-approved goodwill or policy repairs or replacements;

5 (G) repairs with aftermarket parts, when calculating the retail parts
6 rate, but not the retail labor rate;

7 (H) repairs on aftermarket parts;

8 (I) replacement of or work on tires, including alignments and wheel
9 or tire rotations;

10 (J) repairs of motor vehicles owned by the dealer or an employee of
11 the dealer at the time of the repair;

12 (K) engine assemblies or transmission assemblies, or both;

13 (L) vehicle reconditioning;

14 (M) items that do not have individual part numbers, including nuts,
15 bolts, and fasteners; and ~~not involving~~

16 (N) accessories ~~may be considered in calculating the average~~
17 percentage markup.

18 (2) A manufacturer may not require a new motor vehicle dealer to
19 establish the average percentage markup by an unduly burdensome or time-
20 consuming method or by requiring information that is unduly burdensome or

1 time-consuming to provide, including part-by-part or transaction-by-
2 transaction calculations.

3 (3) If a manufacturer furnishes a part or component to a dealer at less
4 than its normal and customary price, including the price previously reflected in
5 the manufacturer’s parts catalogue, to use in performing repairs under a recall,
6 campaign service action, or warranty repair, the manufacturer shall compensate
7 the dealer for the part or component in the same manner as warranty parts
8 compensation under this section by compensating the dealer the average
9 markup on the cost for the part or component as listed in the manufacturer’s
10 price schedule less the cost for the part or component.

11 (4) A new motor vehicle dealer may not change the average percentage
12 markup more than two times in one calendar year. Further, the manufacturer
13 shall reimburse the new motor vehicle dealer for any labor performed at the
14 retail rate customarily charged by that franchisee for the same labor when not
15 performed in satisfaction of a warranty, provided the franchisee’s rate for labor
16 not performed in satisfaction of a warranty is routinely posted in a place
17 conspicuous to its service customer.

18 (5) A manufacturer shall not require, influence, or attempt to influence a
19 dealer to implement or change the prices for which it sells parts or labor in
20 retail customer repairs.

1 (6) A manufacturer shall not implement or continue a policy, procedure,
2 or program with any of its dealers in this State for compensation that is
3 inconsistent with this subsection.

4 (d) It is a violation of this section for any new motor vehicle manufacturer
5 to fail to perform any warranty obligations or to fail to include in written
6 notices of factory recalls to new motor vehicle owners and dealers the expected
7 date by which necessary parts and equipment will be available to dealers for
8 the correction of such defects, or to fail to compensate any of the new motor
9 vehicle dealers in this State for repairs effected by a recall at the rates set forth
10 in subsection (c).

11 (e) All claims made by new motor vehicle dealers pursuant to this section
12 for labor and parts shall be paid within 45 days following their approval;
13 provided, however, that the manufacturer retains the right to audit the claims
14 and to charge back the dealer for fraudulent claims for a period of ~~two years~~
15 one year following payment. All claims shall be either approved or
16 disapproved within 45 days after their receipt on forms and in the manner
17 specified by the manufacturer, and any claim not specifically disapproved in
18 writing within 45 days after the receipt shall be construed to be approved and
19 payment must follow within 45 days. No claim that has been approved and
20 paid may be charged back to the dealer unless it can be shown that the claim
21 was false or fraudulent, that the repairs were not made properly or were

1 unnecessary to correct the defective condition, or that the dealer failed to
2 reasonably substantiate the claim either in accordance with the manufacturer’s
3 reasonable written procedures or by other reasonable means.

4 (f) A manufacturer shall retain the right to audit warranty claims for a
5 period of one year after the date on which the claim is paid.

6 (g) A manufacturer shall retain the right to audit all incentive and
7 reimbursement programs and charge back any amounts paid on claims that are
8 false or unsubstantiated for a period of ~~18 months~~ one year from the date on
9 which the claim is paid ~~or one year from the end of a program that gave rise to~~
10 ~~the payment, whichever is later.~~

11 * * *

12 **Sec. 2.** 9 V.S.A. § 4096 is amended to read:

13 § 4096. UNLAWFUL ACTS BY MANUFACTURERS OR DISTRIBUTORS

14 ~~It~~ Notwithstanding the terms of any franchise or other agreement between a
15 manufacturer and new motor vehicle dealer, it shall be a violation of this
16 chapter for any manufacturer, as defined under this chapter, to require, attempt
17 to require, coerce, or attempt to coerce any new motor vehicle dealer in this
18 State:

19 * * *

20 (9)(A) To change the location of the dealership or to make any
21 substantial alterations to the dealership premises or facilities in the absence of

1 written assurance from the manufacturer or distributor of a sufficient supply of
2 new motor vehicles to justify the change in location or the alterations.

3 (B) Except as necessary to comply with a health or safety law, or to
4 comply with a technology requirement that is necessary to sell or service a
5 motor vehicle that the new motor vehicle dealer is authorized or licensed by
6 the manufacturer to sell or service, a dealer that completes a facility
7 construction or renovation pursuant to factory requirements shall not be
8 required to construct a new facility or renovate the existing facility for the next
9 10 years during which time the dealer will be considered in compliance with
10 any new facility program for purposes of being entitled to all incentive or
11 bonus payments offered to same line-make dealers.

12 (10) To purchase goods or services for the construction, renovation, or
13 improvement of the new motor vehicle dealer’s facility or essential tools and
14 equipment to service vehicles from a vendor chosen by the manufacturer if
15 goods or services available from other sources are of substantially similar
16 quality and design and comply with all applicable laws; provided, however,
17 that such goods are not subject to the manufacturer’s intellectual property or
18 trademark rights and the new motor vehicle dealer has received the
19 manufacturer’s approval, which approval may not be unreasonably withheld.
20 Nothing in this subdivision shall be construed to allow a new motor vehicle

1 dealer to impair or eliminate a manufacturer’s intellectual property, trademark
2 rights, or trade dress usage guidelines.

3 Sec. 3. 9 V.S.A. § 4097 is amended to read:

4 § 4097. MANUFACTURER VIOLATIONS

5 ~~It~~ Notwithstanding the terms of any franchise or other agreement with the
6 manufacturer, it shall be a violation of this chapter for any manufacturer
7 defined under this chapter:

8 * * *

9 (16) To impose unreasonable standards of performance or unreasonable
10 facilities, financial, operating, or other requirements upon a motor vehicle
11 franchisee, whether as part of the franchise or a separate program. It shall be
12 considered unreasonable for a manufacturer to fail to take into account all
13 circumstances relevant to a new motor vehicle dealer’s local market when
14 imposing standards of performance.

15 * * *

16 Sec. 4. EFFECTIVE DATE

17 This act shall take effect on July 1, 2022.