The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 469:

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"10-1-641.

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

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

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

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

(D) Shall provide the dealer with a schedule of the time allowance for the performance of such work and service. Any such schedule of compensation shall include reasonable compensation for diagnostic work, repair service, and labor. Time allowances for the
diagnosis and performance of such work and service shall be reasonable and adequate for the work to be performed.

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

(B) The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the franchisor, manufacturer, or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like repairs or 90 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less. Such service repair orders shall cover repairs made no more than 180 days before the submission. If the franchisor, manufacturer, or distributor determines, from any set of repair orders submitted under this subparagraph, that the retail markup rate for parts calculated is substantially higher or lower than the rate currently on record with the franchisor, manufacturer, or distributor, then the franchisor, manufacturer, or distributor may request additional documentation for a period of either 60 days prior to or 60 days subsequent to the time period for which the repair orders were submitted for purposes of an adjustment. The dealer's retail rate percentage for parts shall be calculated by determining the dealer's total parts sales in the submitted repair orders and dividing that amount by the dealer's total cost for purchase of those parts, subtracting one from that amount, and then multiplying by 100. The declared retail rate shall be approved or disapproved within 30 days following submission by the dealer. The declared retail rate shall go into effect 30 days following approval by the franchisor, manufacturer, or distributor, unless such franchisor, manufacturer, or distributor disapproves and timely contests the dealer's declared rate. If a franchisor, manufacturer, or distributor fails to disapprove within 30 days following submission by the dealer, the declared retail rate shall be deemed
approved. A franchisor, manufacturer, or distributor may contest the dealer's declared parts rate not later than 30 days after submission and declaration of the parts rate by the dealer by reasonably substantiating that the rate is unreasonable in light of the practices of all other similarly situated franchised dealers in a comparable geographic area in this state offering the same line-make vehicles. In contesting the dealer's declared rate, a franchisor, manufacturer, or distributor shall provide a written explanation of the reasons for disagreement with the declared rate. If the declared parts rate is contested, then the franchisor, manufacturer, or distributor shall propose an adjustment of the rate.

If the franchisor, manufacturer, or distributor contests the dealer's declared parts rate, the parties shall attempt to resolve the dispute through an internal dispute resolution procedure of the franchisor, manufacturer, or distributor, if available, provided that such procedure occurs within a reasonable amount of time, not to exceed 30 days after notification of disagreement with the dealer's declared rate. If the internal dispute resolution procedure is unsuccessful or does not occur in a timely manner, the dealer may file a petition with the commissioner not later than 60 days after receipt of the proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30 days after conclusion of the internal dispute resolution procedure, whichever is later. If such a petition is filed, the commissioner shall inform the franchisor, manufacturer, or distributor that a timely petition has been filed and that a hearing will be held on such issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be upon the franchisor, manufacturer, or distributor to demonstrate that the parts rate declared by the dealer was unreasonable and not in accordance with this subparagraph.

(C) The retail rate customarily charged by the dealer for labor may be established by submitting to the franchisor, manufacturer, or distributor 100 sequential nonwarranty customer-paid service repair orders for warranty-like repairs or 90 consecutive days of customer-paid service repair orders for warranty-like repairs, whichever is less. Such service repair orders shall cover repairs made no more than 180 days before the submission. If the franchisor, manufacturer, or distributor determines, from any set of repair orders submitted under this subparagraph, that the retail rate for labor calculated is substantially higher or lower than the rate currently on record with the franchisor, manufacturer, or distributor, then the franchisor, manufacturer, or distributor may request additional documentation for a period of either 60 days prior to or 60 days subsequent to the time period for which the repair orders were submitted for purposes of an adjustment. The retail rate for labor shall be calculated by determining the dealer's total labor sales from the submitted repair orders and dividing that amount by the total number of hours that generated those sales. The declared retail labor rate shall be approved or disapproved within 30 days following submission by the dealer. The
declared retail labor rate shall take effect 30 days following approval by the franchisor, manufacturer, or distributor unless such franchisor, manufacturer, or distributor disapproves and timely contests the dealer's declared rate. A franchisor, manufacturer, or distributor may contest the dealer's declared labor rate not later than 30 days after submission and declaration of the labor rate by the dealer by reasonably substantiating that such rate is unreasonable in light of the practices of all other similarly situated franchised motor vehicle dealers in a comparable geographic area in this state offering the same line-make vehicles. If the declared labor rate is contested, then the franchisor, manufacturer, or distributor shall propose an adjustment of the declared retail labor rate. If the franchisor, manufacturer, or distributor contests the dealer's declared labor rate, the parties shall attempt to resolve the dispute through an internal dispute resolution procedure of the franchisor, manufacturer, or distributor, if available, provided that such procedure occurs within a reasonable amount of time not to exceed 30 days after notification of disagreement with the dealer's declared rate. If the internal dispute resolution procedure is unsuccessful or does not occur in a timely manner, the dealer may file a petition with the commissioner not later than 60 days after receipt of the proposed adjustment by the franchisor, manufacturer, or distributor or not later than 30 days after conclusion of the internal dispute resolution procedure, whichever is later. If such a petition is filed, the commissioner shall inform the franchisor, manufacturer, or distributor that a timely petition has been filed and that a hearing will be held on such issue. In any hearing held pursuant to this subparagraph, the burden of proof shall be upon the franchisor, manufacturer, or distributor to demonstrate that the labor rate declared by the dealer was unreasonable and not in accordance with this subparagraph. (D) In calculating the retail rate customarily charged by the dealer for parts and labor for purposes of this paragraph, the following work shall not be included in the calculation:

(i) Repairs for franchisor, manufacturer, or distributor special events, specials, or promotional discounts for retail customer repairs;
(ii) Parts sold at wholesale;
(iii) Routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;
(iv) Nuts, bolts, fasteners, and similar items which contain no individual part number;
(v) Tires; and
(vi) Vehicle reconditioning.

