2013 HOUSE TRANSPORTATION

HB 1192

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1192
02-15-13
Job # 19059

☐ Conference Committee

Committee Clerk Signature	Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to motor vehicle warranty reimbursement; and to declare an emergency.

Minutes: Attachments 1-8

Chairman Ruby opened the hearing on HB 1192.

Matthew Larsgaard, MBA Automobile Dealers Association of North Dakota, spoke to support HB 1192 and provided written testimony and Bill Review and Explanation. See attachment #1-1A. (10:25)

Representative Gruchella: Are North Dakota dealers getting reimbursed 80% of the hourly rate?

Matthew Larsgaard: Or less.

Representative Gruchella: If the technicians are the ones that are taking a hit, can they expect a 20% increase if this bill passes?

Matthew Larsgaard: The technician that is compensated as a percentage of the repair revenue will realize an increase in their compensation if this bill passes.

Chairman Ruby: Is that percentage below the retail cost but not necessarily their cost?

Matthew Larsgaard: The percentage reduction is a discount from the market rate, the non-warranty customer pay rate.

Amendments were distributed to the committee members. See attachments #2-3.

Chairman Ruby: Will you explain the changes made by these amendments?

Matthew Larsgaard: In paragraph three we felt that the language that had been struck was too restrictive and unnecessary, especially when we look at line eight. It seems that it would not allow any sort of cost recovery. We are not opposed to the idea of cost recovery. We understand that the manufacturers need to maintain a certain gross margin or profit in

order to remain a viable, solvent entity. However, if the manufacturer is allowed to levy a surcharge against the dealer in response to this legislation that would effectively make this legislation of no effect. The surcharge would be a brand new line item on the invoice of a new vehicle. The money would be taken out of the front pocket and put into the back pocket. A potential solution to the manufacturer's need to recover their costs would be to simply raise that base invoice price to spread the cost of the warranty repair to all of the new vehicles of that model that are sold throughout the United States.

Chairman Ruby: What does the amendment change in Subsection 5?

Matthew Larsgaard: In paragraph 5 the original language states that the labor rate will be calculated by taking the last month of gross labor sales and dividing that by the labor hours. That gives you a per hour effective labor rate. In paragraph 4 we were using a different calculation using 100 sequential non-warranty repair orders. Paragraph 5 harmonizes the calculation for the labor rate with paragraph 4, so that the dealer may use the same repair orders that they are using to calculate the parts rate.

Chairman Ruby: Do you know what the average warranty work would be in comparison to the other repair work they do?

Matthew Larsgaard: I don't know for sure.

Gregg Jacobson, RZ Motors, Inc., Hettinger, ND, spoke to support HB 1192 and provided written testimony. See attachment # 4. (21:15)

Representative Kreun: How long does it take the manufacturer to approve a claim?

Gregg Jacobson: It will take a period from 7 days to 45 days or longer.

Representative Kreun: Would the payment be tacked on after the 45 days, so you are waiting 75 days anyway?

Gregg Jacobson: Exactly.

Chairman Ruby: According to your testimony, your employees would actually see more of the money if the warranty work were paid higher? It wouldn't just go to the dealer, and the employees would be paid at a flat rate?

Greg Jacobson: At my dealership if I receive more payment for the fair services that I provide the manufacturer, my employees would be the beneficiary of that.

Representative Sukut: Can you give us an idea of about how much of the work is warranty work in your dealership?

Greg Jacobson: At my dealership it is about 25%.

Representative Delmore: Is there a big discrepancy between what different dealerships will charge people for non-warranty work as we look across the state? Or are the labor costs fairly standard?

Greg Jacobson: In my dealership we charge a retail labor rate that bears the economic conditions of our area. In western North Dakota we have seen an extensive increase in the requirement for us to meet labor costs. So, we have had to increase our retail labor rates accordingly to maintain staff. Human resources are our biggest issue.

Michael Gaddie, owner of five auto stores in western North Dakota, spoke to support HB 1192. He provided written testimony. See attachment #5. (27:28)

Representative Delmore: Do all manufacturers treat the dealers in the same way? Are some manufacturers better about meeting the requirements and warranties?

Michael Gaddie: I don't think I can actually answer that.

Chairman Ruby: Are you concerned about the recovery provision if the bill passes as it is?

Michael Gaddie: If that item is not addressed and is part of the bill, I do believe that it would be a natural assumption that the factory would try and impose something like that.

Dan Wilson: In response to an earlier question about time allowances, in this bill in paragraph 1, line 9, it states that a motor vehicle manufacturer shall provide adequate time allowances for diagnostic and performance warranty and service work.

Chairman Ruby: I am wondering how that is defined. Your ideas of "adequate" time may differ.

Dan Wilson: There are three different systems that we use in a dealership: a Chilton Manual, All Data, and one other one. If a manufacturer's time is consistent with one of those, it should be fair.

Dan Wilson, Corwin Automotive Group, Fargo, and a Board Member of the Automobile Dealers of North Dakota, spoke to support HB 1192 and provided written testimony. See attachment #6. (35:50)

Representative Kreun: When you bring this up to the manufacturers, what is there response?

Dan Wilson: As far as the labor differential? They say we have a dealer sales and service agreement, and policies and procedures that explain how we get paid. You sign the agreement, and that is how you get paid.

Representative Kreun: Is there any negotiation with this?

Dan Wilson: On the labor rate there is negotiation. They allow us to get an increase in our labor rate, typically every year. That labor rate is still less than the retail rate that we are able to get from our customer pay.

Representative Kreun: I am assuming that you would interject all of these comments in the conversation that you would have with the manufacturer and indicate that you are actually losing money. If it isn't a level playing field, wouldn't they be concerned that they could possibly lose a dealer?

Dan Wilson: If they lose me, someone else will come in and represent them.

Representative Gruchella: Is the reimbursement the same for extended warranties as for the regular manufacturer's warranty?

Dan Wilson: Most extended are different. A lot of them aren't provided by the manufacturer themselves. Those agreements are negotiated outside, and most of the outside service contracts that we represent pay us full retail rate for parts and labor.

Representative Sukut: Can you give us an idea of what percentage of your business is warranty work compared to regular work?

Dan Wilson: If you take our Quick Lube in Fargo out of the picture, then the repair work versus the warranty work it probably about 50/50 in many of our stores.

Representative Vigesaa: I know that Corwin has stores in two other states. Is this law in place in Montana and Missouri?

Dan Wilson: Yes, in both of those states the manufacturers do pay us retail rates for warranty and labor.

Representative Kreun: If they are paying at that rate, does that affect the base price of the vehicle or are there any add-ons to cover the higher pay rate?

