



March 13, 2025

Chairman David A. Clemens
North Dakota Senate Transportation Committee

Re: Written testimony in opposition to HB 1515

Dear Chairman Clemens:

On behalf of the Alliance for Automotive Innovation,¹ I am writing to record our opposition to HB 1515, which would unfairly and unreasonably allow automobile dealers to demand to be paid for more hours of labor than were actually worked. The bill would increase costs and ultimately harm consumers in North Dakota and the other 49 states.

When dealers perform work under a manufacturer's warranty, the manufacturer pays the dealer the same labor rate that the dealer charges the public and the dealer is paid for the number of hours that a manufacturer has timed the actual repair to take, which is listed in the manufacturer's warranty time guide. HB 1515 would allow dealers to use aftermarket third-party time guides for work performed under a manufacturer's warranty. Aftermarket guides are intended for general mechanics at independent repair shops that do not specialize in a brand, do not have special tools that a dealer of that brand would have, do not have the training that a mechanic at a dealership would have, and who typically work on older vehicles. Aftermarket time guides are simply intended for a different audience and for a different purpose than warranty work. A senior executive from one of the largest aftermarket guides even confirmed in a sworn affidavit that the time estimates in aftermarket time guides are simply estimates, they are not calculated by actually performing repairs, and are not intended for warranty repairs.

By contrast, manufacturer time guides are intended for warranty work at a dealership. Time allowances in a manufacturer's time guide are not estimates, they are calculations that come from actually doing the repairs and timing how long a qualified technician needed to complete a specific repair. In the event that a dealer needs additional time, there is a process in place for the dealer to request it (and the extra time is typically granted). Manufacturers also allow dealers to request reviews of the time allowance if the dealer believes they need to be restudied.

The difference between a manufacturer's time guide and an aftermarket time guide can be significant. There are also frequently significant differences between the various aftermarket guides for the same repair. These variations are due to the fact the time guide publishers do not perform nor time the actual repair and base the time on estimates. Only automakers actually perform and time the repairs.

The consequences of using inapplicable aftermarket time guides instead of warranty time guides to compensate for warranty work would be significant. In North Dakota alone, we estimate that this bill would cause manufacturers to overpay by roughly \$22 million every year. If every state in the country were to adopt a similar bill, the result would be more than \$5 billion in overpayments every year. That would be a lot of extra cost that would ultimately be passed on to consumers. Notably, only six states have such a law. North Dakota would be an outlier if it passed this bill.

There is no need for this bill. The average dealer in today already earns a gross profit margin of 78% on warranty work. Warranty work is a high margin, high volume, steady stream of business for which the dealer

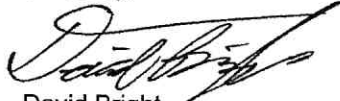
¹ **About Alliance for Automotive Innovation:** From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers, the Alliance for Automotive Innovation represents the full auto manufacturing industry—a critical sector in America's economy.

does not need to advertise to attract or retain. It is also noteworthy that *nothing* in the bill requires dealers to pay their employees more or share any of the extra payments with them.

The Alliance for Automotive Innovation offered two compromises to ensure that dealers are not underpaid for the number of hours worked: to create a statutory obligation that the manufacturer cannot unreasonably deny a request for extra time; or to allow a dealer to be paid based on actual time worked rather than a flat rate book. Both options were rejected by the Automobile Dealers Association of North Dakota. The bill would still allow dealers to demand to be paid based on aftermarket time guides, which will result in dealers being paid for significantly more hours than were actually worked. That is unreasonable.

The Alliance for Automotive Innovation respectfully asks the committee not to pass HB 1515. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David Bright", with a stylized flourish at the end.

David Bright
Senior Attorney

25.0936.02000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1515

Introduced by

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

Senators Hogan, Hogue, Klein

AFAI: BLUE. New Language highlighted in yellow.