(E) If a franchisor, manufacturer, or distributor furnishes a part or component to a dealer to use in performing repairs under a recall, campaign service action, or warranty repair at no cost to the dealer, the franchisor, manufacturer, or distributor shall
compensate the dealer for the authorized repair part or component in the same manner as warranty parts compensation under this Code section by paying the dealer the retail rate markup on the cost for the part or component as listed in the price schedule of the franchisor, manufacturer, or distributor less the cost for the part or component.

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

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

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

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

(d)(1) For purposes of this subsection, the term 'stop-sale' means a notification issued by a manufacturer to its franchised dealers stating that certain used motor vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance or a federal emissions recall.

(2) A franchisor, manufacturer, or distributor shall compensate its dealers for all labor and parts required by the manufacturer to perform recall repairs. Compensation for recall repairs shall be reasonable. If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a dealer authorized to sell and service new motor vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale or do not
drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate
of at least 1 percent of the value of the vehicle per month beginning on the date that is 30
days after the date on which the stop-sale or do not drive order was provided to the dealer
to the earlier of the date the recall or repair parts or remedy are made available or the date
the dealer sells, trades, transfers, or otherwise disposes of the affected used motor vehicle.

(3) The value of a used motor vehicle shall be the average trade-in value for used motor
vehicles as indicated in an independent third party guide for the year, make, and model
of the recalled vehicle.

(4) This subsection shall apply only to used motor vehicles subject to safety or emissions
recalls pursuant to and recalled in accordance with federal law and regulations adopted
thereunder and where a stop-sale or do not drive order has been issued and repair parts
or remedy remain unavailable for 30 days or longer.

(5) This subsection shall apply only to dealers holding an affected used motor vehicle
for sale in inventory at the time a stop-sale or do not drive order is issued or which was
taken into the used motor vehicle inventory of the dealer as a consumer trade-in incident
to the purchase of a new motor vehicle from the dealer after the stop-sale or do not drive
order was issued, and that are a line-make that the dealer is franchised to sell or on which
the dealer is authorized to perform recall repairs.

(6) It shall be a violation of this subsection for a manufacturer to reduce the amount of
compensation otherwise owed to an individual dealer, whether through a chargeback,
removal of the individual dealer from an incentive program, or reduction in amount owed
under an incentive program, solely because the dealer has submitted a claim for
reimbursement under this subsection. The provisions under this subsection shall not
apply to an action by a manufacturer that is applied uniformly among all dealers of the
same line-make in this state.

(7) All reimbursement claims made by dealers pursuant to this subsection for recall
remedies or repairs, or for compensation where no part or repair is reasonably available
and the vehicle is subject to a stop-sale shall be subject to the same limitations and
requirements as a warranty reimbursement claim made under this subsection. In the
alternative, a manufacturer may compensate its franchised dealers under a national recall
compensation program provided the compensation under the program is equal to or
greater than that provided under this subsection; or the manufacturer and dealer otherwise
agree.

(8) A manufacturer may direct the manner and method in which a dealer must
demonstrate the inventory status of an affected used motor vehicle to determine eligibility
under this subsection, provided that the manner and method may not be unduly
burdensome and may not require information that is unduly burdensome to provide.
(9) Nothing in this subsection shall require a manufacturer to provide total compensation
to a dealer which would exceed the total average trade-in value of the affected used motor
vehicle as originally determined under paragraph (3) of this subsection.

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

SECTION 2.

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

“10-1-663.1.
There shall be a right of first refusal to purchase in favor of the franchisor if the dealer has
entered into an agreement to transfer the dealership or its assets, provided that all the
following qualifications and requirements are met:

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

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

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

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

(4) The proposed change of 50 percent or more of the ownership or of the dealership
assets does not involve the transfer or sale of assets or the transfer or issuance of stock
by the dealer or one or more dealer owners to a designated family member or members,
including a spouse, child, grandchild, spouse of a child or grandchild, brother, sister, or
parent of the dealer owner; to a manager who has been employed in the dealership for at
least four years and is otherwise qualified as a dealer operator; or to a partnership or
corporation owned and controlled by one or more of such persons;
(5) The franchisor agrees to pay the reasonable expenses, including reasonable attorney's fees, which do not exceed the usual customary, and reasonable fees charged for similar work done for other clients incurred by the proposed new owner and transferee before the franchisor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or transfer of dealership assets. However, payment of such expenses and attorney's fees shall not be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 20 days after the dealer's receipt of the franchisor's written request for such an accounting. Such an accounting may be requested by the franchisor before exercising its right of first refusal; and

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

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

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

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

SECTION 3.

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