Dan Wilson: In Montana they have not done any surcharges nor in Missouri. But I do have a manufacturer in Missouri that we represent, and I tried to get the increase to retail rate. The manufacturer told me to go ahead and make my submission, and that they would honor it, but then I would be known as the dealer that caused a surcharge to be added onto every new vehicle that came into the state.

Chairman Ruby: In some states do they have the ability to add on the surcharge, but they don't do it?

Dan Wilson: They do in Missouri, but I am unsure of Montana.

Representative Gruchella: Is the labor rate the same in different stores for warranty, comparing Minneapolis to Fargo, for example?

Dan Wilson: The labor rate can be different from a store in Fargo to a store in Grand Forks, to a store in Minneapolis.

Representative Gruchella: So, each dealer sets their own labor rate? Warranty rate?

Dan Wilson: When you buy a dealership, you get a rate to start with. After that they give you an annual cost of living increase, or you can make a submission of 100 repair orders every year, do a market study, or show what your competitors have. It may vary some as to how you get that bump every year. Typically wherever the rate starts, it is much lower than your retail rate. The difference is as high as 30% in some of the stores in western North Dakota.

Tom Balzer, Motor Carriers Association, spoke to support HB 1192. He has members that represent the seven large truck manufacturers. They all do service work as well and would be covered under this legislation. The previous speakers have explained this well. We support this legislation.

There was no further testimony to support HB 1192.

Renae Wadsworth, the Alliance of Automobile Manufacturers (a trade association made of twelve light car and truck manufacturers), spoke to oppose HB 1192 and provided proposed amendments. See attachments #7.

Renae Wadsworth: I am standing in opposition to the bill, but would like to point out that we have resolved a lot of our issues with the bill. Most of the amendments that I have passed out have been agreed to by the dealers. I will also point out that we have accepted the general concept of the bill. Should this bill pass the dealers would now be receiving the retail rate for warranty, parts, and labor. This will be okay with us if it is done in a fair way. I would like to explain a couple of the outstanding issues that we have with the bill. In the bill there is a stipulation that the manufacturers would be prohibited from recouping their costs should a dealer submit exorbitant retail rates for warranty work. We ask that that sentence be struck, so that the manufacturer would have a tool or backstop to keep the system in check. We think the way that we have outlined the formula for parts and labor in paragraph 4 and 5 of the bill is fair. It is clear, and it seems that both the dealers and the manufacturers should understand the process going forward. We would ask the committee some time for the process to begin working, and strike that sentence from the bill. It should be pointed out that manufacturers are seldom surcharging in states that already have retail payments for warranty work. When the state is silent on this matter, the system remains in check. There is ongoing litigation in Florida on this cost recovery issue. The judge recently ruled that manufacturers have a case on the issue, and the case is moving forward. If the case is resolved in a couple of years, I think it would be more appropriate for North Dakota to consider that cost recovery language in a future legislative session. I understand that the dealers have presented an amendment to the cost recovery section, and we just saw it before the hearing began. It is something we could consider if the intent of the dealers is to pass the cost on to the customer. We may want to have continued dialog on this. We couldn't accept it today. We feel the best way to preserve that tool is if the state is silent on the cost recovery bar.

The other concern that we would like to speak on today is in paragraph 6. We believe this contains an incentive to pad the numbers when calculating repair rates. You see a list of seven types of normal services that are offered by dealers when performing repair work. The bill removes these seven services when calculation the repair rate. Our proposal is to remove engine assemblies, tires, and transmission assemblies from the list of exclusions. Therefore, those items would be included in the calculation of the rate as outlined in paragraph 4 and 5. We think they should be included because these are services that you typically think of when you take your car in for repair work. It makes sense to calculate those into the retail rate going forward. (48:07)

Chairman Ruby: Do you get a lot of warranty work for tires?

Renae Wadsworth: I can't answer that.

Representative Delmore: What is the average cost to a customer for warranty work, and what percentage take them? I would like both nationwide and North Dakota statistics if you have them.

Renae Wadsworth: I don't know that information. But, if a person brings in an automobile for warranty work they don't pay for that work.

Representative Weisz: I am wondering why we shouldn't delete transmission or engine assemblies since they are usually done for a package rate, are not repairs, and don't reflect the normal labor rate.

Renae Wadsworth: I will refer this to the General Motors representative.

Chairman Ruby: Can you explain your version of subsection seven compared to what is in the bill?

Renae Wadsworth: The concept behind paragraph seven would remain the same, but there are differences over the timing of when that thirty day period starts. It is something that we will continue to talk about.

Jeffrey Perry, Regional Director, State Government Relations, General Motors Company, spoke to oppose HB 1192 and provided written testimony. See attachment #8. (1:02:00)

Jeffrey Perry: We think that if the manufacturers think it is necessary, they should be able to do a cost recovery for the amount of the incremental increase, not the entire warranty, by adding a line item to the invoice and passing it through to the consumer. The line item would come through before the dealer's final cost on the product. That would also be true of any options added to the vehicle. It would be the same as a line item added to a California vehicle for emissions equipment. If we were prohibited from cost recovery in California, then consumers in North Dakota would be paying for emissions systems in California. This is the same issue. It has been suggested that the repair rates in North Dakota be passed along to every consumer in the country. That in itself is what brings in the U.S. Constitution and the federal case pending in Florida. That is a violation of the

commerce clause. Our suggestion is simply that we need the ability to add a line item, net of the dealers' final cost. When the consumer comes into the dealership and says, what will you sell me this vehicle for? It is reasonable to believe that the dealer will not sell the car for less than dealer paid for the car. If they do sell it for no less than they paid for the car, then that surcharge would have been effectively been passed on to the consumer. The money then has not been taken back from the dealer at any point. That is how the process should work. We are not suggesting that the dealers pay for it. We are saying that since we don't sell the vehicle to the customer, and we are not allowed to, we don't have a price to charge a customer. We don't get a penny from the customer when they buy the car. We sell vehicles to dealers; that is required by law. So, the only place that we can put a surcharge is going to be net of the dealers' cost. That will then be reasonably absorbed when the dealer sells the car back to the consumer.

Representative Delmore: Do you really want us to believe that you don't add anything to the price of the vehicle to cover the cost of the warranty that you offer?

