

HOUSE AMENDMENTS TO HOUSE BILL 3347

By COMMITTEE ON BUSINESS AND LABOR

April 24

1 On page 5 of the printed bill, delete lines 16 through 45.

2 On page 6, delete lines 1 through 9 and insert:

3 “(17)(a) Except as provided in paragraph (b) of this subsection, require a dealer to construct a
4 new dealer facility or materially alter or remodel an existing dealer facility within seven years after
5 the date on which the dealer previously constructed, materially altered or remodeled the existing
6 dealer facility if the existing dealer facility complies with the manufacturer’s, distributor’s or
7 importer’s approved brand image standards or plans that existed at the time the dealer constructed,
8 materially altered or remodeled the existing dealer facility.

9 “(b) A manufacturer, distributor or importer may require a dealer to construct a new dealer
10 facility or materially alter or remodel an existing dealer facility within seven years after the dealer
11 constructed, materially altered or remodeled the existing dealer facility:

12 “(A) If the manufacturer, distributor or importer demonstrates that the dealer’s reasonable fi-
13 nancial expectations, the availability of additional vehicle allocations, the dealer’s market for vehi-
14 cle sales, existing and reasonably projected economic conditions and the reasonably projected costs
15 of constructing a new dealer facility or materially altering or remodeling an existing dealer facility
16 justify the requirement;

17 “(B) In order to comply with a health or safety law or with a technological requirement that is
18 necessary to sell or service a motor vehicle that the dealer sells or services under the terms of the
19 dealer’s franchise; or

20 “(C) By means of a written agreement separate from the franchise agreement if the manufac-
21 turer, distributor or importer provides money, credit, an allowance, an incentive or a reimbursement
22 to the dealer to compensate for all or a substantial portion of the cost of constructing a new dealer
23 facility or materially altering or remodeling an existing dealer facility.

24 “(c) Paragraph (a) of this subsection does not prohibit a dealer from voluntarily agreeing with
25 a manufacturer, distributor or importer to construct a new dealer facility or materially alter or re-
26 model an existing dealer facility in return for separate and valuable consideration. For the purposes
27 of this paragraph, renewing a dealer’s franchise is not separate and valuable consideration.

28 “(d) For purposes of this subsection:

29 “(A) ‘Materially alter’ means a significant architectural or structural modification to a dealer
30 facility that is directly related to effectively selling or servicing motor vehicles of the type that the
31 dealer’s franchise agreement or license permits the dealer to sell or service.

32 “(B) ‘Materially alter’ does not include routine maintenance, such as interior painting, that is
33 reasonably necessary to keep a dealer facility in attractive condition.

34 “(18)(a) Except as provided in paragraph (b) of this subsection, require a dealer to purchase
35 goods or services for constructing, materially altering or remodeling a dealer facility from a vendor

1 that the manufacturer, distributor or importer selects, identifies or designates without giving the
2 dealer an option to obtain goods or services of substantially similar quality and design from a ven-
3 dor that the dealer chooses, subject to the manufacturer's, distributor's or importer's approval in
4 advance. The manufacturer, distributor or importer may not withhold approval unreasonably.

5 “(b) A dealer may not select a vendor from which to obtain goods and services for constructing
6 a new dealer facility or materially altering or remodeling an existing dealer facility if a manufac-
7 turer, distributor or importer provides money, credit, an allowance or a reimbursement to compen-
8 sate for all or a substantial portion of the cost of upgrading or improving a dealer facility or for
9 using a specific material, good or service to upgrade or improve a dealer facility.

10 “(c) This subsection does not permit a dealer to:

11 “(A) Directly or indirectly infringe upon, eliminate or impair a manufacturer's, distributor's or
12 importer's intellectual property rights or reasonable business requirements; or

13 “(B) Erect or maintain signs that do not conform to the manufacturer's, distributor's or
14 importer's intellectual property usage guidelines.”.

15 In line 21, after “(2)” insert “(a)”.

16 After line 30, insert:

17 “(b)(A) For purposes of this subsection and subject to subparagraphs (B) and (C) of this para-
18 graph, to determine compensation under this subsection, a dealer shall propose an hourly rate and
19 an amount for parts that the dealer charges nonwarranty customers by submitting to the manufac-
20 turer, distributor or importer copies of 100 sequential nonwarranty service repair invoices that
21 customers paid or 90 consecutive days' worth of nonwarranty service invoices that customers paid,
22 whichever is less. The dealer shall submit the invoices for repairs that occurred not more than 180
23 days before the dealer submits a proposal under this subparagraph. If the manufacturer, distributor
24 or importer does not contest the dealer's proposal and the dealer otherwise complies with the pro-
25 visions of this paragraph, the dealer's proposal is presumed to be fair and reasonable.

26 “(B) A manufacturer, distributor or importer may contest the dealer's proposal with evidence
27 that the dealer's proposal is not accurate or on the basis that the dealer's proposal does not rea-
28 sonably conform with the hourly rate or the amount for parts that other dealers charge nonwarranty
29 customers in the same line-make in market areas that are contiguous to the dealer's market area
30 or with other relevant evidence. In contesting a dealer's proposal based on evidence from other
31 dealers in the contiguous market area, a manufacturer, distributor or importer shall rely on evi-
32 dence from at least three other dealers in the contiguous market area or three dealers in an eco-
33 nomically similar market within the manufacturer's, distributor's or importer's region.

34 “(C) A dealer may not include in the dealer's proposal:

35 “(i) Repairs the dealer performs for a manufacturer's, distributor's or importer's special event
36 or as part of a promotional discount for retail customer repairs;

37 “(ii) Parts sold at wholesale;

38 “(iii) Routine maintenance that a retail customer warranty does not cover, such as fluids, filters
39 and belts that a dealer uses in performing work other than repairs;

40 “(iv) Nuts, bolts, fasteners and similar items that do not have an individual part number; and

41 “(v) Vehicle reconditioning.

42 “(c) The hourly rate or the amount for parts that a dealer charges nonwarranty customers that
43 the dealer proposes under paragraph (b)(A) of this subsection becomes effective 30 days after the
44 manufacturer, distributor or importer approves the hourly rate or the amount for parts or 30 days
45 after the dealer submits a proposal if the manufacturer, distributor or importer does not contest the

1 proposed hourly rate or amount for parts.

2 “(d) If a manufacturer, distributor or importer successfully contests a dealer’s proposal, the
3 manufacturer, distributor or importer shall propose an adjustment to the dealer’s proposal not later
4 than 30 days after the dealer submits the dealer’s proposal.

5 “(e) Once per year, a manufacturer, distributor or importer may verify the dealer’s hourly rate
6 or the amount for parts the dealer charges nonwarranty customers. If the manufacturer, distributor
7 or importer finds that the dealer’s hourly rate or the amount for parts has decreased, the manufac-
8 turer, distributor or importer may reduce the dealer’s compensation under this subsection
9 prospectively.”

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