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

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **51-07-29. Warranty work compensation.**

- 7 1. a. A motor vehicle manufacturer or distributor shall include reasonable
8 compensation for diagnostic work, as well as repair service, parts, and labor, in
9 warranty work compensation. In addition, a motor vehicle manufacturer shall
10 provide adequate time allowances for diagnosis and performance of warranty
11 work and service for the work performed. The hourly labor rate paid by a motor
12 vehicle manufacturer to the dealer for warranty services may reasonably
13 compensate its dealers for labor and parts provided by the dealer in connection
14 with the following manufacturer or distributor sponsored, issued, or required
15 items:
16 (1) Predelivery preparation.
17 (2) Installation of accessories or components required by the manufacturer or
distributor to be installed before the
18 sale of a vehicle to a consumer.
19 (3) Diagnostic work not otherwise compensated.
20 (4) Maintenance programs.
21 (5) Extended warranty.
22 (6) Certified preowned warranty.
23 (7) Service contracts.
24 (8) Parts exchange programs.
1 (9) Recall. goodwill, and warranty work performed by the dealer.
2 b. Reasonable compensation for labor for the services identified in subdivision a

3 recall and warranty may not be less than the average retail rate charged by the
dealer for like service

4 to nonwarranty customers for nonwarranty service as provided under

5 subsection 5, provided such rate is reasonable. A motor vehicle manufacturer may
not reimburse a dealer for parts

6 used in the performance of warranty repair at a lower rate multiplied by the time

7 guide used by the dealer for nonwarranty customer-paid service repair orders. To

8 establish a time guide, a dealer shall provide written notice to the manufacturer or

9 distributor with the name of the time guide the dealer uses. The manufacturer or

10 distributor may not require the dealer to provide any other information to establish

11 the time guide the dealer uses. If no time guide exists for a warranty repair,

12 compensation for warranty labor must equal the dealer's average retail rate

13 multiplied by the time spent to complete the repair, and may not be less than the

14 time charged to a retail customer for the same or similar work provided. A

manufacturer or distributor shall use time allowances for the diagnosis and
performance of work and service that are reasonable and adequate for a qualified
technician to perform the work or services.

If a dealer submits a written request for additional time allowance for
either diagnostic or repair work on a specific vehicle and provides all
information or documentation reasonably required by the
manufacturer or distributor to assess the merits of the dealer's
request, then there shall be a rebuttable presumption that the dealer's
request is reasonable, and a manufacturer or distributor may not deny
such request without providing a written explanation for the denial.

15 If a dealer submits a written request for modification of a
manufacturer's uniform time allowance for a specific warranty repair
and provides all information and documentation reasonably required
by the manufacturer or distributor to assess the merits of the dealer's
request, then the manufacturer or distributor may not deny that request
unless the denial is reasonable and includes a written explanation for
the denial.

16 Reasonable compensation for parts for the services identified in subdivision a

16 may not be less than the average retail rate customarily charged by the dealer for

