

BILL ANALYSIS

Senate Research Center
83R8274 EES-F

S.B. 812
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Transportation
3/25/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The relationship between motor vehicle manufacturers/distributors and their franchised dealers is governed by the franchise agreement between the parties and state law. Because the franchise agreement is a contract of adhesion that a dealer is required to sign if he intends to be or remain a dealer, Texas and the other 49 states have enacted statutes to regulate the relationships and activities of these entities. States have done so in order to prevent unfair practices, promote a competitive marketplace, and protect consumers. The Texas law, which, by its terms, preempts the franchise agreement, is found in Chapter 2301 (Sale or Lease of Motor Vehicles), Occupations Code, with authority given to the Texas Department of Motor Vehicles to enforce its provisions.

Subchapter I (Warranties: Reimbursement of Dealer), Chapter 2301, Occupations Code, provides for the reimbursement of dealers when they perform warranty work under the manufacturer's or distributor's warranty. Section 2301.402 (Rate of Compensation), Occupations Code, prohibits manufacturers and distributors from paying or reimbursing a dealer an amount of money for warranty work that is less than the amount the dealer charges a retail customer for similar nonwarranty work. This is referred to as the "retail rate." Also, under Section 2301.405, Occupations Code, a manufacturer or distributor may not charge back to a dealer money paid to satisfy a claim approved and paid unless the manufacturer or distributor shows that the claim was false or fraudulent, the repair work was not properly performed or was unnecessary, or the dealer who made the claim failed to substantiate the claim.

Some automobile manufacturers are attempting to circumvent the reimbursement of the franchised new motor vehicle dealers at the retail rate by imposing a warranty surcharge on every new vehicle delivered to the franchised dealer. This practice results in dealers not being adequately compensated at the retail rate to which they are entitled under the law.

S.B. 812 addresses this issue by specifically prohibiting a motor vehicle manufacturer or distributor from directly or indirectly seeking recovery from a dealer of amounts paid to reimburse the dealer for parts and labor on warranty repairs by chargeback, surcharge, an increase in the wholesale price of a motor vehicle or part, or any other means. In addition, S.B. 812 states that this new prohibition does not prohibit a manufacturer or distributor from increasing the price of a motor vehicle or part in the normal course of business.

As proposed, S.B. 812 amends current law relating to the recovery of certain payments by motor vehicle manufacturers and distributors from motor vehicle dealers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2301.405, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Prohibits a manufacturer or distributor, notwithstanding a provision in a franchise agreement and except as provided by this section, from directly or indirectly recovering from a dealer an amount paid by the manufacturer or distributor to the dealer under this subchapter to reimburse the dealer for parts or labor by chargeback, surcharge, an increase in the wholesale price of a motor vehicle or part, or other means.

(d) Provides that Subsection (c) does not prohibit a manufacturer or distributor from increasing the price of a motor vehicle or part in the normal course of business.

SECTION 2. Effective date: September 1, 2013.