

House Bill 469 (COMMITTEE SUBSTITUTE)

By: Representatives Shaw of the 176<sup>th</sup>, Epps of the 144<sup>th</sup>, Tanner of the 9<sup>th</sup>, Caldwell of the 131<sup>st</sup>, Blackmon of the 146<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,  
2 relating to motor vehicle franchise practices, so as to provide standards for reasonable  
3 compensation by a franchisor, manufacturer, distributor, or third party for parts and labor for  
4 warranty service work by a dealer; to provide for payments after a stop-sale or do not drive  
5 order of a motor vehicle in certain instances; to provide for right of first refusal; to correct  
6 a cross-reference; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 22 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to  
10 motor vehicle franchise practices, is amended by revising Code Section 10-1-641, relating  
11 to dealer's predelivery preparation, warranty service, and recall work obligations to be  
12 provided in writing, and recovery costs, as follows:

13 "10-1-641.

14 (a)(1) Each ~~distributor~~ franchisor, manufacturer, or distributor ~~or warrantor~~:

15 (A) Shall specify in writing to each of its dealers in this state the dealer's obligations  
16 for predelivery preparation including the repair of damages incurred in the  
17 transportation of vehicles as set forth in Code Section 10-1-642, recall work, and  
18 warranty service on its products;

19 (B) Shall reasonably compensate the dealer for parts and labor provided for such  
20 warranty service work ~~and service required of the dealer by the distributor,~~  
21 ~~manufacturer, or warrantor~~ as provided in paragraph (2) of this subsection;

22 (C) Shall provide the dealer with a schedule of compensation to be paid such dealer for  
23 parts, work, and service in connection therewith; and

24 (D) Shall provide the dealer with a schedule of the time allowance for the performance  
25 of such work and service. Any such schedule of compensation shall include reasonable  
26 compensation for diagnostic work, repair service, and labor. Time allowances for the

27 diagnosis and performance of such work and service shall be reasonable and adequate  
28 for the work to be performed.

29 ~~(2)(A) In the determination of what constitutes reasonable compensation for parts  
30 reimbursement and labor rates under this Code section, the principal factors to be  
31 considered shall be the retail price paid to dealers for parts and the prevailing hourly  
32 labor rates paid to dealers doing the repair, work, or service and to other dealers in the  
33 community in which the dealer doing the repair, work, or service is doing business for  
34 the same or similar repair, work, or service. However, in no event shall parts  
35 reimbursement paid to the dealer be less than the retail price for such parts being paid  
36 to such dealer by nonwarranty customers for nonwarranty parts replacement, and in no  
37 event shall the hourly labor rate paid to a dealer for such warranty repair, work, or  
38 service be less than the rate charged by such dealer for like repair, work, or service to  
39 nonwarranty customers for nonwarranty repair, work, or service rates customarily  
40 charged by the dealer, as established pursuant to this paragraph, and the rates for parts  
41 and labor charged by other similarly situated franchised dealers in a comparable  
42 geographic area in this state offering the same line-make vehicles.~~

43 (B) The retail rate customarily charged by the dealer for parts shall be established by  
44 the dealer submitting to the franchisor, manufacturer, or distributor 100 sequential  
45 nonwarranty customer-paid service repair orders which contain warranty-like repairs  
46 or 90 consecutive days of nonwarranty customer-paid service repair orders which  
47 contain warranty-like parts, whichever is less. Such service repair orders shall cover  
48 repairs made no more than 180 days before the submission. If the franchisor,  
49 manufacturer, or distributor determines, from any set of repair orders submitted under  
50 this subparagraph, that the retail markup rate for parts calculated is substantially higher  
51 or lower than the rate currently on record with the franchisor, manufacturer, or  
52 distributor, then the franchisor, manufacturer, or distributor may request additional  
53 documentation for a period of either 60 days prior to or 60 days subsequent to the time  
54 period for which the repair orders were submitted for purposes of an adjustment. The  
55 dealer's retail rate percentage for parts shall be calculated by determining the dealer's  
56 total parts sales in the submitted repair orders and dividing that amount by the dealer's  
57 total cost for purchase of those parts, subtracting one from that amount, and then  
58 multiplying by 100. The declared retail rate shall be approved or disapproved within  
59 30 days following submission by the dealer. The declared retail rate shall go into effect  
60 30 days following approval by the franchisor, manufacturer, or distributor, unless such  
61 franchisor, manufacturer, or distributor disapproves and timely contests the dealer's  
62 declared rate. If a franchisor, manufacturer, or distributor fails to disapprove within 30  
63 days following submission by the dealer, the declared retail rate shall be deemed