- 17 these parts as provided under subsection 4, provided such rate is reasonable.
- 18 2. A dealer shall submit a claim for reimbursement for services within ~~one hundred eighty~~
19 ~~ninety~~ days from the completion of the services identified in subdivision a of subsection
20 1. A
21 motor vehicle manufacturer or distributor shall pay a dealer on a claim made by a
22 dealer under this section within thirty days of the approval of the claim. The
23 manufacturer or distributor shall either approve or disapprove a claim within thirty days
24 after the claim is submitted to the manufacturer or distributor. The manufacturer or
25 distributor may prescribe the manner in which and the forms on which the dealer must
26 present the claim. A claim not specifically disapproved in writing within thirty days after
27 the manufacturer or distributor receives the claim must be construed to be approved
28 and the manufacturer or distributor shall pay the claim within thirty days. If a
29 manufacturer or distributor disapproves a claim in writing within thirty days, the
30 manufacturer or distributor shall contemporaneously provide the dealer with a detailed
31 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.
- 1 3. ~~A motor vehicle manufacturer, factory branch, or distributor, or distributor branch~~ shall
2 fully compensate its motor vehicle dealers licensed in this state for warranty parts,
3 ~~work, and service~~ specified in this section. Failure to fully compensate includes a
4 reduction in the amount due under this section to the dealer or imposing a separate
5 charge, surcharge, or other imposition by which the motor vehicle manufacturer,
6 ~~factory branch, or distributor, or distributor branch~~ seeks to recover the costs of
7 complying with this section from the dealer.
- 8 4. The retail rate customarily charged by the dealer for parts is established by the dealer
9 submitting to the manufacturer or distributor one hundred sequential nonwarranty
10 customer-paid service repair orders that contain warranty-like parts or ninety
11 consecutive days of nonwarranty customer-paid service repair orders that contain
12 warranty-like parts, whichever is less, covering repairs made no more than one
13 hundred eighty days before the submission and declaring the average percentage
14 markup.
- 15 5. The retail rate customarily charged by the dealer for labor must be established using
16 the same process as provided under subsection 4 and declaring the average labor
17 rate. The average labor rate must be determined by dividing the amount of the

18 dealer's total labor sales by the number of total hours that generated those sales. If a
19 labor rate and parts markup rate are simultaneously declared by the dealer, the dealer
20 may use the same repair orders to complete each calculation as provided under
21 subsection 4.

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

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

27 b. Parts sold at wholesale;

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

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

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

3 e. Tires

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

6 f.g. Vehicle reconditioning;

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

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

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

10 k. Installation of accessories;

11 l. Repairs of conditions caused by collision, road hazard, the force of the elements,
12 vandalism, theft, or owner, operator, or third-party negligence or deliberate act;

13 m. Repairs to or with aftermarket parts;

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

16 7. a. The average of the parts markup rates and labor rate calculated under
17 subsections 4 and 6 is presumed to be fair and reasonable and must go into
18 effect thirty days following the manufacturer's approval approval receipt of the
submission

- 19 ~~subject to the manufacturer or distributor's ability to contest the rate as provided~~
20 ~~in this subsection.~~ The motor vehicle manufacturer or distributor may not issue
21 more than one notice to the dealer contesting any declared labor rate or parts
22 markup, and may not add to, expand, supplement, or otherwise modify any
23 reason for contesting the declared rate or parts markup. A manufacturer or
24 distributor may rebut the presumption by reasonably substantiating that a rate is
25 unreasonable in light of the practices of all other franchised motor vehicle dealers
26 in an economically similar area of the state offering the dealer's declaration of the
27 same line make vehicles, not later than thirty days after submission. If the
28 average parts markup rate or average labor rate is rebutted, or both, the
29 manufacturer or distributor shall propose an adjustment of the average
30 percentage markup based on that rebuttal not later than thirty days after
31 submission. ~~contest the material accuracy of the rate calculated under this section~~
~~or rebut the presumption that declared rate is reasonable by reasonably~~
~~substantiating that a rate is unreasonable in light of the practices of all other~~
~~similarly situated same line make dealers in the state~~

1 ~~by providing a written objection to the dealer within thirty days after receiving the~~
2 ~~dealer's submission, and shall:~~
3 (1) ~~Provide the dealer with a copy of all calculations used by the motor vehicle~~
4 ~~manufacturer or distributor to make the determination of the dealer's labor~~
5 ~~rate or parts markup, a written explanation of the basis for any inaccuracy~~
6 ~~or unreasonableness alleged by the motor vehicle manufacturer or distributor,~~
~~and evidence~~
7 ~~substantiating any written explanation.~~
8 (2) ~~Provide a proposed adjustment of the dealer's labor rate or parts markup~~
9 ~~based solely upon the information provided by paragraph 1.~~
10 (3) ~~Commence paying the dealer at the proposed adjusted labor rate or parts~~
11 ~~markup determined by the motor vehicle manufacturer or distributor as~~
12 ~~provided in this section. This section applies to all proposed adjusted labor~~
13 ~~rates or parts markups, even if the motor vehicle manufacturer's or~~
14 ~~distributor's determination of the labor rate or parts markup is different from~~
15 ~~the labor rate or parts markup provided in the dealer's submission.~~
16 b. ~~If a motor vehicle manufacturer or distributor fails to comply with the~~
17 ~~requirements of subdivision a approve or deny a submitted rate change within thirty~~

