

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

HOUSE BILL No. 4542

(By ~~the~~ Delegates Redhead + Anderson)



Passed March 9, 1990

In Effect 90 days from Passage

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STATE OF WEST VIRGINIA

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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,
WHOLESALEERS AND MANUFACTURERS.**

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

1 Every motor vehicle manufacturer, distributor or
2 wholesaler, factory branch or distributor branch, or
3 officer, agent or representative thereof, shall specify in
4 writing to each of its motor vehicle dealers, the dealer's

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5 obligation for delivery, preparation, warranty, and
6 factory recall services on its products, shall compensate
7 the motor vehicle dealer for warranty and factory recall
8 service required of the dealer by the manufacturer,
9 distributor or wholesaler, factory branch or distributor
10 branch, or officer, agent or representative thereof, and
11 shall provide the dealer the schedule of compensation to
12 be paid such dealer for parts, work, and service in
13 connection with warranty and recall services, and the
14 time allowance for the performance of such work and
15 service.

16 In no event shall such schedule of compensation fail
17 to compensate such dealers for the work and services
18 they are required to perform in connection with the
19 dealer's delivery and preparation obligations, or fail to
20 adequately and fairly compensate such dealers for labor,
21 parts and other expenses incurred by such dealer to
22 perform under and comply with manufacturer's war-
23 ranty agreements and factory recalls. In no event shall
24 any manufacturer, distributor or wholesaler, or repre-
25 sentative thereof, pay its dealers an amount of money
26 for warranty or recall work that is less than that
27 charged by the dealer to the retail customers of the
28 dealer for nonwarranty and nonrecall work of the like
29 kind; and, in no event shall any manufacturer, distrib-
30 utor or wholesaler, or representative thereof, compen-
31 sate for warranty and recall work based on a flat rate
32 figure that is less than what the dealer charges for retail
33 work.

34 All claims made by motor vehicle dealers pursuant to
35 this section for compensation for delivery, preparation,
36 warranty and recall work including labor, parts and
37 other expenses, shall be paid by the manufacturer
38 within thirty days after approval and shall be approved
39 or disapproved by the manufacturer within thirty days
40 after receipt. When any claim is disapproved, the dealer
41 shall be notified in writing of the grounds for disappro-
42 val. No claim which has been approved and paid may
43 be charged back to the dealer unless it can be shown
44 that the claim was false or fraudulent, that the repairs
45 were not properly made or were unnecessary to correct

46 the defective condition, or the dealer failed to reasonably
47 substantiate the claim in accordance with the written
48 requirements of the manufacturer or distributor in
49 effect at the time the claim arose.

50 Notwithstanding the terms of a franchise agreement
51 or provision of law in conflict with this section, the
52 dealer's delivery, preparation, warranty and recall
53 obligations shall constitute the dealer's sole responsibil-
54 ity for product liability as between the dealer and
55 manufacturer, and, except for a loss caused by the
56 dealer's failure to adhere to these obligations, a loss
57 caused by the dealer's negligence or intentional miscon-
58 duct, or a loss caused by the dealer's modification of a
59 product without manufacturer authorization, the manu-
60 facturer shall reimburse the dealer for all loss incurred
61 by the dealer, including legal fees, court costs, and
62 damages, as a result of the dealer having been named
63 a party in a product liability action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederic J. McAfee
Chairman Senate Committee

Brian V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harriet E. Adams
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Kath Sundette
President of the Senate

Robert C. O'Connell
Speaker of the House of Delegates

The within *is approved* this the *3/8*
day of *March* 1990.

Anton Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/90

Time 3:28 pm