64 approved. A franchisor, manufacturer, or distributor may contest the dealer's declared  
65 parts rate not later than 30 days after submission and declaration of the parts rate by the  
66 dealer by reasonably substantiating that the rate is unreasonable in light of the practices  
67 of all other similarly situated franchised dealers in a comparable geographic area in this  
68 state offering the same line-make vehicles. In contesting the dealer's declared rate, a  
69 franchisor, manufacturer, or distributor shall provide a written explanation of the  
70 reasons for disagreement with the declared rate. If the declared parts rate is contested,  
71 then the franchisor, manufacturer, or distributor shall propose an adjustment of the rate.  
72 If the franchisor, manufacturer, or distributor contests the dealer's declared parts rate,  
73 the parties shall attempt to resolve the dispute through an internal dispute resolution  
74 procedure of the franchisor, manufacturer, or distributor, if available, provided that such  
75 procedure occurs within a reasonable amount of time, not to exceed 30 days after  
76 notification of disagreement with the dealer's declared rate. If the internal dispute  
77 resolution procedure is unsuccessful or does not occur in a timely manner, the dealer  
78 may file a petition with the commissioner not later than 60 days after receipt of the  
79 proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30  
80 days after conclusion of the internal dispute resolution procedure, whichever is later.  
81 If such a petition is filed, the commissioner shall inform the franchisor, manufacturer,  
82 or distributor that a timely petition has been filed and that a hearing will be held on such  
83 issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be  
84 upon the franchisor, manufacturer, or distributor to demonstrate that the parts rate  
85 declared by the dealer was unreasonable and not in accordance with this subparagraph.  
86 (C) The retail rate customarily charged by the dealer for labor may be established by  
87 submitting to the franchisor, manufacturer, or distributor 100 sequential nonwarranty  
88 customer-paid service repair orders for warranty-like repairs or 90 consecutive days of  
89 customer-paid service repair orders for warranty-like repairs, whichever is less. Such  
90 service repair orders shall cover repairs made no more than 180 days before the  
91 submission. If the franchisor, manufacturer, or distributor determines, from any set of  
92 repair orders submitted under this subparagraph, that the retail rate for labor calculated  
93 is substantially higher or lower than the rate currently on record with the franchisor,  
94 manufacturer, or distributor, then the franchisor, manufacturer, or distributor may  
95 request additional documentation for a period of either 60 days prior to or 60 days  
96 subsequent to the time period for which the repair orders were submitted for purposes  
97 of an adjustment. The retail rate for labor shall be calculated by determining the  
98 dealer's total labor sales from the submitted repair orders and dividing that amount by  
99 the total number of hours that generated those sales. The declared retail labor rate shall  
100 be approved or disapproved within 30 days following submission by the dealer. The