Jeffrey Perry: No, I don't want you to believe that. I want you to absolutely believe that we include in the price of the vehicle a factor for what we expect the warranty cost to be on that vehicle over its warranty period. When a manufacturer makes the baseline price assessment for that vehicle, we are currently looking at a national average as to what we pay for an average repair rate for the average amount of repairs that we expect on that vehicle. We factor that into the price of the car. When the consumer pays for the car, it is included in what they paid for. Assume that there is no change in this law today; the dealers don't argue that they are paying for warranty today. Everyone would argue that the price the customer finally pays includes the cost of doing the warranty. We are just suggesting that if the price of doing that warranty is going to go up incrementally in the state of North Dakota as a result of this change, then that incremental change should be reasonably be passed on to the consumer. The only way for the manufacturer to do that would be to line item add it to the price of the car. If we put it into the base price of the car, then we are effectively saying that everybody else in every other state, including dealers, must pay for the increases in the state of North Dakota. Similarly, we would be saying that North Dakota dealers should be paying for increases in New York.

Representative Vigesaa: Are you aware of a time when a dealer has been gone through the process to seek an increase in their warranty rate and have sought that that rate be brought all the way up to their retail rate?

Jeffrey Perry: It has been requested, yes.

Representative Vigesaa: Is it possible that it would be granted?

Jeffrey Perry: Yes.

Representative Vigesaa: So, if every dealer in North Dakota went through the process and proved that was their going rate, then you would theoretically approve all of those increases?

Jeffrey Perry: Theoretically, yes, if they documented everything properly according to the language here.

Representative Vigesaa: Would you institute a surcharge on vehicles in North Dakota if everyone ended up at retail rate through that process?

Jeffery Perry: I couldn't answer that question today, because I don't know what the effect overall would be to our bottom line based on what the ultimate retail rate would be across the board in North Dakota, and what we are currently paying in North Dakota. It is entirely possible that we would find that there was no significant change in the cost of doing business in North Dakota. In that circumstance we can find ways to absorb that difference into our current practice of building and selling the vehicles. It does not necessarily go hand and hand that we start paying retail, and then we start cost recovery. There are many states that we don't.

Representative Vigesaa: Knowing that the North Dakota retail rates are considerably lower than the rest of the country, I would assume that our effect on GM's overall cost would be minimal. I am a dealer. We get midyear price adjustments regularly. How do we know, when we get a $200 increase in one of our vehicles, that cost recovery isn't already being added in as part of that?

Jeffrey Perry: You don't. It is possible that some of that increase is part of a cost recovery expense. I am not saying that we are against paying retail for warranty. We are getting more comfortable with it as we discuss it because we are learning more about it ourselves. I can also tell you that of our 4,500 dealers in the United States that are eligible to seek retail for warranty reimbursement, less than 10% do. That means that over 90% of our dealers across the United States have decided that it is more efficient and beneficial for them to stay with the current programs that we are offering. Then they get the automatic 40% mark-up, they don't have to submit documentation, and they go about their day to day business. Because of that, when we have that take rate that is that low, we are able to better and more efficiently absorb those increased costs from around the country. When we are blocked from doing a cost recovery somewhere, it necessarily pushes those costs to other dealers. So, what you might find in a perfect world if there were not states out there blocking cost recover, and we found that the take rate in a particular state was exorbitantly raising our cost of doing business there. We would, in that state, be able to apply a cost recovery charge that gets passed through to consumers of that state. If that state prevents us from doing it, consumers in North Dakota end up paying the bill.

Representative Vigesaa: You did mention that based on market happenings throughout the country, it may cause those midyear price changes. Isn't that spread to all vehicles that are invoiced throughout the country?

Jeffrey Perry: That is correct.

Representative Vigesaa: You mentioned that one of the reasons that you pay a lower rate for warranty is that the dealers don't have to advertise for that service. How do you propose that the dealers get cost recovery on all of the special tools that we have to purchase without any ability to get out of that? I have a box of Viper tools that cost

between $4000 and $5000, and it has never been opened. So, how do I recover those costs?

Jeffrey Perry: Generally speaking, it is expected that the special tools that are required for certain vehicles, will be used for work other than warranty work, thus the dealer will recover his cost.

Representative Weisz: As a percentage of your invoice cost to the dealers, what is the average percent allocated for warranty for GM vehicles?

Jeffrey Perry: I don't know the exact percentage of warranty within the price of the car. Even if I did know, I probably wouldn't divulge that information to you in a public hearing. That particular factor would be proprietary and competitive information.

Representative Heller: Matthew Larsgaard stated in his testimony six reasons that we need this legislation. In your testimony you say that this bill fails to address a legitimate problem. Is that because you don't feel that these are real problems, or is it because of the way the bill is written?

Jeffrey Perry: I think that my comment about not addressing legitimate concerns is, number one, based on what General Motors does with its dealers. We already reimburse dealers at a profit. There is a difference between the profit that we pay them and the profit that they get at retail, but I think that goes to the difference what they have to do to win a retail customer versus what they have to do to get a warranty customer. Since we are already paying them at a profit level, what they are asking the state to do is mandate more profit. I don't know where it becomes the state's responsibility for independent business people to say, I think you deserve more profit. I would understand better if the argument was that they are not even covering our costs. Our policies allow the dealers to submit back to us and say that they want a labor rate increase. If they can submit back to us documentation that says the going rate in their area is higher, then we will consider the labor rate increase. We already have procedures in place, and we are giving them profit on the mark-ups already. I'm failing to see how there is legitimate problem that is of the ***state's*** interest. What are they protecting at that point? I am not saying that dealers and manufacturers don't disagree on a daily basis on a lot of things. It is simply not something that the state needs to get involved in. Coming back to the retail reimbursement language, we have gotten comfortable with that. It is about the fairness and equity. If we have to absorb this increase, where are we going to put it in our bottom line, if we can't recover it from anyone? (1:27:10)

Representative Becker: Can you tell me more about the state prohibiting the manufacturer from selling its own products or permitting warranty repairs to be done anywhere but at an authorized dealership? Is that unique or uncommon? What is the situation with that? I am not a fan of state created monopolies.

Jeffrey Perry: It is not uncommon, that language has gotten to be very common across the country. The states prohibit manufacturers from selling vehicles directly to consumers. The state also prohibits the manufacturer from servicing their vehicles, and the states require that the manufacturer utilize its authorized repair facilities (the dealers) to perform

warranty work. It is not unique to the state of North Dakota. My point in bringing that to everyone's attention is that if this state mandated monopoly already exists, why is further protection guaranteeing profit on top of profit also needed?

Representative Fransvog: I would like to go back again and talk about cost recovery. The gentleman from Hettinger talked about a time standard of 30% less than what he was getting for full retail. Does your organization have a percentage of full retail that you are comfortable with as far as cost recovery?

