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Prepared by the Legislative Council staff for Senator Klein
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Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1515

Introduced by

Representatives D. Ruby, Bosch, Ista, Lefor, Weisz, Vigesaa

Senators Hogan, Hogue, Klein

A BILL for an Act to amend and reenact section 51-07-29 of the North Dakota Century Code, relating to motor vehicle warranty work compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-29 of the North Dakota Century Code is amended and reenacted as follows:

51-07-29. Warranty work compensation.

1. a. A motor vehicle manufacturer or distributor shall ~~include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a motor vehicle manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a motor vehicle manufacturer to the dealer for warranty services may~~reasonably compensate its dealers for labor and parts provided by the dealer in connection with the following manufacturer or distributor sponsored, issued, or required items:

   (1) Predelivery preparation.

   (2) Installation of accessories or components required by the manufacturer or distributor to be installed before the sale of a vehicle to a consumer.

   (3) Diagnostic work.

   (4) Maintenance programs.

(5) Extended warranty.

(6) Certified preowned warranty.

(7) Service contracts.

(8) Parts exchange programs.

(9) Recall, goodwill, and warranty work performed by the dealer.

b. Reasonable compensation for labor for the services identified in subdivision a may not be less than the average retail rate charged by the dealer ~~for like service to nonwarranty customers for nonwarranty service~~ as provided under subsection 5~~. A motor vehicle manufacturer may not reimburse a dealer for parts used in the performance of warranty repair at a lower rate~~ multiplied by the time guide used by the dealer for nonwarranty customer-paid service repair orders. To establish a time guide, a dealer shall provide written notice to the manufacturer or distributor with the name of the time guide the dealer uses. The manufacturer or distributor may not require the dealer to provide any other information to establish the time guide the dealer uses. If no time guide exists for a warranty repair, compensation for warranty labor must equal the dealer's average retail rate multiplied by the time spent to complete the repair, and may not be less than the time charged to a retail customer for the same or similar work provided. A dealer shall use time allowances for the diagnosis and performance of work and service which are reasonable and adequate for a qualified technician to perform the work or services. Reasonable compensation for parts for the services identified in subdivision a may not be less than the average retail rate customarily charged by the dealer for these parts as provided under subsection 4.

2. A dealer shall submit a claim for reimbursement for services within ninety days from the completion of the services identified in subdivision a of subsection 1. A motor vehicle manufacturer or distributor shall pay a dealer on a claim made by a dealer under this section within thirty days of the approval of the claim. The manufacturer or distributor shall either approve or disapprove a claim within thirty days after the claim is submitted to the manufacturer or distributor. The manufacturer or distributor may prescribe the manner in which and the forms on which the dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the

manufacturer or distributor receives the claim must be construed to be approved and the manufacturer or distributor shall pay the claim within thirty days. If a manufacturer or distributor disapproves a claim in writing within thirty days, the manufacturer or distributor shall contemporaneously provide the dealer with a detailed written explanation of the reason the claim was disapproved. The dealer has thirty days from the receipt of the disapproval to resubmit a corrected claim.

3. A motor vehicle manufacturer~~, factory branch,~~ or distributor~~, or distributor branch~~ shall fully compensate its motor vehicle dealers licensed in this state for ~~warranty~~ parts~~, work, and service~~and labor specified in this section. Failure to fully compensate includes a reduction in the amount due under this section to the dealer or imposing a separate charge, surcharge, or other imposition by which the motor vehicle manufacturer~~, factory branch,~~ or distributor~~, or distributor branch~~ seeks to recover the costs of complying with this section from the dealer.

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

5. The retail rate customarily charged by the dealer for labor must be established using the same process as provided under subsection 4 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection 4.

6. In calculating the retail rate customarily charged by the dealer for parts and labor as provided in subsections 4 and 5, the following work may not be included in the calculation:

a. Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;

b. Parts sold at wholesale;

c. Parts or labor used in manufacturer or distributor sponsored programs that restrict the pricing for repairs;

d. Routine maintenance not covered under any retail customer warranty, including fluids, filters, and belts not provided in the course of repairs;

~~d.~~e. Nuts, bolts, fasteners, and similar items that do not have an individual part number;

~~e.~~ ~~Tires~~

f. Replacement or work on tires, including wheel or tire rotations or balancing, or replacements of brakes, including brake drums, rotors, shoes, or pads; ~~and~~

~~f.~~g. Vehicle reconditioning~~.~~;

h. Alignments, unless necessary as part of a mechanical repair;

i. Batteries, other than electric vehicle or hybrid vehicle propulsion batteries;

j. Repairs of a motor vehicle owned by the dealer or an employee of the dealer;

k. Installation of accessories;

l. Repairs to or with aftermarket parts; and

m. Repairs performed on motor vehicles of a line make other than that for which the dealer is franchised by the motor vehicle manufacturer.

