

BILL ANALYSIS

C.S.H.B. 4078
By: Geren
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The relationship between motor vehicle manufacturers, distributors, and their franchised dealers is governed by the franchise agreement between the parties and state law. The state has enacted laws to regulate the relationships and activities of these entities because the franchise agreement is a contract of adhesion that a dealer is required to sign if the dealer intends to be or remain a dealer. This is intended to prevent unfair practices, promote a competitive marketplace, and protect consumers. The applicable state law, which preempts any franchise agreement, also provides authority to the Texas Department of Motor Vehicles to enforce its provisions.

Under current law, a manufacturer or distributor must fairly and adequately compensate its dealers for warranty work, and a manufacturer or distributor may not pay or reimburse 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. However, some motor vehicle manufacturers may not be appropriately compensating their franchised dealers for recall or warranty work, particularly in parts reimbursement given that the lack of an applicable parts formula may limit appropriate reimbursement. Other manufacturers have surcharged dealers on the wholesale invoice of vehicles delivered to them if the dealer requests the retail reimbursement they are entitled to under law, while others have shipped replacement parts or changed parts numbers on existing parts when the part is involved in warranty and recall work, in order to pay the dealer an amount less than their retail rate. C.S.H.B. 4078 seeks to address these issues by ensuring franchised dealers are reimbursed by a manufacturer or distributor for warranty and recall work at the same rate as a retail customer.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4078 amends the Occupations Code to prohibit a motor vehicle manufacturer or distributor from compelling a dealer to comply, take an adverse action, or initiate an action or proceeding in response to a 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 under law or by agreement, including an action or proceeding to which the manufacturer or distributor is a party.

C.S.H.B. 4078 revises and sets out provisions relating to warranties and recall reimbursement of a motor vehicle dealer. The bill requires a motor vehicle manufacturer or distributor, on

request, to provide to the Texas Department of Motor Vehicles (TxDMV) a copy of the current requirements the manufacturer or distributor imposes on its dealers with respect to the dealer's duties under a manufacturer's or distributor's recall. The bill establishes that the following requirements are unenforceable unless determined to be reasonable:

- warranty, recall, or preparation and delivery requirements placed on a dealer by a distributor; and
- recall requirements placed on a dealer by a manufacturer.

The bill requires a manufacturer or distributor to fairly and adequately compensate its dealers for recall and preparation and delivery work. The bill prohibits a manufacturer or distributor from paying or reimbursing a dealer an amount of money for recall work that is less than the amount the dealer charges a retail customer for similar nonwarranty work.

C.S.H.B. 4078 removes the requirement for a manufacturer or distributor to use the greater of certain labor rates in computing the amount of money a dealer charges a retail customer for warranty work. The bill sets out instead the formulas that the manufacturer or distributor must use, in computing the amount of money a dealer charges a retail customer for labor and parts in connection with warranty or recall work, that produces the fewest number of repair orders. The bill requires the manufacturer or distributor that supplies a part to a dealer at no cost or at a reduced cost for use in a warranty or recall repair 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. The bill provides for the calculation of the fair wholesale value of the part. The bill requires a manufacturer or distributor to compensate a dealer in accordance with provisions relating to the warranty and recall reimbursement of a dealer if the dealer assists in or performs an over-the-air or remote installation, change, repair, update, or amendment to any part, system, accessory, or function.

C.S.H.B. 4078 expands the contents of the written notice provided by a manufacturer or distributor to a dealer requesting an adjustment in the dealer's warranty work rate to include the reduction or claimed material inaccuracy of the request, if applicable. The bill requires the submitted rate to take effect on the 60th day after the date the manufacturer or distributor receives the request for an adjustment in the dealer's warranty work rate if the manufacturer or distributor fails to respond before the 60th day after the date the request is received. The bill requires the manufacturer or distributor to state the reasons for the reduction or claimed material inaccuracy if the claim is reduced or claimed to be materially inaccurate. The bill requires the stated reasons for disapproval, reduction, or claimed material inaccuracy of the requested labor rate or parts markup to contain the following:

- an explanation of the reasons the request is disapproved, reduced, or claimed to be materially inaccurate;
- evidence that substantiates each stated reason;
- if a material inaccuracy is alleged, a copy of the calculations used by the manufacturer or distributor demonstrating the material inaccuracy; and
- a proposed adjusted labor or parts rate, as applicable.

The bill makes procedures for filing a protest with the board of TxDMV by a dealer whose request is disapproved by a manufacturer or distributor applicable to a dealer whose request is reduced or claimed to be materially inaccurate. The bill removes the authorization for a dealer to file a protest with the board if the manufacturer or distributor fails to respond to a request within the required time. The bill prohibits a warranty parts rate established for warranties and recalls from being adjusted more often than once a year.

C.S.H.B. 4078 requires a manufacturer or distributor to pay a dealer's claim for reimbursement for recall work not later than the 30th day after the date of approval of the claim. The bill requires a controversy regarding the payment of a claim for reimbursement for warranty work, recall work, or dealer preparation and delivery work, or compliance regarding the reimbursement of dealers for warranty and recall work, to be resolved in accordance with penalty and enforcement provisions regarding the sale or lease of motor vehicles.

