WEST VIRGINIA CODE: §17a-6A-8A

§17A-6A-8a. Compensation to dealers for service rendered.

(a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

(1) Specify in writing to each of its dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

(2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof;

(3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for diagnostic time, including time communicating with the manufacturer, necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch, and the dealer about the time allowance for the performance of the diagnosis, work, or service, the dealer shall submit a written request for modification of the time allowance, which shall be presumed reasonable. A manufacturer, distributor, or wholesaler, factory branch, or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the manufacturer, distributor, or wholesaler, factory branch, or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a retail buyer or lessee whose vehicle was subjected to an over-the-air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor, and performed at the dealership to satisfy the customer.

(b) In no event may:

(1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor, time, or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

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(2) Any manufacturer, distributor, or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(3) Any manufacturer, distributor, or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose of calculating both the labor rate and parts markup or submit separate sets of repair orders for a labor rate and parts markup calculation.

(e) The retail rate customarily charged by the dealer for labor rate shall be established using the same process as provided under subsection (d) of this section and declaring the average labor rate. The average labor rate shall be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer’s labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair. The request shall not be unreasonably denied by the manufacturer.

(f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for customer repairs;

(2) Parts sold at wholesale;

(3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

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(4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(5) Tires; and

(6) Vehicle reconditioning.

(g) The average of the parts markup rates and labor rate is presumed to be reasonable and goes into effect 30 days following the manufacturer's approval. A manufacturer or distributor must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) Fraudulent or inaccurate; (2) not established in accordance with this section; or (3) unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after the dealer's submission, or the dealer's submission shall be considered approved. If the average parts markup rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position. If the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the dealer's rate submission, the manufacturer or distributor shall propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after the dealer's submission. If the dealer does not agree with the manufacturer’s proposed average percentage parts markup or labor rate, the dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after dealer's receipt of the written notice of rebuttal or adjustment by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish, by a preponderance of the evidence, that the dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles.

(h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the dealer's declaration of hourly labor rates and parts as stated in subsections (d), (e), and (f) of this section and may not obligate any dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating dealers to engage in transaction-by-transaction or part-by-part calculations.

(i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (d) and (e) of this section.

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(j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in §17A-1-1 of this code, with a gross vehicle weight in excess of 26,001 pounds, the manufacturer, distributor and/or original equipment manufacturer supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid $50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or original equipment manufacturer supplier makes the dealer stop working on a vehicle while the manufacturer, distributor, and/or original equipment manufacturer supplier decides how it wants the dealer to proceed with the repairs.

(k) All claims made by dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. A claim which has been approved and paid may not be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. Charge back may not be made until the dealer has had notice and an opportunity to support the claim in question. An otherwise valid reimbursement claim may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer has 30 days to respond to any audit by a manufacturer or distributor.

(l) Notwithstanding the terms of a dealer agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitute the dealer's sole responsibility for product liability between the dealer and manufacturer. Except for a loss caused by the dealer's failure to adhere to the obligations or a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill a warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the

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warranty and recall work and services that are reasonable and adequate for the work or services to be performed by a qualified technician.

(2) At the request of the dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a dealer, transfer or shift any costs to a dealer, limit allocation of vehicles or parts to a dealer, or otherwise take retaliatory action against a dealer based on any dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

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