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Bill Analysis

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Primary Sponsor: Sen. Gavarone

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SUMMARY

- Requires a watercraft manufacturer that has entered into an agreement to allow a watercraft dealer to sell its product to do both of the following:
  - Fulfill warranty and recall obligations of diagnosing, repairing, and servicing watercraft, including all parts and components manufactured for installation in a watercraft; and
  - Compensate the watercraft dealer for labor and parts used to fulfil such obligations at rates that are at least the amount charged by the watercraft dealer to its retail customers for nonwarranty work.
- Establishes a method to allow a watercraft dealer to calculate its retail labor rate and its retail parts markup percentage for warranty and recall obligations.
- Requires a watercraft manufacturer to use a certain method when calculating the compensation provided to a watercraft dealer for labor and parts used to fulfill warranty and recall obligations.
- Prohibits a watercraft manufacturer from requiring a watercraft dealer to establish a retail labor rate or retail parts markup percentage using any method that is unduly burdensome or time consuming.

DETAILED ANALYSIS

Overview and scope

The bill establishes requirements for a watercraft dealer and a watercraft manufacturer (including a person who assembles watercraft)[1] regarding all of the following:

[1] R.C. 1547.85(A)(2).

- A manufacturer's warranty and recall obligations;
- A manufacturer's duty to compensate a dealer for the labor and parts used to fulfill those obligations;
- How a dealer establishes compensation rates for labor performed and parts used when fulfilling those obligations; and
- How a manufacturer calculates retail labor rates and the retail parts markup percentage.

The bill's provisions are similar to current law's requirements for motor vehicle franchisors regarding fulfillment and compensation for warranty and recall obligations.[2]

Watercraft dealer

Under the bill, a watercraft dealer is a person who is regularly engaged in the business of manufacturing, selling, displaying, offering for sale, or dealing in vessels at an established place of business that is used primarily for the selling, displaying, offering for sale, or dealing of vessels and both of the following apply:

1. The person has been issued a watercraft dealer registration certificate from the Ohio Department of Natural Resources' Division of Parks and Watercraft in accordance with current law;[3] and
2. The person has a written or verbal agreement with a manufacturer that allows the watercraft dealer to buy and resell the manufacturer's product or has, through other means, obtained the manufacturer's authorization to buy and sell the product ("dealer agreement").[4]

Watercraft

The bill's provisions apply to dealers and manufacturers of watercraft. A watercraft[5] is any of the following when used or capable of being used for transportation on the water:

1. A vessel operated by machinery either permanently or temporarily affixed to the vessel;
2. A sailboat other than a sailboard;
3. An inflatable, manually propelled vessel that is required by federal law to have a hull identification number meeting the U.S. Coast Guard requirements;
4. A canoe, kayak, pedalboat, or rowboat;
5. An amphibious vehicle;
6. A submersible;
7. An airboat or hovercraft; and

[2] See R.C. 4517.52, not in the bill.

[3] See R.C. 1547.543, not in the bill.

[4] R.C. 1547.85(A)(4).

[5] R.C. 1547.85(A)(3), also see R.C. 1546.01, not in the bill.

8. A vessel that has been issued a federal certificate of documentation with a recreational endorsement.

Additionally, a watercraft includes a trailer used to transport and a motor used to power the various other watercraft but does not include ferries licensed under Ohio law.[6]

Warranty and recall obligations

The bill requires each manufacturer with a dealer agreement to fulfill warranty and recall obligations of diagnosing, repairing, and servicing watercraft, including all parts and components manufactured for installation in any watercraft.[7]

Establishing compensation rates

Under the bill, a manufacturer with a dealer agreement must compensate each of its watercraft dealers for labor and parts used to fulfill warranty and recall obligations of diagnostic, repair, and servicing work. Those rates must be at least the same as those charged by the watercraft dealer to its retail customers for warranty-like diagnosis, labor, and parts for nonwarranty work. If a watercraft dealer establishes compensation rates for labor performed ("retail labor rate") and parts used ("parts markup percentage"), it must do all of the following:

- Submit to the manufacturer either ten nonwarranty service repair orders for warranty-like repairs that have been paid by a customer and closed by the time of submission or all service repair orders for warranty-like repairs that have been paid by a customer and closed by the time of submission for a period of 90 consecutive days. A watercraft dealer may submit either a set of repair orders or separate sets of repair orders to calculate its retail labor rate and parts markup percentage. Repair orders must have occurred within 180 days before submission.

