WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

HENROLLED

HOUSE BILL No. 4542

(By Delegate Reddick Anderson)

Passed ................................................ March 9, 1990

In Effect ................................................ 90 Days from Passage
ENROLLED

H. B. 4542
(By Delegates Anderson and Peddicord)

[Passed March 9, 1990; in effect ninety days from passage.]

AN ACT to amend article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to compensation to motor vehicle dealers for service rendered on warranty and factory recall work; compensation from manufacturers to dealers for warranty and recall work must be the same as the amount charged by the dealer for nonwarranty and nonrecall work, and cannot be based on a flat rate figure; time limit for compensation by manufacturer; dealer's limited responsibility for product liability.

Be it enacted by the Legislature of West Virginia:

That article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight-a, to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.

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

Every motor vehicle manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof, shall specify in writing to each of its motor vehicle dealers, the dealer's
obligation for delivery, preparation, warranty, and
factory recall services on its products, shall 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, and
shall provide the dealer the schedule of compensation to
be paid such dealer for parts, work, and service in
connection with warranty and recall services, and the
time allowance for the performance of such work and
service.

In no event shall such schedule of compensation fail
to compensate such dealers for the 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 such dealers for labor,
parts and other expenses incurred by such dealer to
perform under and comply with manufacturer’s war-
 ranty agreements and factory recalls. In no event shall
any manufacturer, distributor or wholesaler, or repre-
sentative 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, in no event shall any manufacturer, distrib-
utor or wholesaler, or representative thereof, compen-
sate for warranty and recall work based on a flat rate
figure that is less than what the dealer charges for retail
work.

All claims made by motor vehicle 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 thirty days after approval and shall be approved
or disapproved by the manufacturer within thirty days
after receipt. When any claim is disapproved, the dealer
shall be notified in writing of the grounds for disappro-
val. No claim which has been approved and paid may
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 written
requirements of the manufacturer or distributor in
effect at the time the claim arose.

Notwithstanding the terms of a franchise agreement
or provision of law in conflict with this section, the
dealer's delivery, preparation, warranty and recall
obligations shall constitute the dealer's sole responsibil-
ity for product liability as between the dealer and
manufacturer, and, except for a loss caused by the
dealer's failure to adhere to these obligations, a loss
caused by the dealer's negligence or intentional miscon-
duct, or a loss caused by the dealer's modification of a
product without manufacturer authorization, the manu-
facturer 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of March, 1990.

Governor