

**HOUSE BILL NO. 1339**

Introduced by

Representative M. Johnson

Senator Sorvaag

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 reimbursement for warranty.

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 **Parts, equipment, and accessory dealers reimbursed for warranty repair.**

7 1. As used in this section:

8 a. "Dealer" means a person that engages in the business of:

9 (1) Selling, at retail, new or used motor vehicle, truck, or semitrailer parts, or  
10 vehicular implements, equipment, accessories, or attachment units,  
11 designed and used primarily for transporting commodities, merchandise, or  
12 cargo; or

13 (2) Repairing new or used motor vehicle, truck, or semitrailer parts, or vehicular  
14 implements, equipment, accessories, or attachment units, designed and  
15 used primarily for transporting commodities, merchandise, or cargo.

16 b. "Distributor" means any person that offers for sale, sells, or distributes to a dealer  
17 any new motor vehicle, truck, or semitrailer parts, or vehicular implements,  
18 equipment, accessories, or attachment units, designed and used primarily for  
19 transporting commodities, merchandise, or cargo.

20 c. "Manufacturer" means any person engaged in the business of manufacturing or  
21 assembling new motor vehicle, truck, or semitrailer parts, or vehicular  
22 implements, equipment, accessories, or attachment units, designed and used  
23 primarily for transporting commodities, merchandise, or cargo.

1           d. "Parts" includes essential and nonessential motor vehicle, truck, or semitrailer  
2           components.

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

12           3. A manufacturer shall pay a dealer on a claim made by a dealer under this section  
13           within thirty days of the approval of the claim. The manufacturer either shall approve or  
14           disapprove a claim within thirty days after the claim is submitted to the manufacturer.  
15           The manufacturer may prescribe the manner in which and the forms on which the  
16           dealer must present the claim. A claim not specifically disapproved in writing within  
17           thirty days after the manufacturer receives the claim must be construed to be  
18           approved and the manufacturer shall pay the claim within thirty days.

19           4. A manufacturer, factory branch, distributor, or distributor branch shall compensate fully  
20           its dealers licensed in this state for warranty parts, work, and service specified in this  
21           section. Failure to fully compensate includes a reduction in the amount due to the  
22           dealer or imposing a separate charge, surcharge, or other imposition by which the  
23           manufacturer, factory branch, distributor, or distributor branch seeks to recover the  
24           costs of complying with this section from the dealer.

25           5. The retail rate customarily charged by the dealer for parts is established by the dealer  
26           submitting to the manufacturer or distributor one hundred sequential nonwarranty  
27           customer-paid service repair orders that contain warranty-like parts or ninety  
28           consecutive days of nonwarranty customer-paid service repair orders that contain  
29           warranty-like parts, whichever is less, covering repairs made no more than  
30           one hundred eighty days before the submission and declaring the average percentage  
31           markup.

- 1       6. The retail rate customarily charged by the dealer for labor must be established using  
2       the same process as provided under subsection 5 and declaring the average labor  
3       rate. The average labor rate must be determined by dividing the amount of the  
4       dealer's total labor sales by the number of total hours that generated those sales. If a  
5       labor rate and parts markup rate are simultaneously declared by the dealer, the dealer  
6       may use the same repair orders to complete each calculation as provided under  
7       subsection 5.
- 8       7. In calculating the retail rate customarily charged by the dealer for parts and labor, the  
9       following work may not be included in the calculation:
- 10      a. Repairs for manufacturer or distributor special events, specials, or promotional  
11      discounts for retail customer repairs;
- 12      b. Parts sold at wholesale; and
- 13      c. Nuts, bolts, fasteners, and similar items that do not have an individual part  
14      number.
- 15      8. The average of the parts markup rates and labor rate is presumed to be fair and  
16      reasonable and must become effective thirty days following the manufacturer's  
17      approval. Not later than thirty days after submission, a manufacturer or distributor may  
18      rebut the presumption by reasonably substantiating that a rate is unreasonable in light  
19      of the practices of all other franchised dealers in an economically similar area of the  
20      state offering the dealer's declaration of the same part, or vehicular implement,  
21      equipment, accessory, or attachment unit. If the average parts markup rate or average  
22      labor rate, or both are rebutted, the manufacturer or distributor shall propose an  
23      adjustment of the average percentage markup based on that rebuttal not later than  
24      thirty days after submission.
- 25      9. Each manufacturer, in establishing a schedule of compensation for warranty work,  
26      shall rely on the dealer's written schedule of hourly labor rates and parts and may not  
27      obligate any dealer to engage in unduly burdensome or time-consuming  
28      documentation of rates or parts, including obligating dealers to engage in transaction  
29      by-transaction or part-by-part calculations.
- 30      10. A dealer or manufacturer may demand the average parts markup or average labor rate  
31      be calculated using the process provided under subsections 5 and 6; however, the

1           demand for the average parts markup may not be made within twelve months of the  
2           last parts markup declaration and the demand for the average labor rate may not be  
3           made within twelve months of the last labor rate declaration. If a parts markup or labor  
4           rate is demanded by the dealer or manufacturer, the dealer shall determine the repair  
5           orders to be included in the calculation under subsections 5 and 6.