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**Business & Financial Services Committee**

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**HB 2439**

**Brief Description:** Clarifying the relationship between manufacturers and new motor vehicle dealers by providing tools to resolve disparities including expanding compensation for recalled vehicles.

**Sponsors:** Representatives Kirby, Vick, Barkis, Stanford, Ryu and Haler.

**Brief Summary of Bill**

- Requires motor vehicle manufacturers (manufacturers) to compensate new motor vehicle dealers (dealers) for all labor and parts required to perform recall repairs.
- Requires manufacturers to compensate dealers if parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by the dealer in certain circumstances, at a rate tied to the average trade-in value of the vehicle.
- Includes limitations on the scope of the new requirements.
- Establishes requirements and procedures for submitting reimbursement claims to manufacturers and for when a claim must be paid.
- Establishes a process for the Department of Licensing to hold adjudicative proceedings to settle a dispute arising under the motor vehicle franchise law.
- Limits how manufacturers may modify their franchise agreements with dealers.
- Modifies the relief that a dealer may seek in a superior or district court, and specifies a court may increase an award by up to three times the actual damages sustained.

**Hearing Date:** 1/17/18

**Staff:** Peter Clodfelter (786-7127).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Department of Licensing (DOL) regulates persons who engage in business as new motor vehicle dealers (dealer) and motor vehicle manufacturers (manufacturers). The DOL has the authority to issue and deny licenses. Manufacturers maintain a franchise relationship with their dealers, and the responsibilities of each party are delineated in state law and the franchise agreement with the parties. State law generally dictates when a manufacturer may own or terminate a dealer's franchise and the compensation a manufacturer must pay a dealer for warranty work. Also, various practices are prohibited in the dealer franchise law.

For example, a manufacturer is prohibited from taking any adverse action against a dealer, including but not limited to, charge backs or reducing vehicle allocations, for sales and service performance within a designated area of primary responsibility unless the area is reasonable in light of proximity to relevant census tracts to the dealership and competing dealerships, highways and road networks, state borders, any natural or man-made barriers, demographics, including economic factors, and buyer behavior information.

Each manufacturer must specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer must provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation must not be less than the rates charged by the dealer for similar service to retail customers for non-warranty service and repairs, and must not be less than the schedule of compensation for an existing dealer as of a date in 2010.

All claims for warranty work for parts and labor made by dealers must be submitted to the manufacturer within 90 days of the date the work was performed. All claims submitted must be paid by the manufacturer within 30 days following receipt, provided the claim has been approved by the manufacturer. The manufacturer must notify the dealer in writing of any disapproved claim, and must set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within 30 days following receipt is approved, and the manufacturer is required to pay that claim within 30 days of receipt of the claim. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of nine months following payment.

A dealer injured in the dealer's business by a violation of the motor vehicle franchise law may bring an action in superior court or district court, depending on the amount of damages, to recover the costs of the suit, including reasonable attorneys' fees if the dealer prevails.

### **Summary of Bill:**

A motor vehicle manufacturer (manufacturer) must compensate its new motor vehicle dealers (dealers) for all labor and parts required by the manufacturer to perform recall repairs at rates no lower than rates set in accordance with the process in the motor vehicle franchise law for determining rates paid by manufacturers to dealers for warranty work performed by dealers.

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 new vehicles of the same line make within 15

days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale, do-not-drive, or where the issue identified in the notice of recall could otherwise affect the safe operation of the vehicle, the manufacturer must compensate the dealer at a rate of at least 1.75 percent of the average trade-in value as indicated in an independent third-party guide for the year, make, model, and mileage of the recalled vehicle, per month, or portion of a month, while the recall or remedy parts are unavailable and the order remains in effect.

A stop-sale or do-not-drive is defined as a notification issued by a manufacturer to its franchised dealerships stating that certain used vehicles in inventory should not be sold or leased, at retail or wholesale, due to a federal safety recall for a defect or a noncompliance, or a federal or state of California emissions recall.

The new requirements apply only to used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations and where a stop-sale, do-not-drive order has been issued, or where the issue identified in the notice of recall could otherwise affect the safe operation of the vehicle. Additionally, the new requirements apply only to dealers holding used vehicles for sale that are a line make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

All reimbursement claims made by dealers 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, do-not-drive, or where the issue identified in the notice of recall could otherwise affect the safe operation of the vehicle, is subject to the same limitations and requirements as a warranty reimbursement claim.

Claims must be either approved or disapproved within 30 days after the claims' submission to the manufacturer in the manner and on the forms the manufacturer reasonably prescribes. Any claim not specifically disapproved in writing within 30 days following receipt is approved, and the manufacturer must pay that claim within 30 days of receipt of the claim.

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 the compensation provided in the new requirements.

A manufacturer may not recover all or any portion of its costs for compensating its dealers licensed in this state for recalled vehicles, parts, and service either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition.

Any corporation or association that is primarily owned by or composed of dealers and that primarily represents the interests of dealers has standing to file a petition with the Department of Licensing to have a matter handled as an adjudicative proceeding under the Administrative Procedure Act, or as a cause of action with a court of competent jurisdiction for itself or by, for, or on behalf of one or more dealers for any violation of the motor vehicle franchise laws or for the determination of any rights created by the motor vehicle franchise laws. The corporation or association may seek declaratory or injunctive relief.

It is specified that a dealer's designated area of primary responsibility must contain only areas inside the state unless specifically approved by the dealer, for the purposes of determining when

a manufacturer may take adverse action against a dealer such as charge backs or reducing vehicle allocations, for sales and service performance within a designated area of primary responsibility.

It is provided that a manufacturer may not modify the franchise agreement for any dealer unless the manufacturer notifies the dealer in writing of its intention to modify the agreement at least 90 days before the effective date of the modification, stating the specific grounds for the modification, and undertakes the modification in good faith, for good cause, and in a manner that would not adversely and substantially alter the rights, obligations, investment, or return on investment of the franchised new motor vehicle dealer under the existing agreement.

It is provided that a dealer injured in the dealer's business or property by a violation of the motor vehicle franchise law may seek to have a court enjoin further violations. Also, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.