- Calculate its retail labor rate as follows:

$$Retail\ labor\ rate = \frac{Total\ labor\ sales\ from\ the\ service\ repair\ orders}{Total\ number\ of\ labor\ hours\ that\ generated\ those\ sales}$$

- Calculate its parts markup percentage as follows:

$$Parts\ markup\ percentage = \left(\frac{Total\ parts\ sales\ from\ the\ service\ repair\ orders}{Total\ cost\ for\ the\ purchase\ of\ those\ parts} - 1\right) \times 100$$

- Provide notice of its retail labor rates and parts markup percentage to the manufacturer with the dealer agreement.

If a manufacturer determines from any set of repair orders that the retail labor rate or parts markup percentage is substantially higher or lower than the rates the manufacturer currently has on file for that dealer, the manufacturer may request additional documentation. Specifically, the manufacturer may ask the dealer to provide repair orders from 90 days before

[6] See R.C. Chapter 4583, not in the bill.

[7] R.C. 1547.85(B).

or 90 days after the time when the dealer originally submitted the orders for purposes of an alteration.[8]

Calculating compensation rates

The bill requires a manufacturer with a dealer agreement to use a certain method when calculating the compensation provided to the dealer for labor and parts used to fulfill warranty and recall obligations. When calculating that compensation, the manufacturer must do all of the following:

- Use reasonable and adequate time allowances for the diagnosis and performance of the warranty and recall work and service to be performed by a qualified technician;
- Include all reasonable and necessary tasks that are incidental to warranty repairs, if submitted by the watercraft dealer on an itemized statement, including all of the following:
  - Assisting a customer with unhooking or hooking the watercraft to a watercraft trailer or towing vehicle;
  - Removing, installing, or uncovering a protective cover, or accessing an interior compartment for inspection or repair;
  - Assisting a customer with retrieving the customer's watercraft from the dealership after the repair; and
  - Handling administrative or documentation tasks, including paperwork.
- Include the reasonable costs the watercraft dealer incurs in conducting an on-water performance evaluation to verify the effectiveness of a repair or to properly perform a diagnosis, including compensation for labor rates, fuel or oil required for the test, and reasonable transportation costs to and from the testing location;
- Use any retail labor rate and parts markup percentage established using the method described above in calculating the compensation;
- Even if the manufacturer provided a part or component to the watercraft dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, compensate the watercraft dealer an amount equal to the parts markup percentage that would have applied for that part or component, calculated as follows:

$$\begin{aligned} &Compensation\ amount \\ &= Dealer\ cost\ for\ parts, as\ listed\ in\ the\ manufacturer's\ price\ schedule \\ &\times Parts\ markup\ percentage \end{aligned}$$

Compensation rates – prohibitions

When calculating the compensation rates, a manufacturer with a dealer agreement cannot do any of the following to a watercraft dealer:

[8] R.C. 1547.85(C).

- Assess penalties, surcharges, or similar costs;
- Transfer or shift any costs; or
- Limit allocation of watercraft or parts or otherwise take retaliatory action against a watercraft dealer based on any watercraft dealer's exercise of its right.

It is the watercraft dealer's burden to prove any claims by a preponderance of the evidence. Furthermore, the bill's provisions do not prohibit a manufacturer from increasing the price of a vehicle or part.[9]

Additionally, the bill prohibits a manufacturer with a dealer agreement from doing any of the following:

- Requiring a watercraft dealer to establish its retail labor rate or parts markup percentage using any method that is unduly burdensome or time consuming;
- Requiring the use of information that is unduly burdensome or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the watercraft dealer's financial statement; or
- Unilaterally calculating a labor or parts rate for a watercraft dealer.[10]

HISTORY

Action	Date
Introduced	06-09-26

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[9] R.C. 1547.85(D).

[10] R.C. 1547.85(E).