Jeffrey Perry: I think that was a labor discussion. Where we are comfortable is the current parts mark-up plus 40%. Then in terms of labor, if the dealer feels that he is not getting paid enough, he can submit what is going on for local rates. Then we will consider that rate. I know that we have increased dealers to going rates in many communities. I can't speak specifically in North Dakota. The difference in the labor rate was mentioned. A couple of different time guides were talked about the manufacturer's, Chiltons, and All Data. The last two are aftermarket time guides. They are in competition to sell their time guides, and whoever offers the best time will probably sell more manuals. The dealers will then turn around and use that when they charge an after-warranty customer. The manufacturer's time guide, however, are based off of real data. We do time studies on the vehicle. So, every time that we make a new model or make an alteration to a vehicle, we take that vehicle and for every operation we put it through a time study. We do NOT do that in ideal circumstances. We typically go out to a dealer, pay the dealer to use his facility, and will run the time study through the dealership without power tools, even though the dealers are allowed to use them. We go through the process to figure out what is the maximum time this should take. We do take into consideration that the dealer's technician should be certified and know what he is doing. After we do the time study, we bake in extra time that allows for breaks for the technician and other things he needs to do. After all that is done we add another six minutes to the time study. In the end, that is the time we say it should take you to do this repair. If for some reason that the technician comes back and tell us that it is not enough, that they can't do it in the time we listed. We have an appeal process in which the technicians can call back to the headquarters and ask for a re-evaluation of the time study and give the extenuating circumstances that they feel should be taken into consideration. We will then re-evaluate the study. If we find, and we have, that it is different; we will adjust the time study in our manual. We also allow a dealer to add up two hours for unforeseen circumstances. Chilton and All Data have taken our rates and added on 20%. Then they sell them to the dealer, and they are mostly used for after-warranty work.

Representative Kreun: I would disagree with the fact that this would cause dealers to tend to raise repair rates because of the competitive nature. If the dealer is going to raise their rates, and another dealership down the road doesn't, the customer will go to the place where the rates are lower. Just because we raise the warranty rates, isn't necessarily going to affect the retail rate as far as repairs go. You say that if you can't recover your costs, you will go out of business. It is the same for every dealer, and something that they deal with day in and day out.

Jeffrey Perry: I would disagree. I think that it does encourage the dealers to raise the retail rate. The reason is because what they get paid for warranty work is based on the

retail amount. That will encourage them to raise the retail amount, so they can get more on the warranty work. They clearly stated today that their biggest concern is getting more money for warranty work. They suggested that if you get more for the warranty work, that they could decrease the rates for non-warranty work. We have never found that to be the case.

Representative Kreun: How do you deal with this legislation if 45 other states have it?

Jeffrey Perry: Only 35 states have it. Of those states the majority of them do not prohibit cost recovery. Because we have seen the less than 10% take rate, in the majority of those states, we don't cost recover. Of those that we do have a cost recovery provision in place, it is because it was part of the agreement with the dealers back then of how we would implement the entire change. In New Jersey, for example, they have a cost recovery mechanism in place where we surcharge the invoice. It is just a checkbox, added as an option, to every vehicle that a dealer orders in the state of New Jersey. We apply a unique surcharge for that state as part of an agreement that we had with the dealers when they put all of this in place. I other states where we have retail for warranty and dealers collecting, in most of those cases we are not doing cost recovery at this time. That is one of the things that my counterpart from the Alliance was indicating. We have a circumstance right now where the state of Florida has active litigation over this exact issue of prohibiting cost recovery, enforcing a state mandated price increase beyond the boundaries of that state. Primarily, that is because you leave the manufacturers with no other option. So, because there is active litigation, and we have very little evidence to show that manufacturers are regularly seeking cost recovery, we are not certain at this point it is time to say, "and you can't cost recover." If something happens between now and the next legislative session in North Dakota that the legislature feels that the manufacturers are taking advantage of this cost recovery opening that we've left, there would be nothing to stop the legislature from bringing that issue next time. In the meantime, you do allow it to out and see what the real impact is, if any. You also allow it to play out to see what the outcome will be in a federal court case that will have an impact across the country.

Chairman Ruby: Can you explain why the engine and transmission assembly shouldn't be part of the exclusion?

Jeffrey Perry: Representative Weisz stated that in an after-market world the dealer may offer specials to replace a rebuilt engine or transmission. That would be mischaracterized to suggest that the only thing that goes back into a vehicle if your engine needs to be replaced is a brand new engine. Manufacturers reserve the right to put in rebuilt engines and transmissions, as well, under warranty. In fact it is very common, and rebuilt assemblies are part of the warranty process as well. But, the idea of all of this is to try to find out the fair reimbursement rate should be. Why are we excluding anything? If a dealer has a special on an engine or transmission assembly installation for his retail customers that is part of what his retail rate averages are going to be. The list is seven items long and we only taking out two of them. We are basically conceding that the rest don't have any bearing on what retail is. If it is something that is wholly in control of the dealer and relates directly to what he has charged retail customers, and if the ultimate goal is to find the fair retail rate, why would you exclude anything?

Chairman Ruby: For instance, tires, the people who come in to fix tires. You don't pay someone who fixes tires, the same rate that someone who is doing the warranty work. It would bring down the average.

Jeffrey Perry: They will both pull down the average to what we think is fairer. That is "their" whole point in excluding them. It brings down the average. The net result of any exclusions is that we are actually paying something that is truly higher that their retail rate.

Matthew Godlewski, Vice President of State Affairs with the Alliance of Automobile Manufacturers, spoke to oppose HB 1192. One of the important things to note is that we are conceding this point of having a higher retail rate for warranty repairs in the state of North Dakota. We are also conceding to bring some clarity in how that rate is calculated. We believe that both of those items are going to result in a higher profit for the dealers in terms of these warranty repairs. Relative to the cost recovery provision, we are simply asking for fair play and balance in a measured approach relative to that provision. When you have a situation where the rules are being written for two private parties who have decided to freely contract, we really do believe that balance is required. We feel auto dealerships already have their own right to cost recover. There are examples such as document fees, which is a surcharge on the consumer who is purchasing the vehicle to cover the administrative costs that are incurred by the dealer. There are other things that you might see on the invoice. In regard to the cost recovery provision, it is a tool used very seldom, and that needs to be taken into consideration. We think that if you are mandating higher reimbursements rates for the warranty work, and you are also prohibiting the manufacturer from having this tool that can be used to create some balance, then you are really squashing all of the competitive forces in the marketplace. The concern there is that it raised the cost for manufacturers. It will create more acrimony and tension in the relationship between the dealer and the manufacturer, and ultimately, it will increase cost for consumers both in the purchase price for a vehicle, and also for those consumers that are having vehicles repaired outside of warranty.

There was no further testimony in opposition to HB1192.

There was no further testimony on HB1192.

Representative Drovdal: Mr. Jacobson, coming from a small town with the influx that we have had in western North Dakota, do you do a measurable amount of warranty work on vehicles that you have not sold?

