

House Bill 1515
Testimony before House Transportation Committee
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Automobile Dealers Association of North Dakota
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2/5/25

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in Support of House Bill 1515 on behalf of the Automobile Dealers Association of North Dakota which represents our state's franchised new car dealerships, the majority of which are North Dakota family-owned, multi-generation small businesses.

In 2023, the total annual retail sales of our 87 automobile dealerships was \$3.3 Billion dollars equating to 12.4% of our state's total retail sales. Our dealerships directly employed almost 3,900 people, with a statewide payroll over \$275 Million dollars.

Background

Motor vehicle dealerships are a vital component of North Dakota's critical transportation infrastructure. These dealerships sell, service, and repair ambulances, firetrucks, motor carriers, police cars, the vehicles we use to get to work and more.

For decades the ND state legislature has regulated motor vehicles dealerships in an effort to protect consumers. An example of this is the state dealer licensing laws. In order to be a dealer, one must be licensed with the state and follow a strict list of rules and regulations that are managed and enforced by the NDDOT.

Likewise, many decades ago, the legislature also recognized the need to protect automobile dealers from manufacturer overreach and unfair business practices. One of the primary reasons for protecting dealers is to help promote competition in the marketplace, which provides a broad societal benefit.

Many years ago, individuals entered into contractual relationships with manufacturers to become dealers. In many cases, those individuals began by investing much of what they owned into purchasing a building, buying inventory, training employees, purchasing equipment, establishing a customer base, building the manufacturers' brand, etc. As time marched on, the manufacturers would often **change the terms of the existing contracts and then require dealers to adhere to the new stipulations**. These new agreements are called "Contracts of Adhesion" which are a take-it or leave-it arrangement under which the dealer has no choice but to sign the contract or not be a dealer. It is important to understand that dealers have no bargaining power or ability to negotiate the terms of these contracts, or anything else with the manufacturers. This is the reason why almost every state, including North Dakota, has comprehensive automobile dealer protection laws. The legislation that is before you today seeks to amend and update a portion of the existing dealer protection laws.

The Issue

Typically, when a motor vehicle breaks down the owner of that vehicle brings it to a dealership to have repair work performed. If the vehicle is under a factory warranty the repair bill is paid by the manufacturer, not the customer. Manufacturers contractually require dealers to perform warranty repair; they can't turn it away... whether they sold that vehicle or not. In addition, the manufacturer requires the dealers to purchase all warranty parts from them.

Prior to 2013, manufacturers had been compensating dealers for warranty work at a rate that was arbitrarily set by the manufacturer. Those rates were much lower than the dealer's labor rate and parts markup rate for retail or non-warranty repair work. As a result, in 2013, at the request of our Association, HB 1192 was introduced and passed which requires the manufacturer to reimburse dealers at their normal retail rate for both warranty labor and parts. The law states that the "*manufacturer....shall fully compensate its motor vehicle dealers...for warranty parts, work, and service... Failure to fully compensate includes a reduction in the amount due to the dealer.*" 51-07-29 (3)

However, since that time the manufacturers have found several loopholes in the 2013 law and they *are not fully compensating dealers* at their normal retail, free market rates. They are employing several strategies to effectively shift some of the cost of THEIR warranty repair to dealers and non-warranty customers. The legislation that is before you today is designed to close those loopholes.

Like the 2013 legislation, this bill is about only one thing, requiring manufacturers to reimburse dealers at their free-market rates for the products and services that the manufacturers require the dealers to provide them with. Dealers have absolutely no ability to negotiate a fair rate of payment from the manufacturers.

Problem/Solution #1 – Time Allowance

When a customer brings a vehicle in for repair the dealer must determine the charge for both the parts and labor for that repair. Most dealers across the nation use an industry standard time guide to determine the number of hours to charge a customer for a labor repair. They then take that number and multiply it by their hourly labor rate which results in the total labor bill. However, the manufacturers refuse to pay dealers what they charge the entire free market. Manufacturers discount the time component of the calculation and significantly reduce the dealers' reimbursement, even though it is their actual, competitive retail rate.

Keep in mind, retail customers can go anywhere they want for their repairs whether it be a competing franchise dealer, a used car dealer, an independent repair shop, or other. **This is a highly competitive industry.** Competition serves to drive down the price of a good or service and, at the same time, drive up the quality of that good or service. So, the dealer's non-warranty, retail repair work is truly at a fair rate that is established by the competitive market. **Dealers cannot charge excessive fees for repair, or word would spread and they will be out of business since there is so much competition in the marketplace.**

It's important to understand that technicians also take a pay cut when manufacturers discount time as most technicians are paid a flat-rate based on the allotted hours for the repair.

This legislation requires manufacturers to reimburse dealers for warranty labor at the "average retail rate charged by the dealer...multiplied by the time guide used by the dealer for non-warranty customer-paid service repair orders." page 2, lines 3-7

Third-party time guide legislation has passed in several states including the neighboring states of Montana and Minnesota.

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Problem/Solution #2 – No Cost Parts

Current law requires the manufacturer to compensate dealers for parts based on the dealer's average retail rate for the part. However, in some instances, manufacturers will prevent dealers from ordering certain parts needed for warranty repairs; and instead, mandate that the dealer notify them when they need such a part; then, the manufacturer will ship that part at no-cost to the dealer – so that the dealer cannot obtain reimbursement for that part.

The strategy is that if the part costs \$0, then the dealer's mark-up rate for reimbursement multiplied by \$0 is still \$0 – so, the manufacturer circumvents the law and avoids paying the dealer for a repair that they required them to perform.

