

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"~~Commercial equipment dealer" means a person that engages in the
9 business of:

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

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

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

23 c. ~~"Manufacturer"~~Commercial manufacturer" means any person engaged in the
24 business of manufacturing or assembling parts for any new commercial motor

1 vehicle, truck, or semitrailer ~~parts~~, or vehicular implements, commercial
2 equipment, or accessories, or attachment units, designed and used primarily for
3 transporting commodities, merchandise, or commercial cargo.

4 d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or
5 semitrailer components.

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

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

26 4. A commercial manufacturer, ~~factory branch~~, commercial distributor, or commercial
27 distributor branch shall compensate fully its commercial equipment dealers licensed in
28 this state for warranty parts, work, and service specified in this section. Failure to fully
29 compensate includes a reduction in the amount due to the commercial equipment
30 dealer or imposing a separate charge, surcharge, or other imposition by which the
31 commercial manufacturer, ~~factory branch, distributor, or distributor branch~~ seeks to

1 recover the costs of complying with this section from the **commercial equipment**
2 dealer.

3 5. The retail rate customarily charged by the **commercial equipment** dealer for parts is
4 established by the **commercial equipment** dealer submitting to the **commercial**
5 manufacturer or **commercial** distributor one hundred sequential nonwarranty
6 customer-paid service repair orders that contain warranty-like parts or ninety
7 consecutive days of nonwarranty customer-paid service repair orders that contain
8 warranty-like parts, whichever is less, covering repairs made no more than
9 one hundred eighty days before the submission and declaring the average percentage
10 markup.

11 6. The retail rate customarily charged by the **commercial equipment** dealer for labor must
12 be established using the same process as provided under subsection 5 and declaring
13 the average labor rate. The average labor rate must be determined by dividing the
14 amount of the dealer's total labor sales by the number of total hours that generated
15 those sales. If a labor rate and parts markup rate are simultaneously declared by the
16 **commercial equipment** dealer, the **commercial equipment** dealer may use the same
17 repair orders to complete each calculation as provided under subsection 5.

18 7. In calculating the retail rate customarily charged by the **commercial equipment** dealer
19 for parts and labor, the following work may not be included in the calculation:
20 a. Repairs for **commercial** manufacturer or **commercial** distributor special events,
21 specials, or promotional discounts for retail customer repairs;
22 b. Parts sold at wholesale; and
23 c. Nuts, bolts, fasteners, and similar items that do not have an individual part
24 number.

25 8. The average of the parts markup rates and labor rate is presumed to be fair and
26 reasonable and must become effective thirty days following the **commercial**
27 manufacturer's approval. Not later than thirty days after submission, a **commercial**
28 manufacturer or **commercial** distributor may rebut the presumption by reasonably
29 substantiating that a rate is unreasonable in light of the practices of all other
30 ~~franchised~~**commercial equipment** dealers in an economically similar area of the state
31 offering the **commercial equipment** dealer's declaration of the same part, or vehicular

1 implement, equipment, accessory, or attachment unit. If the average parts markup rate
2 or average labor rate, or both are rebutted, the commercial manufacturer or
3 commercial distributor shall propose an adjustment of the average percentage markup
4 based on that rebuttal not later than thirty days after submission.

5 9. Each commercial manufacturer, in establishing a schedule of compensation for
6 warranty work, shall rely on the commercial equipment dealer's written schedule of
7 hourly labor rates and parts and may not obligate any commercial equipment dealer to
8 engage in unduly burdensome or time-consuming documentation of rates or parts,
9 including obligating commercial equipment dealers to engage in transaction
10 by-transaction or part-by-part calculations.

11 10. A commercial dealer or commercial manufacturer may demand the average parts
12 markup or average labor rate be calculated using the process provided under
13 subsections 5 and 6; however, the demand for the average parts markup may not be
14 made within twelve months of the last parts markup declaration and the demand for
15 the average labor rate may not be made within twelve months of the last labor rate
16 declaration. If a parts markup or labor rate is demanded by the commercial equipment
17 dealer or commercial manufacturer, the commercial equipment dealer shall determine
18 the repair orders to be included in the calculation under subsections 5 and 6.