

ASSEMBLY BILL NO. 248—ASSEMBLYMEN ELLISON,
OSCARSON, WHEELER; AND TITUS

MARCH 1, 2017

Referred to Committee on Transportation

SUMMARY—Revises provisions governing unfair acts or practices relating to vehicle dealers. (BDR 43-877)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to unfair practices; expanding the circumstances under which a manufacturer, distributor or factory branch of a manufacturer commits an unfair act or practice against a vehicle dealer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Certain acts or practices undertaken by a factory branch or a manufacturer or
2 distributor of new vehicles toward a vehicle dealer licensed in this State are
3 considered unfair acts or practices under existing law. (NRS 482.36371-482.36395)
4 For example, it is considered an unfair act or practice for a vehicle manufacturer or
5 distributor to fail to compensate a dealer fairly for labor, parts and other expenses
6 incurred by the dealer under the manufacturer's warranty agreements. (NRS
7 482.36385) This bill adds manufacturer's service agreements and maintenance
8 agreements to existing provisions governing manufacturer's warranty agreements.
9 This bill also makes it an unfair practice for a manufacturer or distributor to fail to
10 compensate a dealer fairly for reasonable travel and related expenses resulting from
11 the dealer sending an employee of the dealer to attend certain repair, service and
12 warranty training required by the manufacturer or distributor.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 482.36385 is hereby amended to read as follows:

482.36385 It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

1. Compete with a dealer. A manufacturer or distributor shall not be deemed to be competing when operating a previously existing dealership temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified person at a fair and reasonable price, or in a bona fide relationship in which a person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

2. Discriminate unfairly among its dealers, or fail without good cause to comply with franchise agreements, with respect to warranty , *service or maintenance agreement* reimbursement or authority granted to its dealers to make warranty , *service or maintenance agreement* adjustments with retail customers.

3. Fail to compensate a dealer fairly for the work and services which the dealer is required to perform in connection with the delivery and preparation obligations under any franchise, or fail to compensate a dealer fairly for labor, parts and other expenses incurred by the dealer under the manufacturer's warranty , *service and maintenance* agreements. The manufacturer shall set forth in writing the respective obligations of a dealer and the manufacturer in the preparation of a vehicle for delivery, and as between them a dealer's liability for a defective product is limited to the obligation so set forth. Fair compensation includes diagnosis and reasonable administrative and clerical costs. The dealer's compensation for parts and labor to satisfy a *manufacturer's* warranty *or to perform service or maintenance required by a manufacturer's service or maintenance agreement, respectively*, must not be less than the amount of money charged to its various retail customers for parts and labor that are not covered by a warranty ~~H~~ , *service or maintenance agreement*. If parts are supplied by the manufacturer, including exchanged parts and assembled components, the dealer is entitled with respect to each part to an amount not less than the dealer's normal retail markup for the part. This subsection does not apply to compensation for any part, system, fixture, appliance, furnishing, accessory or feature of a motor home or recreational vehicle that is designed, used and maintained primarily for nonvehicular, residential purposes.



4. Fail to:

(a) Pay all claims made by dealers for compensation for delivery and preparation work, transportation claims, special campaigns and work to satisfy ~~warranties~~ *warranty, service and maintenance agreements* within 30 days after approval, or fail to approve or disapprove such claims within 30 days after receipt;

(b) Disapprove any claim without notice to the dealer in writing of the grounds for disapproval; or

(c) Accept an amended claim for labor and parts if the amended claim is submitted not later than 60 days after the date on which the manufacturer or distributor notifies the dealer that the claim has been disapproved and the disapproval was based on the dealer's failure to comply with a specific requirement for processing the claim, including, without limitation, a clerical error or other administrative technicality that does not relate to the legitimacy of the claim.

➤ Failure to approve or disapprove or to pay within the specified time limits in an individual case does not constitute a violation of this section if the failure is because of reasons beyond the control of the manufacturer, distributor or factory branch.

5. *Fail to compensate a dealer for all reasonable travel and related expenses incurred by the dealer for an employee of the dealer to attend training that is required by the manufacturer, distributor or factory branch and is related to, without limitation, the administration and handling of recalls and warranties, warranty repair service, or other service, maintenance and repair policies and practices. Reasonable travel and related expenses include, without limitation, airfare, motor vehicle rental, food, lodging and wages for an employee of the dealer during the period the employee is traveling to or from or attending the required training pursuant to this subsection.*

6. Sell a new vehicle to a person who is not licensed as a new vehicle dealer under the provisions of this chapter.

~~16-1~~ 7. Use false, deceptive or misleading advertising or engage in deceptive acts in connection with the manufacturer's or distributor's business.

~~17-1~~ 8. Perform an audit to confirm a warranty , *service or maintenance agreement* repair, sales incentive or rebate more than 9 months after the date on which the claim was made. An audit of a dealer's records pursuant to this subsection may be conducted by the manufacturer or distributor on a reasonable basis, and a dealer's claim for warranty , *service, maintenance* or sales incentive compensation must not be denied except for good cause, including, without limitation, performance of nonwarranty repairs, *performance of service or maintenance not covered under a*



1 *service or maintenance agreement*, lack of material documentation,
2 fraud or misrepresentation. A dealer's failure to comply with the
3 specific requirements of the manufacturer or distributor for
4 processing the claim does not constitute grounds for the denial of
5 the claim or the reduction of the amount of compensation to the
6 dealer if reasonable documentation or other evidence has been
7 presented to substantiate the claim. The manufacturer or distributor
8 shall not deny a claim or reduce the amount of compensation to the
9 dealer for warranty repairs , *service or maintenance* to resolve a
10 condition discovered by the dealer during the course of a separate
11 repair.

12 ~~†8.†~~ 9. Prohibit or prevent a dealer from appealing the results
13 of an audit to confirm a warranty , *service or maintenance* repair,
14 sales incentive or rebate, or to require that such an appeal be
15 conducted at a location other than the dealer's place of business.

16 **Sec. 2.** This act becomes effective upon passage and approval.