days of receipt of submission, ~~any~~

18 ~~labor rate or parts markup submitted is effective after thirty days then the~~
~~submission shall be deemed approved.~~

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

24 d. If a motor vehicle manufacturer or distributor provides a written objection that
25 complies with the requirements under subdivision a, and the dealer does not
26 agree with the proposed adjusted labor rate or parts markup contained within the
27 written objection, or if the dealer disputes the motor vehicle manufacturer or
28 distributor complied with the provisions of subdivision a, the dealer may bring an
29 action in a court of competent jurisdiction. In such proceeding:

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

- 1 (a) The manufacturer or distributor complied with subdivision a;
2 (b) The dealer's submitted labor rate or parts markup was materially
3 Inaccurate ~~or unreasonable~~; and
4 (c) The manufacturer's or distributor's proposed adjustment to the
5 dealer's submitted labor rate or parts markup was materially accurate ~~or~~
~~unreasonable~~.

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

13 8. Each manufacturer, in establishing a schedule of compensation for warranty work,
14 shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and
15 may not obligate any vehicle dealer to engage in unduly burdensome or
16 time-consuming documentation of rates or parts, including obligating vehicle dealers to

17 ~~engage in transaction-by-transaction or part-by-part calculations.~~ In establishing a rate
18 under this section, the dealer's labor rate or parts markup must be calculated using the
19 method proscribed in subsections 4 through 6.

20 9. ~~A dealer or, manufacturer, or distributor~~ may demand that the average parts markup or
21 average labor rate be calculated using the process provided under subsections 4 and
22 5; however, the demand for the average parts markup may not be made within twelve
23 months of the last parts markup declaration and the demand for the average labor rate
24 may not be made within twelve months of the last labor rate declaration. If a parts
25 markup or labor rate is demanded by the dealer or manufacturer or distributor, the
26 dealer shall determine the repair orders to be included in the calculation under
27 subsections 4 and 5.

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

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

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

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

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

17 11. A motor vehicle manufacturer or distributor may not:

18 a. Require ~~or influence or attempt to influence~~ a dealer to implement or change the

- 19 prices for which it sells parts or labor in retail repairs.
- 20 b. Implement or continue a policy, procedure, or program to any of its dealers in this
- 21 state for compensation under this section which is inconsistent with this section
unless otherwise agreed by the dealer and the manufacturer or distributor.
- 22 c. Take, or threaten to take, adverse action against a dealer that seeks to obtain
- 23 compensation under this section, including:
- 24 (1) Creating or implementing an obstacle or process that is inconsistent with the
- 25 motor vehicle manufacturer's obligations to the dealer under this chapter;
- 26 (2) Acting, ~~or failing to act, other than in good faith in bad faith~~
- 27 (3) Hindering, delaying, or rejecting the proper and timely payment of
- 28 compensation due to a dealer under this section, provided that nothing in this
paragraph shall restrict or impair audits or chargebacks conducted in
accordance with Section 51-07-02.4.
- 29 12. This section applies to all manufacturers and distributors as defined by section
- 30 51-07-00.1, and any other person that supplies a component or part installed on a new
- 1 motor vehicle for which the warranty of the component or part is warranted by another
- 2 person that is not the manufacturer.

25.0936.02000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1515

Introduced by

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

Senators Hogan, Hogue, Klein

AFAI: BLUE. Yellow highlight is language to allow dealers the choice to be paid for actual time worked instead of flat rate pay.