101 declared retail labor rate shall take effect 30 days following approval by the franchisor,  
 102 manufacturer, or distributor unless such franchisor, manufacturer, or distributor  
 103 disapproves and timely contests the dealer's declared rate. A franchisor, manufacturer,  
 104 or distributor may contest the dealer's declared labor rate not later than 30 days after  
 105 submission and declaration of the labor rate by the dealer by reasonably substantiating  
 106 that such rate is unreasonable in light of the practices of all other similarly situated  
 107 franchised motor vehicle dealers in a comparable geographic area in this state offering  
 108 the same line-make vehicles. If the declared labor rate is contested, then the franchisor,  
 109 manufacturer, or distributor shall propose an adjustment of the declared retail labor rate.  
 110 If the franchisor, manufacturer, or distributor contests the dealer's declared labor rate,  
 111 the parties shall attempt to resolve the dispute through an internal dispute resolution  
 112 procedure of the franchisor, manufacturer, or distributor, if available, provided that such  
 113 procedure occurs within a reasonable amount of time not to exceed 30 days after  
 114 notification of disagreement with the dealer's declared rate. If the internal dispute  
 115 resolution procedure is unsuccessful or does not occur in a timely manner, the dealer  
 116 may file a petition with the commissioner not later than 60 days after receipt of the  
 117 proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30  
 118 days after conclusion of the internal dispute resolution procedure, whichever is later.  
 119 If such a petition is filed, the commissioner shall inform the franchisor, manufacturer,  
 120 or distributor that a timely petition has been filed and that a hearing will be held on such  
 121 issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be  
 122 upon the franchisor, manufacturer, or distributor to demonstrate that the labor rate  
 123 declared by the dealer was unreasonable and not in accordance with this subparagraph.  
 124 (D) In calculating the retail rate customarily charged by the dealer for parts and labor  
 125 for purposes of this paragraph, the following work shall not be included in the  
 126 calculation:  
 127 (i) Repairs for franchisor, manufacturer, or distributor special events, specials, or  
 128 promotional discounts for retail customer repairs;  
 129 (ii) Parts sold at wholesale;  
 130 (iii) Routine maintenance not covered under any retail customer warranty, such as  
 131 fluids, filters, and belts not provided in the course of repairs;  
 132 (iv) Nuts, bolts, fasteners, and similar items which contain no individual part number;  
 133 (v) Tires; and  
 134 (vi) Vehicle reconditioning.  
 135 (E) If a franchisor, manufacturer, or distributor furnishes a part or component to a  
 136 dealer to use in performing repairs under a recall, campaign service action, or warranty  
 137 repair at no cost to the dealer, the franchisor, manufacturer, or distributor shall

138 compensate the dealer for the authorized repair part or component in the same manner  
 139 as warranty parts compensation under this Code section by paying the dealer the retail  
 140 rate markup on the cost for the part or component as listed in the price schedule of the  
 141 franchisor, manufacturer, or distributor less the cost for the part or component.

142 (F) No franchisor, manufacturer, or distributor shall require a dealer to establish the  
 143 retail rate customarily charged by the dealer for parts and labor by an unduly  
 144 burdensome or time consuming method or by requiring information that is unduly  
 145 burdensome or time consuming to provide, including, but not limited to, part-by-part  
 146 or transaction-by-transaction calculations. No dealer shall declare a retail rate for parts  
 147 or labor or both more than once in one calendar year.

148 (b)(1) ~~Manufacturers~~ Franchisors, manufacturers, and distributors shall include in written  
 149 notices of factory recalls to ~~new motor vehicle owners and~~ dealers the expected date by  
 150 which necessary parts and equipment will be available to dealers for the ~~correction of~~  
 151 ~~such defects~~ repair or replacement of recalled parts and equipment. ~~Manufacturers~~  
 152 Franchisors, manufacturers, and distributors shall compensate any dealers in this state for  
 153 repairs affected by all recalls.

154 ~~(e)~~(2) All such claims shall be either approved or disapproved within 30 days after their  
 155 receipt on forms and in the manner specified by the franchisor, manufacturer, or  
 156 distributor, ~~or warrantor~~, and any claim not specifically disapproved in writing within 30  
 157 days after the receipt shall be construed to be approved and payment must follow within  
 158 30 days.

159 ~~(d)~~(c) Subject to subsection (c) of Code Section 10-1-645, a franchisor, manufacturer, or  
 160 distributor shall not otherwise recover its costs from dealers within this state, including ~~an~~  
 161 ~~increase in the wholesale price of a vehicle or a~~ surcharge imposed on a dealer solely  
 162 intended to recover the cost of reimbursing the dealer for parts and labor pursuant to this  
 163 Code section, provided that a franchisor, manufacturer, or distributor shall not be  
 164 prohibited from increasing prices for vehicles or parts in the normal course of business.

