

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

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
18 distributor to be installed before the sale of a vehicle to a consumer.

19 (3) Diagnostic work **not otherwise compensated.**

20 (4) Maintenance programs.

- 1 (5) Extended warranty.
- 2 (6) Certified preowned warranty.
- 3 (7) Service contracts.
- 4 (8) Parts exchange programs.
- 5 (9) Recall, goodwill, and warranty work performed by the dealer.
- 6 b. Reasonable compensation for labor for the services identified in-
- 7 subdivision arecall and warranty may not be less than the average retail rate
- 8 charged by the dealer for like service to nonwarranty customers for nonwarranty-
- 9 service as provided under subsection 5. A motor vehicle manufacturer may not
- 10 reimburse a dealer for parts used in the performance of warranty repair at a lower-
- 11 rate multiplied by the time guide used by the dealer for nonwarranty customer-
- 12 paid service repair orders. To establish a time guide, a dealer shall provide-
- 13 written notice to the manufacturer or distributor with the name of the time guide-
- 14 the dealer uses. The manufacturer or distributor may not require the dealer to-
- 15 provide any other information to establish the time guide the dealer uses. If no-
- 16 time guide exists for a warranty repair, compensation for warranty labor must
- 17 equal the dealer's average retail rate multiplied by the time spent to complete the-
- 18 repair, and may not be less than the time charged to a retail customer for the-
- 19 same or similar work provided, provided the rate is reasonable. A
- 20 dealer, manufacturer or distributor shall use time allowances for the diagnosis and
- 21 performance of work and service which are reasonable and adequate for a
- 22 qualified technician to perform the work or services. The compensation for labor
- 23 must be the rate charged to retail customers for similar nonwarranty service work
- 24 multiplied, at the dealer's option, by either the time allowances recognized by the
- 25 manufacturer or distributor to compensate dealers for warranty work, or the
- 26 actual time spent performing the repair in good faith. A dealer may not change its
- 27 choice to be compensated for labor on the basis of the manufacturer's or
- 28 distributor's time guide or actual time more than once in one calendar year,
- 29 unless otherwise agreed by both the manufacturer or distributor and the dealer. A
- 30 manufacturer or distributor may reasonably require a dealer that elects to be
- 31 compensated for actual time to provide documentation and signatures, including

1 copies of all time-stamped job cards for specific technicians. If a manufacturer or
2 distributor can show the dealer submitted claims for actual time in bad faith,
3 including overlapping time charged for repairs or assigning technicians with
4 inadequate training or skill level required to complete the repairs, then the
5 manufacturer or distributor may require the dealer to be compensated under the
6 manufacturer's or distributor's time guide for a period of two years following the
7 date of a claim shown to have been submitted in bad faith. Reasonable
8 compensation for parts for the services identified in subdivision a may not be less
9 than the average retail rate customarily charged by the dealer for these parts as
10 provided under subsection 4, provided the rate is reasonable.

11 2. A dealer shall submit a claim for reimbursement for services within ninety days from
12 the completion of the services identified in subdivision a of subsection 1. A motor
13 vehicle manufacturer or distributor shall pay a dealer on a claim made by a dealer
14 under this section within thirty days of the approval of the claim. The manufacturer or
15 distributor shall either approve or disapprove a claim within thirty days after the claim
16 is submitted to the manufacturer or distributor. The manufacturer or distributor may
17 prescribe the manner in which and the forms on which the dealer must present the
18 claim. A claim not specifically disapproved in writing within thirty days after the
19 manufacturer or distributor receives the claim must be construed to be approved and
20 the manufacturer or distributor shall pay the claim within thirty days. If a manufacturer
21 or distributor disapproves a claim in writing within thirty days, the manufacturer or
22 distributor shall contemporaneously provide the dealer with a detailed written
23 explanation of the reason the claim was disapproved. The dealer has thirty days from
24 the receipt of the disapproval to resubmit a corrected claim.

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

- 1 4. The retail rate customarily charged by the dealer for parts is established by the dealer
2 submitting to the manufacturer or distributor one hundred sequential nonwarranty
3 customer-paid service repair orders that contain warranty-like parts or ninety
4 consecutive days of nonwarranty customer-paid service repair orders that contain
5 warranty-like parts, whichever is less, covering repairs made no more than one
6 hundred eighty days before the submission and declaring the average percentage
7 markup.
- 8 5. The retail rate customarily charged by the dealer for labor must be established using
9 the same process as provided under subsection 4 and declaring the average labor
10 rate. The average labor rate must be determined by dividing the amount of the
11 dealer's total labor sales by the number of total hours that generated those sales. If a
12 labor rate and parts markup rate are simultaneously declared by the dealer, the dealer
13 may use the same repair orders to complete each calculation as provided under
14 subsection 4.
- 15 6. In calculating the retail rate customarily charged by the dealer for parts and labor as
16 provided in subsections 4 and 5, the following work may not be included in the
17 calculation:
- 18 a. Repairs for manufacturer or distributor special events, specials, or promotional
19 discounts for retail customer repairs;
- 20 b. Parts sold at wholesale;
- 21 c. Parts or labor used in manufacturer or distributor sponsored programs that
22 restrict the pricing for repairs;
- 23 d. Routine maintenance not covered under any retail customer warranty, including
24 fluids, filters, and belts not provided in the course of repairs;
- 25 ~~d.e.~~ Nuts, bolts, fasteners, and similar items that do not have an individual part
26 number;
- 27 e. Tires
- 28 f. Replacement or work on tires, including wheel or tire rotations or balancing, or
29 replacements of brakes, including brake drums, rotors, shoes, or pads; and
- 30 ~~f.g.~~ Vehicle reconditioning;:
- 31 h. Alignments, unless necessary as part of a mechanical repair;