Note: The dealer provides the technician; the dealer provides the service bay; the dealer provides the lift; the dealer provides the special tools – all of those are investments the dealer must make well in advance – and then the manufacturer unilaterally creates a process to avoid compensation for the work it requires the dealer to perform.

As it stands today, the manufacturer can unilaterally decide what parts to do this with, and not surprisingly, they are often expensive parts – absent this provision, the dealers and technicians will continue to be significantly underpaid on work they are required to perform; and even worse, there is nothing stopping the manufacturers from doing this across the board for ALL parts.

To illustrate how unfair this is, the manufacturers sell these parts to dealers for non-warranty work, but refuse to sell the part to the dealer for warranty work. There can be only one reason for this – money – and avoiding paying the dealers for warranty work. This type of provision has been adopted in over 20 states.

Problem/Solution #3 – Changing Part #s

This is a different game some manufacturers play to avoid paying for warranty work. Manufacturers, especially in the recall context, will simply change the part number and substantially lower the cost of the part – so that the payment to the dealer for the warranty work is less.

For example, let's say that a power window motor is part # 123 in the normal course of business and costs \$150. Then, the power window motor is the subject of a recall, which means a lot of motors will need to be replaced at the expense of the manufacturer – the manufacturer will then change the part number to 123A and reduce the price to \$15 for purposes of the recall. All to avoid the warranty costs associated with the recall. This provision has been adopted in several states.

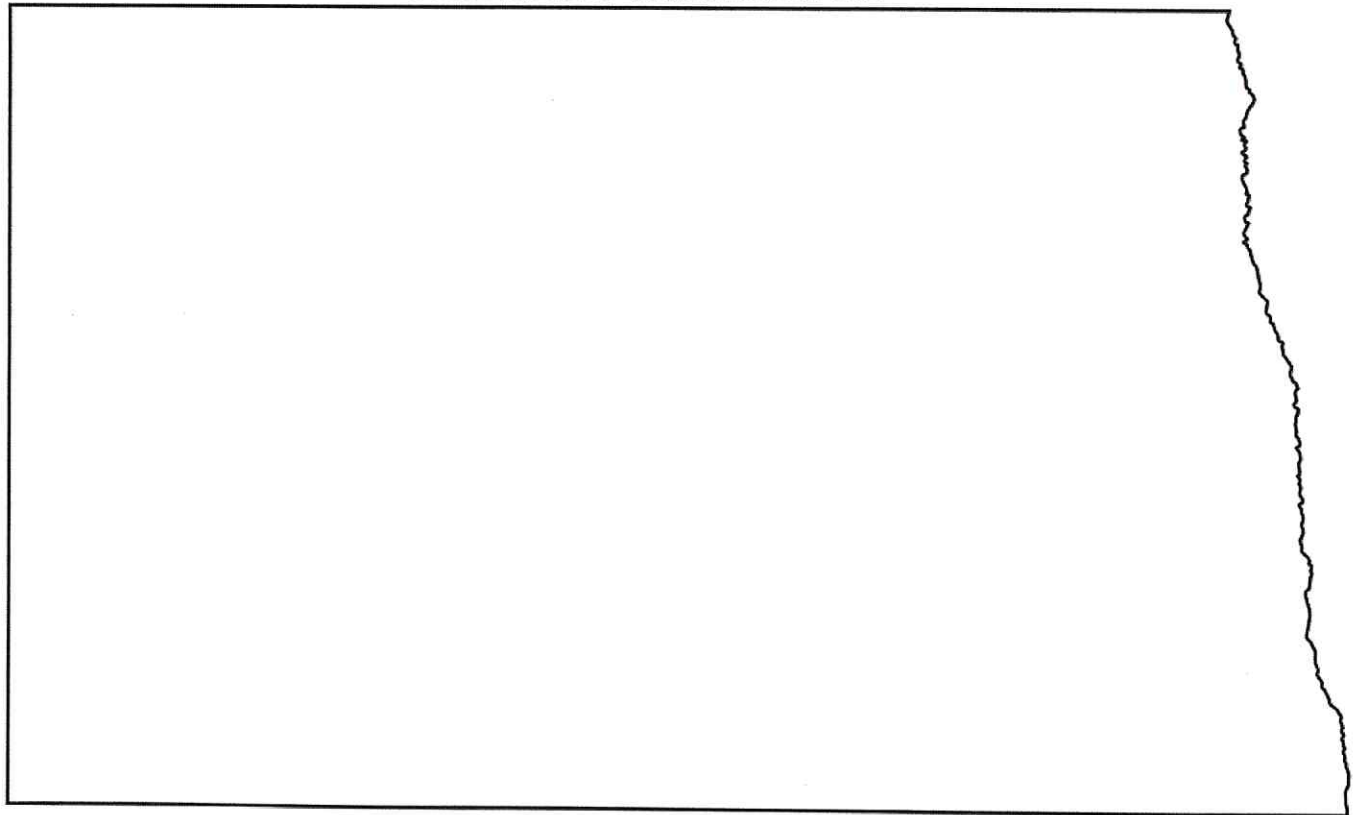
Conclusion

It is important to understand that there are protections in place for the manufacturers as well. Everything in this bill is based on free-market, competitive rates. Furthermore, a manufacturer may contest the legitimacy of any dealer's rate, they may audit the dealer, they may reduce a dealer's rate if they can justify doing so....the law provides for all of this. Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with auto manufacturers.

Mr. Chairman, Members of the Committee we respectfully request you pass this legislation.

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Automobile Dealers Association of North Dakota

Automobile Manufacturers



ADAND Dealerships