165 (d)(1) For purposes of this subsection, the term:

166 (A) 'Do not drive order ' means a notification issued by a manufacturer to its franchised  
 167 dealers stating that certain used motor vehicles in inventory shall not be driven due to  
 168 a federal safety recall for a defect or a noncompliance or a federal emissions recall.

169 (B) 'Stop-sale' means a notification issued by a manufacturer to its franchised dealers  
 170 stating that certain used motor vehicles in inventory shall not be sold or leased, at either  
 171 retail or wholesale, due to a federal safety recall for a defect or a noncompliance or a  
 172 federal emissions recall.

173 (2) A franchisor, manufacturer, or distributor shall compensate its dealers for all labor  
 174 and parts required by the manufacturer to perform recall repairs. Compensation for recall

175 repairs shall be reasonable. If parts or a remedy are not reasonably available to perform  
176 a recall service or repair on a used vehicle held for sale by a dealer authorized to sell and  
177 service new motor vehicles of the same line-make within 30 days of the manufacturer  
178 issuing the initial notice of recall, and the manufacturer has issued a stop-sale or do not  
179 drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate  
180 of at least 1 percent of the value of the vehicle per month beginning on the date that is 30  
181 days after the date on which the stop-sale or do not drive order was provided to the dealer  
182 to the earlier of the date the recall or repair parts or remedy are made available or the date  
183 the dealer sells, trades, transfers, or otherwise disposes of the affected used motor vehicle.  
184 (3) The value of a used motor vehicle shall be the average trade-in value for used motor  
185 vehicles as indicated in an independent third party guide for the year, make, and model  
186 of the recalled vehicle.  
187 (4) This subsection shall apply only to used motor vehicles subject to safety or emissions  
188 recalls pursuant to and recalled in accordance with federal law and regulations adopted  
189 thereunder and where a stop-sale or do not drive order has been issued and repair parts  
190 or remedy remain unavailable for 30 days or longer.  
191 (5) This subsection shall apply only to dealers holding an affected used motor vehicle  
192 for sale in inventory at the time a stop-sale or do not drive order is issued or which was  
193 taken into the used motor vehicle inventory of the dealer as a consumer trade-in incident  
194 to the purchase of a new motor vehicle from the dealer after the stop-sale or do not drive  
195 order was issued, and that are a line-make that the dealer is franchised to sell or on which  
196 the dealer is authorized to perform recall repairs.  
197 (6) It shall be a violation of this subsection for a manufacturer to reduce the amount of  
198 compensation otherwise owed to an individual dealer, whether through a chargeback,  
199 removal of the individual dealer from an incentive program, or reduction in amount owed  
200 under an incentive program, solely because the dealer has submitted a claim for  
201 reimbursement under this subsection. The provisions under this subsection shall not  
202 apply to an action by a manufacturer that is applied uniformly among all dealers of the  
203 same line-make in this state.  
204 (7) All reimbursement claims made by dealers pursuant to this subsection for recall  
205 remedies or repairs, or for compensation where no part or repair is reasonably available  
206 and the vehicle is subject to a stop-sale shall be subject to the same limitations and  
207 requirements as a warranty reimbursement claim made under this subsection. In the  
208 alternative, a manufacturer may compensate its franchised dealers under a national recall  
209 compensation program provided the compensation under the program is equal to or  
210 greater than that provided under this subsection or the manufacturer and dealer otherwise  
211 agree.

212 (8) A manufacturer may direct the manner and method in which a dealer must  
 213 demonstrate the inventory status of an affected used motor vehicle to determine eligibility  
 214 under this subsection, provided that the manner and method may not be unduly  
 215 burdensome and may not require information that is unduly burdensome to provide.

216 (9) Nothing in this subsection shall require a manufacturer to provide total compensation  
 217 to a dealer which would exceed the total average trade-in value of the affected used motor  
 218 vehicle as originally determined under paragraph (3) of this subsection.

219 (10) Any remedy provided to a dealer under this subsection is exclusive and may not be  
 220 combined with any other state or federal recall compensation remedy."