C.S.H.B. 4078 expands the applicability of the prohibition against a manufacturer or distributor, except under certain circumstances, charging back a dealer for money paid by the manufacturer or distributor for an approved and paid claim from statutory provisions relating to the reimbursement of dealers for warranties and recalls to statutory provisions relating to the sale or lease of motor vehicles. The bill similarly expands the prohibition against a manufacturer or distributor, except under certain circumstances, auditing an approved and paid claim after the first anniversary of the date the claim is submitted to apply to statutory provisions relating to the sale or lease of motor vehicles.

C.S.H.B. 4078 prohibits 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 by a separate charge, surcharge, like charge, other charge, supplemental charge, or reduction in return reserve allowance to the wholesale price paid by the dealer to the manufacturer or distributor for any product, including motor vehicles and parts. This prohibition does not prohibit a manufacturer or distributor from increasing prices for a vehicle or part in the normal course of business. The bill prohibits a manufacturer or distributor from establishing or implementing a special part number for a part used in such work if the result is lower compensation to the dealer than as calculated under the bill's provisions.

C.S.H.B. 4078 defines the following for purposes of the bill's provisions regarding the reimbursement of a dealer for warranties and recalls:

- "goodwill repair" as a repair made by a seller for no charge that the seller is not obligated to make;
- "part" includes the following:
 - any component, electric vehicle battery, engine, equipment, fixture, good, part assembly, software, or transmission for a motor vehicle; and
 - a replacement for any such part; and
- "routine maintenance" includes replacement of a belt, bolt, brake pad, bulb, fastener, filter, fluid, internal combustion engine vehicle battery, nut, or rotor, unless the replaced part is provided by the manufacturer or distributor in the course of a repair with an assigned part number.

C.S.H.B. 4078 applies only to warranty, recall, or preparation and delivery work commenced on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4078 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits a prohibition present in the introduced against a manufacturer or distributor, if the result would be injurious to a dealer or to the public, doing the following:

- coercing or compelling or attempting to coerce or compel by threat or by other adverse consequence a motor vehicle dealer to agree to a program or incentive provision, including a loss of an incentive or benefit; or
- amending a franchise agreement.

Whereas the introduced prohibited a manufacturer or distributor from taking an adverse action or initiating an action or proceeding in response to a dealer initiating an action or proceeding to enforce a right or remedy available to the dealer, the substitute instead prohibits a manufacturer or distributor from compelling a dealer to comply, take an adverse reaction, or initiate an action

or proceeding in response to a dealer not participating in a manufacturer or distributor program or initiating an action or proceeding to enforce such a right or remedy.

The substitute revises a provision in the introduced that sets out the formulas that a manufacturer or distributor must use to compute the amount of money a dealer charges a retail customer for labor and parts in connection with warranty or recall work as follows:

- by including among the types of repairs excluded from the calculation a wheel repair and repairs to a vehicle owned by the dealer, a dealer's affiliate, or an employee of either the dealer or affiliate; and
- by removing a provision that establishes that the calculation of certain charges for labor and parts consists of a single set of repair orders for calculating the dealer's retail customer labor rate and the dealer's retail customer parts rate or one set of repair orders for calculating the dealer's retail customer labor rate and a separate set for calculating the dealer's retail customer parts rate.

Whereas the introduced included a provision establishing that assistance by a dealer in an over-the-air or remote installation, change, repair, update, or amendment to any part, system, accessory, or function is compensated in accordance with provisions relating to warranty and recall reimbursement of a dealer, the substitute requires a manufacturer or distributor to compensate the dealer in accordance with such provisions if the dealer assists in or performs an over-the-air or remote installation, change, repair, update, or amendment to any part, system, accessory, or function.

The substitute omits a provision present in the introduced giving a dealer the option to send electronically a request to the manufacturer or dealer for an adjustment in the dealer's warranty work rate.

The substitute omits a prohibition present in the introduced against a manufacturer or distributor that disapproves or reduces a dealer's adjustment request or claims such a request is materially inaccurate adding to, expanding, supplementing, or otherwise modifying the objection except on the discovery of relevant information that could not have been known at the time of issuing the rebuttal.

Both the introduced and substitute 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 by a separate charge, surcharge, like charge, other charge, supplemental charge, or reduction in return reserve allowance to the wholesale price paid by the dealer to the manufacturer or distributor for any product, including motor vehicles and parts. However, only the substitute includes a provision establishing that this prohibition does not prohibit a manufacturer or distributor from increasing prices for a vehicle or part in the normal course of business.

Whereas the introduced defined "part" as including any equipment, fixture, good, or software that is provided by a manufacturer or distributor for a motor home or towable recreational vehicle, the substitute defines "part" as any component, electric vehicle battery, engine, equipment, fixture, good, part assembly, software, or transmission for a motor vehicle and any replacement for such a part.

Whereas the introduced defined "routine maintenance" as including replacement of a fluid, filter, battery, bulb, belt, nut, bolt, or fastener, unless the replaced part is provided by the manufacturer or distributor in the course of a repair with an assigned part number, the substitute revises the definition as follows:

- includes the replacement of a brake pad or rotor as an applicable replacement; and
- specifies that the qualifying replacement of a battery is replacement of an internal combustion engine vehicle battery.