

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1192

Introduced by

Representatives Ruby, Delmore, Kasper, Sukut

Senators Hogue, Klein, Lyson

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota
2 Century Code, relating to motor vehicle warranty reimbursement; and to declare an emergency.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Warranty work compensation.**

7 1. A motor vehicle manufacturer shall include reasonable compensation for diagnostic
8 work, as well as repair service, parts, and labor, in warranty work compensation. In
9 addition, a motor vehicle manufacturer shall provide adequate time allowances for
10 diagnosis and performance of warranty work and service for the work performed. The
11 hourly labor rate paid by a motor vehicle manufacturer to the dealer for warranty
12 services may not be less than the average rate charged by the dealer for like service
13 to nonwarranty customers for nonwarranty service as provided under subsection 5. A
14 motor vehicle manufacturer may not reimburse a dealer for parts used in the
15 performance of warranty repair at a lower rate than the average retail rate customarily
16 charged by the dealer for these parts as provided under subsection 4.

17 2. A motor vehicle manufacturer shall pay a dealer on a claim made by a dealer under
18 this section within thirty days of the approval of the claim. The manufacturer shall
19 either approve or disapprove a claim within thirty days after the claim is submitted to
20 the manufacturer. The manufacturer may prescribe the manner in which and the forms
21 on which the dealer must present the claim. A claim not specifically disapproved in
22 writing within thirty days after the manufacturer receives the claim must be construed
23 to be approved and the manufacturer shall pay the claim within thirty days.

- 1 3. A motor vehicle manufacturer, factory branch, distributor, or distributor branch shall
2 fully compensate its motor vehicle dealers licensed in this state for warranty parts,
3 work, and service specified in this section. Failure to fully compensate includes a
4 reduction in the amount due to the dealer or imposing a separate charge, surcharge,
5 or other imposition by which the motor vehicle manufacturer, factory branch,
6 distributor, or distributor branch seeks to recover the costs of complying with this
7 section from the dealer.
- 8 4. The retail rate customarily charged by the dealer for parts is established by the dealer
9 submitting to the manufacturer or distributor one hundred sequential nonwarranty
10 customer-paid service repair orders that contain warranty-like parts or ninety
11 consecutive days of nonwarranty customer-paid service repair orders that contain
12 warranty-like parts, whichever is less, covering repairs made no more than one
13 hundred eighty days before the submission and declaring the average percentage
14 markup.
- 15 5. The retail rate customarily charged by the dealer for labor must be established using
16 the same process as provided under subsection 4 and declaring the average labor
17 rate. The average labor rate must be determined by dividing the amount of the
18 dealer's total labor sales by the number of total hours that generated those sales. If a
19 labor rate and parts markup rate are simultaneously declared by the dealer, the dealer
20 may use the same repair orders to complete each calculation as provided under
21 subsection 4.
- 22 6. In calculating the retail rate customarily charged by the dealer for parts and labor, the
23 following work may not be included in the calculation:
- 24 a. Repairs for manufacturer or distributor special events, specials, or promotional
25 discounts for retail customer repairs;
- 26 b. Parts sold at wholesale;
- 27 c. Routine maintenance not covered under any retail customer warranty, including
28 fluids, filters and belts not provided in the course of repairs;
- 29 d. Nuts, bolts, fasteners, and similar items that do not have an individual part
30 number;
- 31 e. Tires; and

1 f. Vehicle reconditioning.

2 7. The average of the parts markup rates and labor rate is presumed to be fair and
3 reasonable and must go into effect thirty days following the manufacturer's approval. A
4 manufacturer or distributor may rebut the presumption by reasonably substantiating
5 that a rate is unreasonable in light of the practices of all other franchised motor vehicle
6 dealers in an economically similar area of the state offering the dealer's declaration of
7 the same line-make vehicles, not later than thirty days after submission. If the average
8 parts markup rate or average labor rate is rebutted, or both, the manufacturer or
9 distributor shall propose an adjustment of the average percentage markup based on
10 that rebuttal not later than thirty days after submission.

11 8. Each manufacturer, in establishing a schedule of compensation for warranty work,
12 shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and
13 may not obligate any vehicle dealer to engage in unduly burdensome or
14 time-consuming documentation of rates or parts, including obligating vehicle dealers to
15 engage in transaction-by-transaction or part-by-part calculations.

16 9. A dealer or manufacturer may demand that the average parts markup or average labor
17 rate be calculated using the process provided under subsections 4 and 5; however,
18 the demand for the average parts markup may not be made within twelve months of
19 the last parts markup declaration and the demand for the average labor rate may not
20 be made within twelve months of the last labor rate declaration. If a parts markup or
21 labor rate is demanded by the dealer or manufacturer, the dealer shall determine the
22 repair orders to be included in the calculation under subsections 4 and 5.

23 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.