- 1 i. Batteries, other than electric vehicle or hybrid vehicle propulsion batteries;
2 j. Repairs of a motor vehicle owned by the dealer or an employee of the dealer;
3 k. Installation of accessories;
4 l. Repairs to or with aftermarket parts; and
5 m. Repairs performed on motor vehicles of a line make other than that for which the
6 dealer is franchised by the motor vehicle manufacturer.
- 7 7. a. ~~The~~There is a rebuttable presumption that the average of the parts markup rates
8 and labor rate calculated under subsections 4 and through 6 is ~~presumed to be~~
9 fair and reasonable, and must go into effect thirty days following the
10 manufacturer's ~~approval~~receipt of the submission subject to the manufacturer or
11 ~~distributor's ability to contest the rate as provided in this subsection.~~ The motor
12 vehicle manufacturer or distributor may not issue more than one notice to the
13 dealer contesting any declared labor rate or parts markup, and may not add to,
14 expand, supplement, or otherwise modify any reason for contesting the declared
15 rate or parts markup. A manufacturer or distributor may contest the material
16 accuracy of the rate calculated under subsection 4 through 6 or rebut the
17 presumption in this subsection by ~~reasonably substantiating that a rate is~~
18 ~~unreasonable in light of the practices of all other~~ franchised motor vehicle dealers
19 in an economically similar area of the state offering the dealer's declaration of the
20 same line make vehicles, not later than thirty days after submission. If the
21 average parts markup rate or average labor rate is rebutted, or both, the
22 manufacturer or distributor shall propose an adjustment of the average
23 percentage markup based on that rebuttal not later than thirty days after
24 submission. ~~contest the material accuracy of the rate calculated under this~~
25 ~~sections~~similarly suited same line make dealers in the state by providing a written
26 objection to the dealer within thirty days after receiving the dealer's submission,
27 and shall:
- 28 (1) Provide the dealer with a copy of all calculations used by the motor vehicle
29 manufacturer or distributor to make the determination of the dealer's labor
30 rate or parts markup, a written explanation of the basis for any inaccuracy or

1 unreasonableness alleged by the motor vehicle manufacturer or distributor,
2 and evidence substantiating any written explanation.

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

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

11 b. If a motor vehicle manufacturer or distributor fails to ~~comply with the~~
12 requirements of subdivision a approve or deny a submitted rate change within
13 thirty days of receipt of submission, the submission is approved.

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

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

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

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

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

- 1 (c) The manufacturer's or distributor's proposed adjustment to the
2 dealer's submitted labor rate or parts markup was materially accurate
3 or unreasonable.
- 4 (2) If the dealer prevails in the action, the dealer's labor rate or parts markup is
5 retroactive to the date thirty days following the motor vehicle manufacturer's
6 or distributor's receipt of the submission, ~~and the dealer shall recover all~~
7 ~~expenses in bringing and maintaining the action, including reasonable~~
8 ~~attorney fees. If a court finds the motor vehicle manufacturer or distributor~~
9 ~~willfully violated this section, the dealer is entitled to recover three times the~~
10 ~~amount of the retroactive labor rate or parts markup.~~
- 11 8. ~~Each manufacturer, in establishing a schedule of compensation for warranty work,~~
12 ~~shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and~~
13 ~~may not obligate any vehicle dealer to engage in unduly burdensome or~~
14 ~~time-consuming documentation of rates or parts, including obligating vehicle dealers to~~
15 ~~engage in transaction-by-transaction or part-by-part calculations~~In establishing a rate
16 under this section, the dealer's labor rate or parts markup must be calculated using the
17 method ~~proscribed~~prescribed in subsections 4 through 6.
- 18 9. A dealer ~~or~~ manufacturer, or distributor may demand that the average parts markup or
19 average labor rate be calculated using the process provided under subsections 4 and
20 5; however, the demand for the average parts markup may not be made within twelve
21 months of the last parts markup declaration and the demand for the average labor rate
22 may not be made within twelve months of the last labor rate declaration. If a parts
23 markup or labor rate is demanded by the dealer ~~or~~ manufacturer, or distributor, the
24 dealer shall determine the repair orders to be included in the calculation under
25 subsections 4 and 5.
- 26 10. ~~a.~~ If a motor vehicle manufacturer or distributor furnishes, or causes to be
27 furnished, a part to a dealer at no cost or at a reduced cost for use in performing the
28 services identified in subdivision a of subsection 1, the motor vehicle manufacturer or
29 distributor shall compensate the dealer in the same manner as parts compensation
30 under this section by paying the dealer for the dealer's cost of the part, if any, plus an

1 amount equal to the dealer's parts markup, multiplied by the wholesale value of the
2 part. The wholesale value of the part must be the greater of:

3 ~~—(1)a. The amount the dealer paid for the part or a substantially identical part if~~
4 ~~already owned by the dealer; or~~

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

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

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

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

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

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

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

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

24 (2) Acting in bad faith; or

25 (3) Hindering, delaying, or rejecting the proper and timely payment of
26 compensation due to a dealer under this section, provided nothing in this
27 paragraph may restrict or impair audits or chargebacks conducted in
28 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~~warrantied
- 2 | by another person that is not the manufacturer.