- 1 A BILL for an Act to amend and reenact section 51-07-29 of the North Dakota Century Code,
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10 provide adequate time allowances for diagnosis and performance of warranty
11 work and service for the work performed. The hourly labor rate paid by a motor
12 vehicle manufacturer to the dealer for warranty services may reasonably
13 compensate its dealers for labor and parts provided by the dealer in connection
14 with the following manufacturer or distributor sponsored, issued, or required
15 items:
- 16 (1) Predelivery preparation.
 - 17 (2) Installation of accessories or components required **by the manufacturer or**
distributor to be installed before the
18 sale of a vehicle to a consumer.
 - 19 (3) Diagnostic work **not otherwise compensated.**
 - 20 (4) Maintenance programs.
 - 21 (5) Extended warranty.
 - 22 (6) Certified preowned warranty.
 - 23 (7) Service contracts.
 - 24 (8) Parts exchange programs.
 - 1 (9) Recall, **goodwill,** and warranty work performed by the dealer.
 - 2 b. Reasonable compensation for labor for **the services identified in subdivision a**

3 recall and warranty may not be less than the average retail rate charged by the
dealer for like service

4 to nonwarranty customers for nonwarranty service as provided under

5 subsection 5, provided such rate is reasonable. A motor vehicle manufacturer may
not reimburse a dealer for parts

6 used in the performance of warranty repair at a lower rate multiplied by the time

7 guide used by the dealer for nonwarranty customer-paid service repair orders. To

8 establish a time guide, a dealer shall provide written notice to the manufacturer or

9 distributor with the name of the time guide the dealer uses. The manufacturer or

10 distributor may not require the dealer to provide any other information to establish

11 the time guide the dealer uses. If no time guide exists for a warranty repair,

12 compensation for warranty labor must equal the dealer's average retail rate

13 multiplied by the time spent to complete the repair, and may not be less than the

14 time charged to a retail customer for the same or similar work provided. A

manufacturer or distributor shall use time allowances for the diagnosis and

performance of work and service that are reasonable and adequate for a qualified

technician to perform the work or services.

15 The compensation for labor shall be the rate charged to retail customers for similar
nonwarranty service work multiplied, at the dealer's option, by either the time
allowances recognized by the manufacturer or distributor to compensate
dealers for warranty work, or the actual time spent performing the repair in
good faith. A dealer may not change its choice to be compensated for labor on
the basis of the manufacturer or distributor's time guide or actual time more
than once in one calendar year, unless otherwise agreed by both the
manufacturer or distributor and the dealer. A manufacturer or distributor may
reasonably require a dealer that elects to be compensated for actual time to
provide documentation and signatures, including but not limited to copies of all
time-stamped job cards for specific technicians. If a manufacturer or distributor
can show that the dealer submitted claims for actual time in bad faith, including
but not limited to overlapping time charged for repairs or assigning technicians
with inadequate training or skill level required to complete the repairs, then the
manufacturer or distributor may require the dealer to be compensated under
the manufacturer or distributor's time guide for a period of two years following
the date of a claim shown to have been submitted in bad faith.