Mr. Jacobson: We have had to put in place a policy that we do not decline factory warranty at the dealership, no matter where you are from. However, you will be placed on the list behind all of "my" customers. The notion that we turn away warranty or don't want warranty from other dealers is ridiculous because I personally like people who buy a car from someone else to come to my dealership to be treated the way they should be treated. I would say that the amount of warranty work that we do on cars from other dealerships is under 10%.

Representative Becker: Do you think that it would be good idea to open up warranty work to get rid of this monopoly?

Mr. Jacobson: I don't think I can answer that.

The hearing was closed on HB 1192.

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1192
2/21/13
Job # 19323

☐ Conference Committee

Committee Clerk Signature	Jeanette Cook

Minutes: *Attachment # 1-4.*

Chairman Ruby brought HB 1192 back to the committee.

Joel Gilbertson, Alliance of Automobile Manufacturers, presented a letter from the Alliance. See attachment #4. It will bring the committee up to date on the meetings we have had, and the concessions that the Alliance has made in respect to setting up the new system that will pay a significantly higher rate to dealers for warranty work. We have agreed to that. It also stipulates a formula for which manufacturers will reimburse dealers for warranty work, parts, and labor, and a time frame in which reimbursement must occur. We agreed with the dealers on that. The agreed upon amendments were provided to the committee. See attachment #1. Amendments that the Alliance would like to see, that have not been agreed upon were also provided. See attachment #2.

Chairman Ruby: On the second point, dealing with the exceptions to the calculation, I still can't understand tires.

Joel Gilbertson: As far as a priority, it is far more important to take out engines and transmission assemblies than tires.

Representative Delmore: Is this reimbursement pretty much in line with what they do in the other states that have this?

Joel Gilbertson: Yes, but not the cost recovery.

Matthew Larsgaard, Automobile Dealers Association of North Dakota: I am here to support HB 1192, and we do have some proposed amendments. See attachment #3. There are two line items. These were discussed in the hearing last week. The reason to strike lines 6-8 is because we think it is too narrow and unnecessary. Line 8 seems to not allow any sort of cost recovery, such as increasing the cost of any particular model of vehicle that is sold throughout the United States.

Chairman Ruby: We understand the amendments that you agree upon. Did the amendments expand the window of time that the manufacturers have to review?

Matthew Larsgaard: Yes, one of the amendments allow the manufacturers to expand the time that they may use to collect repair orders, assuming that a small rural dealer may not have 100 sequential non-warranty repair orders that contain those warranty like parts. We are in full agreement with the manufacturers on these amendments.

Chairman Ruby: In the area of disagreement on what can be included in the calculation, how do you feel?

Matthew Larsgaard: On tires, it is my understanding that typically they go right to the manufacturers. We are unclear on why the manufacturers are asking for tires.

Representative Delmore made a motion for a DO PASS on the amendments agreed upon by both parties. (Attachment #1)
Representative Kreun seconded the motion.
A voice vote was taken. All aye. The motion passed.

Representative Becker moved an amendment to remove line 26 from page 2. (See attachment #2)
Representative Gruchella seconded the motion.
A voice vote was taken. Motion carried.

Representative Vigesaa: As you know, I am an auto dealer. I think from my own perspective, and probably other dealers, that we should leave the language in that prohibits the cost to recover. I believe that the manufacturers have multiple ways to recover costs. A vehicle has a base invoice, and sometimes we have two to three price increases during a model year on certain vehicles. The only reason they could be raising those prices is to recover some additional costs that have come towards them. Also, the dealers have many other programs that they are charged with. We have no input as to what we will be charged for the special tools, training, posters, etc., that we are sent with an invoice. I spoke to a dealer that had just received his training cost for 2013, and his increase was $420, from $692 to $1112 per month. They have plenty of ways to recover costs. I would resist any motion to remove the cost of recovery language.

Representative Vigesaa moved the amendment provided by Matthew Larsgaard. See attachment # 3.
Representative Sukut seconded the motion.

Representative Becker: I will resist the motion. I think that this bill forces the manufacturer to pay more. They will have to recover their costs, and the cost will be passed on to the consumer. The question will be, if they use a surcharge or just raise their invoice price. If a surcharge goes into effect, it is just for North Dakota residents. If they raise the bottom line price; it is for the nation. I would not want to pay for special fees that are added on in other states. I feel that if North Dakota legislators are going to pass a law that forces the manufacturers to pay an increased amount on warranty work, then it makes sense that they recoup their costs from the citizens of North Dakota. If other states start to include a ban on surcharges, then that would mean that we are starting to pay their costs and should come back and put the ban on surcharges here as well. Or, if the

manufacturers are egregious and abuse their surcharge capability, we can come back in two years, and add the ban on surcharges.

Chairman Ruby: I could see that I didn't want to pay for state specific costs either. The manufacturers made a good case for that. But, when a manufacturer comes out with a new model of vehicle, they decide what they are going to charge for that. They average out the cost for the warranty work and spread that cost out equally across every dealer in the country. It is on the base cost of every car. So, we are already paying New York's higher percentage because that is already figured in; just as we are paying a lower one from another state. So, if they have to pay more on this end, it will just be averaged in. I'm sure they adjust from year to year as costs go up and labor rates change. I was visiting with a dealer from my area. He told me that his manufacturer averages out the shipping costs to all the dealers. In that case a dealer in Detroit pays the same as a dealer in North Dakota, or a dealer in California. The shipping costs are all the same. It took him some time to see that it made sense. So, that example made it easier for me to see that it is the same with the issue of increased warranty costs. I am okay with this motion.

Vice Chairman Owens: I will support this motion.

Chairman Ruby: This isn't the controversial portion of the amendment.

A voice vote was taken. All aye. The motion carried.

Representative Becker made a motion to remove lines 2-5 on page 2, and failure to fully compensate on line 1. See attachment #2.
Vice Chairman Owens seconded the motion.

Chairman Ruby: Representative Becker, do you believe that cost recovery should be an option?

Representative Becker: Yes.

A roll call vote was taken. Aye 2 Nay 11 Absent 1
The motion failed. (Vote sheet #4)

There was a request for a break. The committee recessed for 15 minutes.

Representative Weisz moved to remove the words "or other imposition" on page 2 line 3.
Vice Chairman Owens seconded the motion.

Representative Weisz explained the reason for this amendment. It is a way for manufacturers to recover some costs, but without putting on a line item surcharge. (27:00-31:00)

Representative Becker: Does the prevention of the surcharge stay on with this amendment?

Representative Weisz: Yes.

Representative Weisz: Are you stating that the dealers are okay with that?