7. a. The average of the parts markup rates and labor rate calculated under subsections 4 ~~and~~through 6 is presumed to be fair and reasonable and must go into effect thirty days following the manufacturer's ~~approval~~receipt of the submission subject to the manufacturer or distributor's ability to contest the rate as provided in this subsection. The motor vehicle manufacturer or distributor may not issue more than one notice to the dealer contesting any declared labor rate or parts markup, and may not add to, expand, supplement, or otherwise modify any reason for contesting the declared rate or parts markup. A manufacturer or distributor may ~~rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar area of the state offering the dealer's declaration of the~~

~~same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.~~contest the material accuracy of the rate calculated under this section by providing a written objection to the dealer within thirty days after receiving the dealer's submission, and shall:

(1) Provide the dealer with a copy of all calculations used by the motor vehicle manufacturer or distributor to make the determination of the dealer's labor rate or parts markup, a written explanation of the basis for any inaccuracy alleged by the motor vehicle manufacturer or distributor, and evidence substantiating any written explanation.

(2) Provide a proposed adjustment of the dealer's labor rate or parts markup based solely upon the information provided by paragraph 1.

(3) Commence paying the dealer at the proposed adjusted labor rate or parts markup determined by the motor vehicle manufacturer or distributor as provided in this section. This section applies to all proposed adjusted labor rates or parts markups, even if the motor vehicle manufacturer's or distributor's determination of the labor rate or parts markup is different from the labor rate or parts markup provided in the dealer's submission.

b. If a motor vehicle manufacturer or distributor fails to comply with the requirements of subdivision a within thirty days of receipt of submission, the submission is approved.

c. If a dealer agrees with the conclusions of the motor vehicle manufacturer or distributor and any corresponding adjustment to the labor rate or parts markup contained within the written objection, no further action is required. The new adjusted rate is effective thirty days after the dealer's submission is received by the manufacturer or distributor.

d. If a motor vehicle manufacturer or distributor provides a written objection that complies with the requirements under subdivision a, and the dealer does not agree with the proposed adjusted labor rate or parts markup contained within the

written objection, or if the dealer disputes the motor vehicle manufacturer or distributor complied with the provisions of subdivision a, the dealer may bring an action in a court of competent jurisdiction. In such proceeding:

(1) The motor vehicle manufacturer or distributor has the burden of proof by a preponderance of the evidence, and must show:

(a) The manufacturer or distributor complied with subdivision a;

(b) The dealer's submitted labor rate or parts markup was materially inaccurate; and

(c) The manufacturer's or distributor's proposed adjustment to the dealer's submitted labor rate or parts markup was materially accurate.

(2) If the dealer prevails in the action, the dealer's labor rate or parts markup is retroactive to the date thirty days following the motor vehicle manufacturer's or distributor's receipt of the submission, and the dealer shall recover all expenses in bringing and maintaining the action, including reasonable attorney fees. If a court finds the motor vehicle manufacturer or distributor willfully violated this section, the dealer is entitled to recover three times the amount of the retroactive labor rate or parts markup.

8. ~~Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations~~In establishing a rate under this section, the dealer's labor rate or parts markup must be calculated using the method ~~proscribed~~prescribed in subsections 4 though 6.

9. A dealer ~~or~~, manufacturer, or distributor may demand that the average parts markup or average labor rate be calculated using the process provided under subsections 4 and 5; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer or distributor, the

dealer shall determine the repair orders to be included in the calculation under subsections 4 and 5.

10. a. If a motor vehicle manufacturer or distributor furnishes, or causes to be furnished, a part to a dealer at no cost or at a reduced cost for use in performing the services identified in subdivision a of subsection 1, the motor vehicle manufacturer or distributor shall compensate the dealer in the same manner as parts compensation under this section by paying the dealer for the dealer's cost of the part, if any, plus an amount equal to the dealer's parts markup, multiplied by the wholesale value of the part. The wholesale value of the part must be the greater of:

(1) The amount the dealer paid for the part or a substantially identical part if already owned by the dealer;

(2) The cost of the part shown in a current, or prior, motor vehicle manufacturer's, distributor's, or furnishing party's established price schedule; and

(3) The cost of a substantially identical part shown in a current, or prior, motor vehicle manufacturer's, distributor's, or furnishing party's established price schedule.

b. A motor vehicle manufacturer or distributor may not establish or implement a special part number for any part used in the services identified in subdivision a of subsection 1 if it results in lower compensation to the dealer than as calculated under this section.

11. A motor vehicle manufacturer or distributor may not:

a. Require or influence or attempt to influence a dealer to implement or change the prices for which it sells parts or labor in retail repairs.

b. Implement or continue a policy, procedure, or program to any of its dealers in this state for compensation under this section which is inconsistent with this section unless otherwise agreed by the dealer and the manufacturer or distributor.

c. Take, or threaten to take, adverse action against a dealer that seeks to obtain compensation under this section, including:

(1) Creating or implementing an obstacle or process that is inconsistent with the motor vehicle manufacturer's obligations to the dealer under this chapter;

(2) Acting in bad faith; or

(3) Hindering, delaying, or rejecting the proper and timely payment of compensation due to a dealer under this section, provided nothing in this paragraph may restrict or impair audits or chargebacks conducted in accordance with section 51-07-02.4.

12. This section applies to all manufacturers and distributors as defined by section 51-07-00.1, and any other person that supplies a component or part installed on a new motor vehicle for which the warranty of the component or part is ~~warranted~~warrantied by another person that is not the manufacturer.