

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

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 'stop-sale' means a notification issued by
 166 a manufacturer to its franchised dealers stating that certain used motor vehicles in
 167 inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety
 168 recall for a defect or a noncompliance or a federal emissions recall.

169 (2) A franchisor, manufacturer, or distributor shall compensate its dealers for all labor
 170 and parts required by the manufacturer to perform recall repairs. Compensation for recall
 171 repairs shall be reasonable. If parts or a remedy are not reasonably available to perform
 172 a recall service or repair on a used vehicle held for sale by a dealer authorized to sell and
 173 service new motor vehicles of the same line-make within 30 days of the manufacturer
 174 issuing the initial notice of recall, and the manufacturer has issued a stop-sale or do not

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

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

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

217 **SECTION 2.**

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

220 "10-1-663.1.

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

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

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

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

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

240 (4) The proposed change of 50 percent or more of the ownership or of the dealership
 241 assets does not involve the transfer or sale of assets or the transfer or issuance of stock
 242 by the dealer or one or more dealer owners to a designated family member or members,
 243 including a spouse, child, grandchild, spouse of a child or grandchild, brother, sister, or
 244 parent of the dealer owner; to a manager who has been employed in the dealership for at
 245 least four years and is otherwise qualified as a dealer operator; or to a partnership or
 246 corporation owned and controlled by one or more of such persons;

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

257 (6) The franchisor agrees to comply with and be subject to the requirements and
 258 restraints as set forth in paragraphs (1) and (2) of subsection (a) of Code Section
 259 10-1-664.1 and in subsection (b) of Code Section 10-1-664.1.

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

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

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

274 **SECTION 3.**

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