Representative Weisz: I am not going to imply that either the dealers or the manufacturers are necessarily supporting or opposing it. This is a compromise, I don't know that either side is prepared to say that they support or oppose. Often times, when nobody is happy, those are the best compromises. I am looking at a way to address some of the manufacturers concern, but I don't want to see the surcharge showing up on an invoice. I think that is a competitive disadvantage to North Dakota dealers.

Chairman Ruby: You are saying that you understand that the cost could be passed on to the consumer, but you just don't want it set up as a separate line item?

Representative Weisz: Yes, but I am not going to imply that either side is in total agreement on this.

Chairman Ruby asked **Joel Gilbertson, Alliance of Automobile Manufacturers** and **Matthew Larsgaard, Automobile Dealers Association of North Dakota** if they had any comments on the amendment. Joel Gilbertson indicated that he did not have authority to support or oppose the amendment. He will pass it on to the Alliance if the motion passes. Matthew Larsgaard stated that he understands the intent, but that he is not a lawyer and he would like to run it by their legal team.

Representative Weisz: This seems to be the main disagreement. If this at least puts the manufacturers in a neutral position, then it is progress. It might not be perfect for either side, but it might be a compromise.

A roll call vote was taken on the amendment. Aye 5 Nay 8 Absent 1
The motion failed. (Vote sheet #5)

Representative Gruchella moved a DO PASS as amended on HB 1192.
Representative Sukut seconded the motion.

Vice Chairman Owens: I would like to state my concern is dictating to companies how they manage their cost of goods sold. I don't have a clear-cut answer to this situation, which has a captive customer group. Since it is going to the other side, and we can continue to work with it; I will support the bill.

A roll call vote was taken. Aye 12 Nay 1 Absent 1
The motion carried.
Representative Sukut will carry HB 1192.

Adopted by the Transportation Committee

February 21, 2013

2/21/13
SANC
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1192

Page 1, line 12, after the first "the" insert "average"

Page 1, line 13, after "service" insert "as provided under subsection 5"

Page 1, line 15, replace "current" with "average"

Page 1, line 15, after "parts" insert "as provided under subsection 4"

Page 1, line 23, replace "must" with "shall"

Page 2, line 5, remove "or seeks to recover legal costs and expenses incurred by the dealers in"

Page 2, remove lines 6 and 7

Page 2, line 8, replace "factory branch, distributor, or distributor branch imposes upon" with "from"

Page 2, line 11, replace "which" with "that"

Page 2, line 11, replace "sixty" with "ninety"

Page 2, line 16, replace "is" with "must be"

Page 2, line 16, remove "by the dealer"

Page 2, remove lines 17 through 19

Page 2, line 20, replace "that generated those sales." with "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."

Page 2, remove line 26

Page 2, line 27, replace "d." with "c."

Page 2, line 29, replace "e." with "d."

Page 2, line 31, replace "f." with "e."

Page 3, line 1, replace "g." with "f."

Page 3, line 3, replace "declaration" with "manufacturer's approval"

Page 3, line 5, remove "unfair and"

Page 3, line 6, after "in" insert "an economically similar area of"

Page 3, line 6, replace "vicinity" with "state"

Page 3, line 6, after the second "the" insert "dealer's declaration of the"

2/82

Page 3, line 7, remove "of the"

Page 3, line 7, after "or" insert "average"

Page 3, line 16, remove "may not declare a retail parts markup rate or retail labor rate more than twice"

Page 3, replace line 17 with "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."

Renumber accordingly

Date: 2/21/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Delmore Seconded By Kreun

Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Lois Delmore		
Vice Chairman Mark Owens			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Kylie Oversen		
Rep. David Drovdal					
Rep. Robert Frantsvog					
Rep. Brenda Heller					
Rep. Curtiss Kreun					
Rep. Mike Schatz					
Rep. Gary Sukut					
Rep. Don Vigesaa					
Rep. Robin Weisz					

Voice vote all aye

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

#1

Date: 2/21/13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Becker Seconded By Gruchalla

Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Lois Delmore		
Vice Chairman Mark Owens			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Kylie Oversen		
Rep. David Drovdal					
Rep. Robert Frantsvog					
Rep. Brenda Heller					
Rep. Curtiss Kreun					
Rep. Mike Schatz					
Rep. Gary Sukut					
Rep. Don Vigesaa					
Rep. Robin Weisz					

Voice vote
Motion Carried

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

#2 — P. 2 Remove 26

Date: 2/21/13
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Vigesaa Seconded By Sukut

Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Lois Delmore		
Vice Chairman Mark Owens			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Kylie Oversen		
Rep. David Drovdal					
Rep. Robert Frantsvog					
Rep. Brenda Heller					
Rep. Curtiss Kreun					
Rep. Mike Schatz					
Rep. Gary Sukut					
Rep. Don Vigesaa					
Rep. Robin Weisz					

Voice Vote
All aye

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

#3

Date: 2/21/13
Roll Call Vote #: 4

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Becker Seconded By Owens

Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby		✓	Rep. Lois Delmore		✓
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Kylie Oversen		✓
Rep. David Drovdal		✓			
Rep. Robert Frantsvog		✓			
Rep. Brenda Heller		✓			
Rep. Curtiss Kreun		A			
Rep. Mike Schatz		✓			
Rep. Gary Sukut		✓			
Rep. Don Vigesaa		✓			
Rep. Robin Weisz		✓			

Failed

Total (Yes) 2 No 11

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

p. 2
Remove line 1 – lines 2-5

Date: 2/21/13
Roll Call Vote #: 5

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Weisz Seconded By Owens.

Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Lois Delmore		✓
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Kylie Oversen	✓	
Rep. David Drovdal		✓			
Rep. Robert Frantsvog		✓			
Rep. Brenda Heller		✓			
Rep. Curtiss Kreun					
Rep. Mike Schatz		✓			
Rep. Gary Sukut		✓			
Rep. Don Vigesaa		✓			
Rep. Robin Weisz	✓				

Failed

Total (Yes) 5 No 8

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Subsection 3.
p. 2 line 3 Remove " or other

Date: 2/21/13
Roll Call Vote #: 26

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0539.01002

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Gruchalla Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Lois Delmore	✓	
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker		✓	Rep. Kylie Oversen	✓	
Rep. David Drovdal	✓				
Rep. Robert Frantsvog	✓				
Rep. Brenda Heller	✓				
Rep. Curtiss Kreun	A				
Rep. Mike Schatz	✓				
Rep. Gary Sukut	✓				
Rep. Don Vigesaa	✓				
Rep. Robin Weisz	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Sukut

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1192: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1192 was placed on the Sixth order on the calendar.