- 16 Reasonable compensation for parts for the services identified in subdivision a
16 may not be less than the average retail rate customarily charged by the dealer for
17 these parts as provided under subsection 4, provided such rate is reasonable.
- 18 2. A dealer shall submit a claim for reimbursement for services within ~~one hundred eighty~~
19 ~~ninety~~ days from the completion of the services identified in subdivision a of subsection
20 1. A
21 motor vehicle manufacturer or distributor shall pay a dealer on a claim made by a
22 dealer under this section within thirty days of the approval of the claim. The
23 manufacturer or distributor shall either approve or disapprove a claim within thirty days
24 after the claim is submitted to the manufacturer or distributor. The manufacturer or
25 distributor may prescribe the manner in which and the forms on which the dealer must
26 present the claim. A claim not specifically disapproved in writing within thirty days after
27 the manufacturer or distributor receives the claim must be construed to be approved
28 and the manufacturer or distributor shall pay the claim within thirty days. If a
29 manufacturer or distributor disapproves a claim in writing within thirty days, the
30 manufacturer or distributor shall contemporaneously provide the dealer with a detailed
31 written explanation of the reason the claim was disapproved. The dealer has thirty
1 days from the receipt of the disapproval to resubmit a corrected claim.
- 2 3. A motor vehicle manufacturer, ~~factory branch,~~ or distributor, ~~or distributor branch~~ shall
3 fully compensate its motor vehicle dealers licensed in this state for warranty parts,
4 ~~work, and service~~ specified in this section. Failure to fully compensate includes a
5 reduction in the amount due under this section to the dealer or imposing a separate
6 charge, surcharge, or other imposition by which the motor vehicle manufacturer,
7 ~~factory branch,~~ or distributor, ~~or distributor branch~~ seeks to recover the costs of
8 complying with this section from the dealer.
- 9 4. The retail rate customarily charged by the dealer for parts is established by the dealer
10 submitting to the manufacturer or distributor one hundred sequential nonwarranty
11 customer-paid service repair orders that contain warranty-like parts or ninety
12 consecutive days of nonwarranty customer-paid service repair orders that contain
13 warranty-like parts, whichever is less, covering repairs made no more than one
14 hundred eighty days before the submission and declaring the average percentage
15 markup.
- 15 5. The retail rate customarily charged by the dealer for labor must be established using

16 the same process as provided under subsection 4 and declaring the average labor
17 rate. The average labor rate must be determined by dividing the amount of the
18 dealer's total labor sales by the number of total hours that generated those sales. If a
19 labor rate and parts markup rate are simultaneously declared by the dealer, the dealer
20 may use the same repair orders to complete each calculation as provided under
21 subsection 4.

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

- 25 a. Repairs for manufacturer or distributor special events, specials, or promotional
26 discounts for retail customer repairs;
27 b. Parts sold at wholesale;
28 c. Parts or labor used in manufacturer or distributor sponsored programs that
29 restrict the pricing for repairs;
30 d. Routine maintenance not covered under any retail customer warranty, including
31 fluids, filters, and belts not provided in the course of repairs;

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

3 e. Tires

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

6 f.g. Vehicle reconditioning;

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

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

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

10 k. Installation of accessories;

11 l. Repairs of conditions caused by collision, road hazard, the force of the elements,
12 vandalism, theft, or owner, operator, or third-party negligence or deliberate act;

13 m. Repairs to or with aftermarket parts;

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

16 7. a. The average of the parts markup rates and labor rate calculated under

17 subsections 4 and 6 is presumed to be fair and reasonable and must go into
18 effect thirty days following the manufacturer's approval ~~approval receipt of the~~
19 ~~submission~~
20 ~~subject to the manufacturer or distributor's ability to contest the rate as provided~~
21 ~~in this subsection.~~ The motor vehicle manufacturer or distributor may not issue
22 more than one notice to the dealer contesting any declared labor rate or parts
23 markup, and may not add to, expand, supplement, or otherwise modify any
24 reason for contesting the declared rate or parts markup. A manufacturer or
25 distributor may rebut the presumption by reasonably substantiating that a rate is
26 unreasonable in light of the practices of all other franchised motor vehicle dealers
27 in an economically similar area of the state offering the dealer's declaration of the
28 same line make vehicles, not later than thirty days after submission. If the
29 average parts markup rate or average labor rate is rebutted, or both, the
30 manufacturer or distributor shall propose an adjustment of the average
31 percentage markup based on that rebuttal not later than thirty days after
submission, contest the material accuracy of the rate calculated under this section
or rebut the presumption that declared rate is reasonable by reasonably
substantiating that a rate is unreasonable in light of the practices of all other
similarly situated same line make dealers in the state

1 by providing a written objection to the dealer within thirty days after receiving the
2 dealer's submission, and shall:

