

**PROPOSED AMENDMENTS TO
HOUSE BILL 3347**

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
4 dealer to construct a new dealer facility or materially alter or remodel an
5 existing dealer facility within seven years after the date on which the dealer
6 previously constructed, materially altered or remodeled the existing dealer
7 facility if the existing dealer facility complies with the manufacturer’s,
8 distributor’s or importer’s approved brand image standards or plans that ex-
9 isted at the time the dealer constructed, materially altered or remodeled the
10 existing dealer facility.

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

15 “(A) If the manufacturer, distributor or importer demonstrates that the
16 dealer’s reasonable financial expectations, the availability of additional ve-
17 hicle allocations, the dealer’s market for vehicle sales, existing and reason-
18 ably projected economic conditions and the reasonably projected costs of
19 constructing a new dealer facility or materially altering or remodeling an
20 existing dealer facility justify the requirement;

21 “(B) In order to comply with a health or safety law or with a technolog-
22 ical requirement that is necessary to sell or service a motor vehicle that the

1 dealer sells or services under the terms of the dealer's franchise; or

2 “(C) By means of a written agreement separate from the franchise agree-
3 ment if the manufacturer, distributor or importer provides money, credit, an
4 allowance, an incentive or a reimbursement to the dealer to compensate for
5 all or a substantial portion of the cost of constructing a new dealer facility
6 or materially altering or remodeling an existing dealer facility.

7 “(c) Paragraph (a) of this subsection does not prohibit a dealer from vol-
8 untarily agreeing with a manufacturer, distributor or importer to construct
9 a new dealer facility or materially alter or remodel an existing dealer facility
10 in return for separate and valuable consideration. For the purposes of this
11 paragraph, renewing a dealer's franchise is not separate and valuable con-
12 sideration.

13 “(d) For purposes of this subsection:

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

18 “(B) ‘Materially alter’ does not include routine maintenance, such as in-
19 terior painting, that is reasonably necessary to keep a dealer facility in at-
20 tractive condition.

21 “(18)(a) Except as provided in paragraph (b) of this subsection, require a
22 dealer to purchase goods or services for constructing, materially altering or
23 remodeling a dealer facility from a vendor that the manufacturer, distributor
24 or importer selects, identifies or designates without giving the dealer an
25 option to obtain goods or services of substantially similar quality and design
26 from a vendor that the dealer chooses, subject to the manufacturer's,
27 distributor's or importer's approval in advance. The manufacturer, distribu-
28 tor or importer may not withhold approval unreasonably.

29 “(b) A dealer may not select a vendor from which to obtain goods and
30 services for constructing a new dealer facility or materially altering or re-

1 modeling an existing dealer facility if a manufacturer, distributor or
2 importer provides money, credit, an allowance or a reimbursement to com-
3 pensate for all or a substantial portion of the cost of upgrading or improving
4 a dealer facility or for using a specific material, good or service to upgrade
5 or improve a dealer facility.

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

7 “(A) Directly or indirectly infringe upon, eliminate or impair a
8 manufacturer’s, distributor’s or importer’s intellectual property rights or
9 reasonable business requirements; or

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

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

13 After line 30, insert:

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

26 “(B) A manufacturer, distributor or importer may contest the dealer’s
27 proposal with evidence that the dealer’s proposal is not accurate or on the
28 basis that the dealer’s proposal does not reasonably conform with the hourly
29 rate or the amount for parts that other dealers charge nonwarranty custom-
30 ers in the same line-make in market areas that are contiguous to the dealer’s

1 market area or with other relevant evidence. In contesting a dealer's pro-
2 posal based on evidence from other dealers in the contiguous market area,
3 a manufacturer, distributor or importer shall rely on evidence from at least
4 three other dealers in the contiguous market area or three dealers in an
5 economically similar market within the manufacturer's, distributor's or
6 importer's region.

7 "(C) A dealer may not include in the dealer's proposal:

8 "(i) Repairs the dealer performs for a manufacturer's, distributor's or
9 importer's special event or as part of a promotional discount for retail cus-
10 tomer repairs;

11 "(ii) Parts sold at wholesale;

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

15 "(iv) Nuts, bolts, fasteners and similar items that do not have an indi-
16 vidual part number; and

17 "(v) Vehicle reconditioning.

18 "(c) The hourly rate or the amount for parts that a dealer charges non-
19 warranty customers that the dealer proposes under paragraph (b)(A) of this
20 subsection becomes effective 30 days after the manufacturer, distributor or
21 importer approves the hourly rate or the amount for parts or 30 days after
22 the dealer submits a proposal if the manufacturer, distributor or importer
23 does not contest the proposed hourly rate or amount for parts.

24 "(d) If a manufacturer, distributor or importer successfully contests a
25 dealer's proposal, the manufacturer, distributor or importer shall propose an
26 adjustment to the dealer's proposal not later than 30 days after the dealer
27 submits the dealer's proposal.

28 "(e) Once per year, a manufacturer, distributor or importer may verify the
29 dealer's hourly rate or the amount for parts the dealer charges nonwarranty
30 customers. If the manufacturer, distributor or importer finds that the dealer's

1 hourly rate or the amount for parts has decreased, the manufacturer, dis-
2 tributor or importer may reduce the dealer's compensation under this sub-
3 section prospectively.”.

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