

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1339
(Representative M. Johnson)
(Senator Sorvaag)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to reimbursement for warranty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. As used in this section:

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

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

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

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

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

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

2. A commercial manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a commercial 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 commercial manufacturer to the commercial equipment dealer for warranty services may not be less than the average rate charged by the commercial equipment dealer for like service to nonwarranty customers for nonwarranty service. A commercial manufacturer may not reimburse a commercial equipment dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the commercial equipment dealer for these parts as provided under subsection 5.

3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made by a commercial equipment dealer under this section within thirty days of the approval of the claim. The commercial manufacturer either shall approve or disapprove a claim within thirty days after the claim is submitted to the commercial manufacturer. The commercial manufacturer may prescribe the manner in which and the forms on which the commercial equipment dealer must present the claim. A claim not specifically disapproved in writing within thirty days after the commercial manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
4. A commercial manufacturer, commercial distributor, or commercial distributor branch shall compensate fully its commercial equipment dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the commercial equipment dealer or imposing a separate charge, surcharge, or other imposition by which the commercial manufacturer seeks to recover the costs of complying with this section from the commercial equipment dealer.
5. The retail rate customarily charged by the commercial equipment dealer for parts is established by the commercial equipment dealer submitting to the commercial manufacturer or commercial 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.
6. The retail rate customarily charged by the commercial equipment dealer for labor must be established using the same process as provided under subsection 5 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 commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.
7. In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the following work may not be included in the calculation:
 - a. Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional discounts for retail customer repairs;
 - b. Parts sold at wholesale; and
 - c. Nuts, bolts, fasteners, and similar items that do not have an individual part number.
8. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer's approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other commercial equipment dealers in an economically similar area of the state offering the commercial equipment dealer's declaration of the same part, or vehicular implement, equipment, accessory, or attachment unit. If the average parts markup rate or average labor rate, or both are rebutted, the commercial manufacturer or commercial distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.
9. Each commercial manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not obligate any commercial equipment dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating

commercial equipment dealers to engage in transaction-by-transaction or part-by-part calculations.

10. A commercial dealer or commercial manufacturer may demand the average parts markup or average labor rate be calculated using the process provided under subsections 5 and 6; 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 commercial equipment dealer or commercial manufacturer, the commercial equipment dealer shall determine the repair orders to be included in the calculation under subsections 5 and 6.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1339.

House Vote: Yeas 86 Nays 6 Absent 2

Senate Vote: Yeas 34 Nays 13 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State