- 3 (1) Provide the dealer with a copy of all calculations used by the motor vehicle
4 manufacturer or distributor to make the determination of the dealer's labor
5 rate or parts markup, a written explanation of the basis for any inaccuracy
6 or unreasonableness alleged by the motor vehicle manufacturer or distributor,
7 and evidence
8 substantiating any written explanation.
9 (2) Provide a proposed adjustment of the dealer's labor rate or parts markup
10 based solely upon the information provided by paragraph 1.
11 ~~(3) Commence paying the dealer at the proposed adjusted labor rate or parts~~
12 ~~markup determined by the motor vehicle manufacturer or distributor as~~
13 ~~provided in this section. This section applies to all proposed adjusted labor~~
14 ~~rates or parts markups, even if the motor vehicle manufacturer's or~~
15 ~~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.~~

- 16 b. If a motor vehicle manufacturer or distributor fails to ~~comply with the~~
17 ~~requirements of subdivision a~~ approve or deny a submitted rate change within thirty
days of receipt of submission, ~~any~~
18 ~~labor rate or parts markup submitted is effective after thirty days then the~~
~~submission shall be deemed approved.~~
- 19 c. If a dealer agrees with the conclusions of the motor vehicle manufacturer or
20 distributor and any corresponding adjustment to the labor rate or parts markup
21 contained within the written objection, no further action is required. The new
22 adjusted rate is effective thirty days after the dealer's submission is ~~received~~
approved by
23 the manufacturer or distributor.
- 24 d. If a motor vehicle manufacturer or distributor provides a written objection that
25 complies with the requirements under subdivision a, and the dealer does not
26 agree with the proposed adjusted labor rate or parts markup contained within the
27 written objection, or if the dealer disputes the motor vehicle manufacturer or
28 distributor complied with the provisions of subdivision a, the dealer may bring an
29 action in a court of competent jurisdiction. In such proceeding:
- 30 (1) The motor vehicle manufacturer or distributor has the burden of proof by a
31 preponderance of the evidence, and must show:
- 1 (a) The manufacturer or distributor complied with subdivision a;
2 (b) The dealer's submitted labor rate or parts markup was materially
3 inaccurate or unreasonable; and
4 (c) The manufacturer's or distributor's proposed adjustment to the
5 dealer's submitted labor rate or parts markup was materially accurate or
unreasonable.
- 6 (2) If the dealer prevails in the action, the dealer's labor rate or parts markup is
7 retroactive to the date thirty days following the motor vehicle manufacturer's
8 or distributor's receipt of the submission, ~~and the dealer shall recover all~~
9 ~~expenses in bringing and maintaining the action, including reasonable~~
10 ~~attorney fees. If a court finds the motor vehicle manufacturer or distributor~~
11 ~~willfully violated this section, the dealer is entitled to recover three times the~~
12 ~~amount of the retroactive labor rate or parts markup.~~
- 13 8. Each manufacturer, in establishing a schedule of compensation for warranty work,
14 shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and

15 may not obligate any vehicle dealer to engage in unduly burdensome or
16 time-consuming documentation of rates or parts, including obligating vehicle dealers to
17 engage in transaction-by-transaction or part-by-part calculations. In establishing a rate
18 under this section, the dealer's labor rate or parts markup must be calculated using the
19 method proscribed in subsections 4 through 6.

20 9. A dealer ~~or, manufacturer, or distributor~~ may demand that the average parts markup or
21 average labor rate be calculated using the process provided under subsections 4 and
22 5; however, the demand for the average parts markup may not be made within twelve
23 months of the last parts markup declaration and the demand for the average labor rate
24 may not be made within twelve months of the last labor rate declaration. If a parts
25 markup or labor rate is demanded by the dealer or manufacturer or distributor, the
26 dealer shall determine the repair orders to be included in the calculation under
27 subsections 4 and 5.

