

**SUBJECT:** Revising certain reimbursement requirements for vehicle dealers

**COMMITTEE:** Transportation — committee substitute recommended

**VOTE:** 9 ayes — Canales, Ashby, Davis, Gámez, Caroline Harris, Landgraf, Ordaz, Perez, Romero

1 nay — Lujan

3 absent — Raney, Lozano, Patterson

**WITNESSES:** For — April Ancira, Texas Automobile Dealers Association (*Registered, but did not testify*; Don Herring, Don Herring Mitsubishi; Wyatt Houston, Houston Auto Dealers Association; Morris Wilkes, New Car Dealers of West Texas; Charles Brent Franks, North Texas Automobile Dealers; Pamela Crail, San Antonio Automobile Dealers Association; Claire McDonald, Texas Automobile Dealer Association; Mark Borskey, Texas Recreational Vehicle Association)

Against — Nick Steingart, Alliance for Automotive Innovation; John T. Montford, General Motors; Laird Doran, Gulf States Toyota (*Registered, but did not testify*; Robert Peeler, Ford Motor Company; Kelly Curbow, General Motors; Chris Shields, Toyota; Laura Matz, Volkswagen Group of America)

On — (*Registered, but did not testify*; Monique Johnston, Texas Department of Motor Vehicles)

**BACKGROUND:** Concerns have been raised that some motor vehicle manufacturers may not be fairly compensating their franchised dealers for recall or warranty work. Some have suggested that statutory changes are needed to ensure that dealers are reimbursed for warranty and recall work at the same rate a retail customer would pay for similar work.

**DIGEST:** CSHB 4078 would extend certain statutes governing reimbursement of a motor vehicle dealer for warranty work to apply to recall work.

CSHB 4078 would require a motor vehicle manufacturer or distributor to fairly and adequately compensate its dealers for recall, preparation, and delivery work and would prohibit a manufacturer or distributor from paying or reimbursing a dealer less for recall work than the dealer charged to a retail customer for similar non-warranty work.

The bill would require a manufacturer or distributor to calculate separately the amounts charged for labor and parts related to warranty or recall work using, of the respective formulas provided in the bill, the formulas that produced the fewest repair orders, rather than computing the amount a dealer charged a retail customer for warranty work using the greater of certain formulas. Each formula for computing an amount charged would exclude:

- routine maintenance;
- tire, wheel, or wheel alignment;
- discounts to state agencies, insurers, or warranty or service contract providers;
- state inspections;
- goodwill repairs, meaning repairs made free of charge that a dealer was not obligated to make;
- accessory installation;
- a manufacturer's or distributor's promotion or service campaign;
- and
- repairs to a vehicle owned by the dealer, an affiliate, or an employee of either.

A manufacturer or distributor that supplied a part to a dealer at no cost or a reduced cost for use in a warranty or recall would be required to compensate the dealer for the dealer's cost for the part, if any, plus an amount equal to the dealer's prevailing retail parts markup, multiplied by the fair wholesale value of the part, defined as the greater of:

- the amount the dealer paid for a part or a substantially identical part if presently owned by the dealer;

- the cost of the part as shown in a current or previously established price schedule of the manufacturer or distributor; or
- the cost of a substantially identical part shown in a current or previously established price schedule of the manufacturer or distributor.

A manufacturer or distributor would be required to compensate a dealer if the dealer assisted in or performed an over-the-air or remote installation, change, repair, update, or amendment to any party, system, accessory, or function.

CSHB 4078 would provide for a manufacturer or distributor to respond to a dealer's request for a warranty work rate adjustment with a reduction or claim of material inaccuracy as well as approval or disapproval of the request. The bill would remove a manufacturer or distributor's failure to respond within 60 days as a condition of allowing a dealer to file a protest with the Department of Motor Vehicles, and instead establish that if the manufacturer or distributor failed to respond within 60 days the requested rate would take effect. The required statement of reasons for disapproval, reduction, or claimed material inaccuracy would have to include:

- an explanation of the reasons;
- substantiating evidence of each reason;
- a copy of calculations used to demonstrate material inaccuracy, as applicable; and
- a proposed adjusted labor or parts rate, as applicable.

The bill would prohibit a manufacturer or distributor from recovering or attempting to recover any portion of the compensation due to a dealer for warranty, recall, or preparation and delivery work by reducing the amount due through specified charges or a reduction in return reserve allowance to the wholesale price paid by the dealer to the manufacturer or distributor for any product. A manufacturer or distributor could not establish or implement a special part number for a part used in warranty, recall, or preparation and delivery work if the result was lower compensation to the dealer than otherwise provided for by the bill.

A manufacturer or distributor could not compel a dealer to comply, take an adverse action, or initiate an action or proceeding in response to the dealer not participating in a manufacturer or distributor program or initiating an action or proceeding to enforce a right or remedy available to the dealer.

The bill would take effect September 1, 2023, and would apply only to work commenced on or after that date.