

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1192
(Representatives Ruby, Delmore, Kasper, Sukut)
(Senators Hogue, Klein, Lyson)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to motor vehicle warranty reimbursement; and to declare an emergency.

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:

Warranty work compensation.

1. A motor vehicle manufacturer 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 not be less than the average 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 than the average retail rate customarily charged by the dealer for these parts as provided under subsection 4.
2. A motor vehicle manufacturer 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 shall either approve or disapprove a claim within thirty days after the claim is submitted to the manufacturer. The manufacturer 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 receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.
3. A motor vehicle manufacturer, factory branch, distributor, or distributor branch shall fully compensate its motor vehicle 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 dealer or imposing a separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, 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, 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. Routine maintenance not covered under any retail customer warranty, including fluids, filters and belts not provided in the course of repairs;
 - d. Nuts, bolts, fasteners, and similar items that do not have an individual part number;
 - e. Tires; and
 - f. Vehicle reconditioning.
7. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must go into effect thirty days following the manufacturer's approval. 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.
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.
9. A dealer or manufacturer 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, the dealer shall determine the repair orders to be included in the calculation under subsections 4 and 5.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

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-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1192 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 2 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 43 Nays 2 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,
at _____ o'clock _____ M.

Secretary of State