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

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

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

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

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

- 17 11. A motor vehicle manufacturer or distributor may not:
- 18 a. Require ~~or influence or attempt to influence~~ a dealer to implement or change the
- 19 prices for which it sells parts or labor in retail repairs.
- 20 b. Implement or continue a policy, procedure, or program to any of its dealers in this
- 21 state for compensation under this section which is inconsistent with this section
 unless otherwise agreed by the dealer and the manufacturer or distributor.
- 22 c. Take, or threaten to take, adverse action against a dealer that seeks to obtain
- 23 compensation under this section, including:
- 24 (1) Creating or implementing an obstacle or process that is inconsistent with the
- 25 motor vehicle manufacturer's obligations to the dealer under this chapter;
- 26 (2) Acting, ~~or failing to act, other than in good faith in bad faith~~
- 27 (3) Hindering, delaying, or rejecting the proper and timely payment of
- 28 compensation due to a dealer under this section, provided that nothing in this
 paragraph shall restrict or impair audits or chargebacks conducted in
 accordance with Section 51-07-02.4.
- 29 12. This section applies to all manufacturers and distributors as defined by section
- 30 51-07-00.1, and any other person that supplies a component or part installed on a new
- 1 motor vehicle for which the warranty of the component or part is warranted by another
- 2 person that is not the manufacturer.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MOTOR VEHICLES

BERGLUND CHEVROLET, INC. d/b/a
BERGLUND CHEVROLET BUICK

Petitioner

v.

GENERAL MOTORS LLC

Respondent

File No. 2017-003

AFFIDAVIT OF KEVIN CARR

Kevin Carr, having been duly sworn, hereby states under oath as follows:

1. I am over the age of 18 and am competent to make this Affidavit. I have actual knowledge of the matters set forth herein.

2. I am the Executive Chairman of MOTOR Information Systems ("MOTOR"), a division of Hearst Business Publishing, Inc. MOTOR maintains an office in Troy, Michigan. I have served as an executive of MOTOR for over twenty-five years.

3. MOTOR is a provider of various types of automotive data. Among other things, MOTOR creates and publishes Estimated Work Times ("EWTs") that estimate the amount of time it should take the average mechanic in an independent repair shop to perform various motor vehicle repairs. MOTOR's EWTs are designed to enable independent repair facilities to provide time and cost estimates to their customers.

4. In order to generate an EWT, a MOTOR staff member often evaluates the steps required to complete a labor operation on a particular vehicle based on the repair procedures issued by motor vehicle Original Equipment Manufacturers ("OEMs"). Staff members use their judgment and experience to estimate how long they think it will take an independent repair shop

mechanic to perform the repair. The staff members do not typically perform the repair steps on an actual vehicle or measure the actual time necessary to complete the repair.

5. MOTOR licenses EWT data to repair facilities, quick service facilities, collision repair facilities, and motor vehicle dealerships, among others. MOTOR also licenses its EWT data to ALLDATA. ALLDATA is a company that has developed information systems that provide parts, repair, and EWT information. As part of MOTOR's own publications and the information it provides to ALLDATA, MOTOR separately includes a number of the warranty labor time guides that it obtains from a number of OEMs, including General Motors LLC ("GM").

6. MOTOR EWTs are not intended as a substitute for GM's warranty labor time guides. MOTOR EWTs are designed for the typical independent repair shop mechanic, who has not been specially-trained by an OEM, does not necessarily have all of the factory approved tools and diagnostic equipment, and typically works on a broad range of post-warranty vehicles from multiple brands (as compared to warranty repairs on a repetitive basis on relatively newer, lower-mileage vehicles produced by a single OEM).

I declare under penalty of perjury that the foregoing is true and correct.

4/23/18
Date

[Signature]
Kevin Carr

TROY, MICHIGAN)
) ss.:
)

Sworn to and subscribed before me this 23rd day of April, 2018.

[Signature]
Notary Public

My commission expires: 12/7/20