Page 1, line 12, after the first "the" insert "average"

Page 1, line 13, after "service" insert "as provided under subsection 5"

Page 1, line 15, replace "current" with "average"

Page 1, line 15, after "parts" insert "as provided under subsection 4"

Page 1, line 23, replace "must" with "shall"

Page 2, line 5, remove "or seeks to recover legal costs and expenses incurred by the dealers in"

Page 2, remove lines 6 and 7

Page 2, line 8, replace "factory branch, distributor, or distributor branch imposes upon" with "from"

Page 2, line 11, replace "which" with "that"

Page 2, line 11, replace "sixty" with "ninety"

Page 2, line 16, replace "is" with "must be"

Page 2, line 16, remove "by the dealer"

Page 2, remove lines 17 through 19

Page 2, line 20, replace "that generated those sales." with "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."

Page 2, remove line 26

Page 2, line 27, replace "d." with "c."

Page 2, line 29, replace "e." with "d."

Page 2, line 31, replace "f." with "e."

Page 3, line 1, replace "g." with "f."

Page 3, line 3, replace "declaration" with "manufacturer's approval"

Page 3, line 5, remove "unfair and"

Page 3, line 6, after "in" insert "an economically similar area of"

Page 3, line 6, replace "vicinity" with "state"

Page 3, line 6, after the second "the" insert "dealer's declaration of the"

Page 3, line 7, remove "of the"

Page 3, line 7, after "or" insert "average"

Page 3, line 16, remove "may not declare a retail parts markup rate or retail labor rate more than twice"

Page 3, replace line 17 with "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."

Renumber accordingly

2013 SENATE TRANSPORTATION

HB 1192

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1192
3/21/2013
Recording job number 20277

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:
Relating to motor vehicle warranty reimbursement; and to declare an emergency

Minutes: Attached testimony: 4

Chairman Oehlke opened the hearing on HB 1192

Matthew Larsgaard, on behalf of the Automobile Dealers Association of North Dakota in support of this bill When a motor vehicle, under factory warranty, breaks down and is repaired at the dealership, the bill is paid by the manufacturer, not the customer. Manufacturers compensate dealers for warranty work at a rate not consistent with the dealer's labor rate and parts markup rate for non-warranty repair work. Dealers do not have the ability to negotiate a fair rate of payment from the manufacturers, they are contractually required to perform warranty repair. Forty four other states have adopted warranty reimbursement laws. This bill is in the interest of bringing balance to these contractual relationships. See attached testimony # 1 which includes explanation on why the need for this legislation (#1-2) a bill review and explanation (#1-4)

Chairman Oehlke: What does "other imposition mean"? How do you decide what an "imposition" is?

Matthew Larsgaard: We can't anticipate all other types of surcharges as otherwise stated, that language is meant to encompass any other potential additional cost recovery charge that may be imputed on the dealer. The discussion is usually between a manufacturer and a dealer.

Chairman Oehlke: Page 3 line 14 what does "time consuming" is? Line 6 "economically similar area", how do you figure that out? Page 1 section 2, how does a dealership submit claims now, when do the thirty days start.

Matthew Larsgaard: The language was requested by the manufacturers and we agreed to it. Claims are submitted electronically, the manufacturer has thirty days to either approve or deny the claim, if approved, they have thirty days to pay the claim. We worked with the manufacturers in crafting what you see here, only two issues of contention, one was passed by the house, the other, the anti-surcharge language which is before you. Manufacturers require dealer does the warranty repair

Discussion followed regarding warranty work/repairs. **Matthew Larsgard** read article dated 01/07/2013 "Dealers Win a Round over factories in warranty fee fight" citing Illinois state court siding with dealers and answered questions from committee members. Recording segment (17:58 to 27:48)

Renee Wadsworth, on behalf of the Alliance of Automobile Manufacturers, an association of 12 vehicle manufacturers: if the cost recovery prohibition remains in the bill we encourage you to oppose the bill unless it is amended. We accept the general concept of the bill. The bill stipulates manufacturers cannot recoup their costs should a dealer submit exorbitant rates for warranty work. We believe our proposed amendment (attachment #2) will keep a check on the market in the state should the dealers be artificially inflating rates. We have ongoing federal litigation in Florida, judge ruled manufacturers have a case on the cost recovery issue and the case is moving forward, motion to dismiss was denied.

Senator Axness: Why do we need a law, why can't the dealers and manufacturers work this out?

Renee Wasdsworth: We oppose any change to the franchise statute at the state level.

Questions and answers followed regarding surcharge. Recording segments 32:51 to 36:40

Christine Estereicher, Senior Manager, State Relations, Chrysler Group, written testimony # 3 in opposition. As currently written HB 1192 would prohibit automakers from setting a contracted-for bulk repair rate for warranty and recall work with our dealers. This bill limits the freedom to contract between two willing parties in the private marketplace.

Questions and answers followed, recording segment 43:50 to 55:27.

Jeffrey Perry, Regional Director, State Government Relations, General Motors Company written testimony # 4: House Bill 1192 would add provisions into the law that would institute state mandated guaranteed profits for dealers above and beyond the already profitable reimbursement levels that manufacturers pay dealers for performing warranty work. One significant issue remains section 1 paragraph 3 of the bill frequently referred to as a ban on cost recovery. We ask committee members to recommend "do not pass", unless and until the bill is amended to remove the cost recovery prohibition in the language.

Questions and answers followed, recording segment 1:05:32 to 1:17:49

No additional testimony, hearing adjourned until next Thursday at 9:30

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1192
3/28/2013
Recording job number 20625

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:
Relating to motor vehicle warranty reimbursement and to declare an emergency

Minutes: A ached testimony 4

Chairman Oehlke opened the hearing continuation on HB 1192

Michael Gaddie, dealership owner/operator, in favor, discussed door rates vs. warranty rates, competition for trained technicians, testimony #1 (2:13 - 5:14, Q&A: 5:15 - 8:59).