221 **SECTION 2.**

222 Said article is further amended by revising Code Section 10-1-663.1, relating to right of first  
 223 refusal, as follows:

224 "10-1-663.1.

225 ~~There shall be a right of first refusal to purchase in favor of the franchisor if the dealer has~~  
 226 ~~entered into an agreement to transfer the dealership or its assets, provided that all the~~  
 227 ~~following qualifications and requirements are met:~~

228 (a) Notwithstanding the terms of any franchise agreement, sales and services agreement,  
 229 or similar agreement, a franchisor, manufacturer, or distributor shall be permitted to  
 230 exercise a right of first refusal to acquire a dealer's assets or ownership, in the event of a  
 231 proposed change of ownership, or transfer of dealership assets, if all of the following  
 232 requirements are met:

233 (1) The proposed transfer of the dealership or its assets is of more than 50 percent of the  
 234 ownership or assets;

235 (2) The franchisor notifies the dealer in writing within 60 days of its receipt of the  
 236 complete written proposal for the proposed sale or transfer on forms generally utilized  
 237 by the franchisor for such purpose and containing the information required therein and  
 238 all documents and agreements relating to the proposed sale or transfer;

239 (3) The exercise of the right of first refusal will result in the dealer and dealer's owners  
 240 receiving the same or greater consideration as ~~is provided in the documents and~~  
 241 ~~agreements submitted to the franchisor under paragraph (2) of this Code section~~ provided  
 242 for through the terms of the contract related to the proposed change of ownership or  
 243 transfer of dealership assets;

244 (4) The proposed change of 50 percent or more of the ownership or of the dealership  
 245 assets does not involve the transfer or sale of assets or the transfer or issuance of stock  
 246 by the dealer or one or more dealer owners to a designated family member or members,  
 247 including a spouse, child, grandchild, spouse of a child or grandchild, brother, sister, or

248 parent of the dealer owner; to a manager who has been employed in the dealership for at  
 249 least four years and is otherwise qualified as a dealer operator; or to a partnership or  
 250 corporation owned and controlled by one or more of such persons;

251 (5) The franchisor agrees to pay the reasonable expenses, including reasonable attorney's  
 252 fees, which do not exceed the usual customary, and reasonable fees charged for similar  
 253 work done for other clients incurred by the proposed new owner and transferee before the  
 254 franchisor's exercise of its right of first refusal in negotiating and implementing the  
 255 contract for the proposed change of ownership or transfer of dealership assets. However,  
 256 payment of such expenses and attorney's fees shall not be required if the dealer has not  
 257 submitted or caused to be submitted an accounting of those expenses within 20 days after  
 258 the dealer's receipt of the franchisor's written request for such an accounting. Such an  
 259 accounting may be requested by the franchisor before exercising its right of first refusal;  
 260 and

261 (6) The franchisor agrees to comply with and be subject to the requirements and  
 262 restraints as set forth in paragraphs (1) and (2) of subsection (a) of Code Section  
 263 10-1-664.1 and in subsection (b) of Code Section 10-1-664.1.

264 (b) Within the terms of a right of first refusal contract related to the proposed change of  
 265 ownership or transfer of dealership assets:

266 (1) The franchisor, manufacturer, or distributor shall have the right to assume the dealer's  
 267 lease for, or acquire the real property on which the franchise is located, on the same terms  
 268 as those on which the real property or lease was to be sold or transferred to the proposed  
 269 new owner in connection with the sale of the franchise, unless otherwise agreed to by the  
 270 dealer and manufacturer or distributor. The franchisor, manufacturer, or distributor shall  
 271 have the right to assign the lease or to convey the real property; and

272 (2) The franchisor, manufacturer, or distributor shall assume all of the duties,  
 273 obligations, and liabilities contained in the agreements that were to be assumed by the  
 274 proposed new owner and with respect to which the franchisor, manufacturer, or  
 275 distributor exercised the right of first refusal, provided that the franchisor, manufacturer,  
 276 or distributor has knowledge of such obligations at the time of the exercise of the right  
 277 of first refusal."

278 **SECTION 3.**

279 All laws and parts of laws in conflict with this Act are repealed.