Representative Dan Ruby, Dist. 38 in favor, issues: lack of technicians, appeals process with the manufacturers, and warranty work reimbursement (9:06 - 13:45)

Gregg Jacobson, owner/operator R Z Motors Inc. Hettinger ND, in favor, testimony #2 (14:00 - 18:21)

Mark Helbling Director, Fixed Operations, Corwin Honda, Fargo, ND, in favor. Listed ways in which dealers and employees are disadvantaged by manufacturer rates, testimony #3 (19:05 - 26:34, Q&A:26:37 -33:19)

Arik Spencer, ND Motor Carriers Association representing truck dealers have the same concerns as automobile dealers, they support this bill. (33:23 - 33:53)

Mathew Larsgaard, Automobile Dealers Association of ND, testimony #4 asking that bill be passed without amendment (34:20 - 40:40, Q&A :40:41 - 43:48)

David Bright State Affairs Manager, Assistant Franchise Counsel, Alliance of Automobile Manufacturers addressed rates issues (44:04 - 49:22, Q&A: 49:23 - 56:00)

Jeff Perry, GM, addressed: shipping costs, warranty reimbursement, GM bankruptcy not affecting dealer's contracts, creation of labor time guides, competitiveness of labor rates, questioned state's purpose in getting involved in these contracts, manufacturers shouldn't absorb the cost of the ND economic boom (56:03 -1:01:03, Q&A:1:01:05 -1:26:40)

Michael Gaddie answered committee questions regarding tools provided by the manufacturer (1:27:10 - 1:28:54)

No additional testimony Hearing closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1192
4/04/2013
Recording job number 20855

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:
Relating to motor vehicle warranty reimbursements and to declare an emergency

Minutes: Attached testimony

Chairman Oehlke opened the discussion on HB 1192 regarding proposed amendment 13.0539.02001 it would change 100% to 95% in both categories of warranty repair on page 1 lines 12 and 15. (#1)

Senator Campbell moved to adopt amendment

Senator Sitte seconded

Discussion followed regarding the percentage

Roll call vote: Yes 3 **No 4** Absent not voting 0

Motion failed

Senator Sinner moved same amendment but 92%

Senator Flakoll seconded

No discussion

Roll call vote: Yes 3 **No 4** Absent not voting 0

Motion failed Discussion followed

Senator Campbell moved do pass

Vice Chairman Armstrong seconded

Roll call vote: Yes 5 No 2 Absent not voting 0

Carrier Senator Campbell

Date: 4/04/13
Roll Call Vote #: #1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0539.02001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Campbell Seconded By Senator Sitte

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke		✓	Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong		✓	Senator George Sinner		✓
Senator Margaret Sitte	✓				
Senator Tim Flakoll	✓				
Senator Tom Campbell		✓			

Total (Yes) 3 No 4

Absent 0

Floor Assignment Motion failed

If the vote is on an amendment, briefly indicate intent:

Lines 12 and 15, page 1, change 100% to 95%

Date: 4/04/13
Roll Call Vote #: #2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number change 100% to 92% p/ lines 12 & 15

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sinner Seconded By Senator Flakoll

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke		✓	Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong		✓	Senator George Sinner	✓	
Senator Margaret Sitte		✓			
Senator Tim Flakoll	✓				
Senator Tom Campbell		✓			

Total (Yes) 3 No 4

Absent

Floor Assignment Motion failed

If the vote is on an amendment, briefly indicate intent:

Date: 4/04/13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1192

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Campbell Seconded By Senator Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke	✓		Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong	✓		Senator George Sinner		✓
Senator Margaret Sitte	✓				
Senator Tim Flakoll		✓			
Senator Tom Campbell	✓				

Total (Yes) 5 No 2

Absent

Floor Assignment Senator Campbell

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1192, as engrossed: Transportation Committee (Sen. Oehlke, Chairman) recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1192 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1192

#1

House Bill 1192
Testimony before House Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
9:00 a.m., February 15, 2013

2/13/13

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in Support of House Bill 1192 on behalf of the Automobile Dealers Association of North Dakota which represents approximately 100 of our state's franchised new car dealerships.

In 2012 the total annual retail sales of motor vehicles in North Dakota exceeded $2 Billion dollars which equates to over 8% of our state's total retail sales. Our dealerships employ almost 3,800 people with annual statewide payroll of over $180 Million dollars.

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 have been compensating dealers for warranty work at a rate that is arbitrarily set by the manufacturer. These rates are not consistent with the dealer's labor rate and parts markup rate for non-warranty repair work.

Manufacturers contractually require dealers to perform warranty repair; they can't turn it away. Dealers do not have the ability to negotiate a fair rate of payment from the manufacturers. Manufacturer contracts 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 a "contract of adhesion" meaning it is non-negotiable. In the interest of bringing balance to these contractual relationships, your North Dakota automobile dealers are asking for your support of HB 1192.

continued…

Why the need for this legislation:

1. Most manufacturers require dealers, by contract, to perform warranty repair and use OEM parts that are purchased from the manufacturers. This service and parts policy is essential to both the dealer and manufacturer customer satisfaction programs.

2. Manufacturers require warranty work to be performed by manufacturer certified technicians. For example, any engine work must be performed by a technician certified in powertrains. Certifications can be very expensive as it involves online courses and destination, in-person training. Dealerships are required to pay for all of the expenses associated with training their technicians.

3. Some manufacturers are only paying dealers 80% of the market rate for repairs. This is especially problematic in Western North Dakota as our dealers are in fierce competition with the oil fields for technicians. Dealers are struggling to retain "manufacturer qualified" technicians and must pay these techs a premium to keep them at the dealership in order to fulfill the manufacturers' requirements. The manufacturers then turn around and reduce the dealers' reimbursement rate for the work that these technicians perform.

4. Discounting reimbursement rates allows manufacturers to effectively shift some of the cost of warranty repair to dealers and non-warranty customers.

   In other cases, it is the North Dakota worker that takes the monetary hit as some technicians are paid on commission as a percent of the repair revenue. When the manufacturer requires a dealer to accept below market reimbursement rates the worker must also take a reduction in pay.

5. This legislation is not unique. 44 other states have adopted warranty reimbursement laws (36 parts rates, 44 labor rates) including Minnesota, South Dakota, and Montana. HB 1192 puts North Dakota on a more level playing field with these other states. In fact, the majority of the provisions in this bill are fashioned after law that already exists in other states.

6. Under ND law, farm equipment manufacturers are currently required to reimburse dealers at their non-warranty labor rates. We believe it is fair to make this concept apply to auto dealers as well.

HB 1192 provides for a simple but fair process to establish the rate at which dealers are reimbursed for warranty work using the dealer's average customer-paid, non-warranty rate. This solution is equitable to both the dealer and the manufacturer.

Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with auto manufacturers. It is important to note that we have also built several protections into this bill for the manufacturers....we want fairness for both parties.

(Bill Review and Explanation on Page 4)

Mr. Chairman, this concludes my testimony. Thank you.

Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota

Bill Review and Explanation:

Page 1, lines 7-15: requires manufacturers to provide adequate time allowances and reasonable compensation for warranty repairs, parts, and labor. The hourly labor rate and parts rate may not be less than a dealer's non-warranty customer pay rate.

Page 1, lines 16-22: requires manufacturers to approve or deny a claim within 30 days. Following manufacturer approval, the claim must be paid within 30 days. This provision allows manufacturers to require that claims be submitted in a manner that is acceptable to them.

Page 2, lines 1-8: prevents manufacturers from attempting to hit dealers with a surcharge in order to make this legislation of no effect. In other states which have passed "warranty reimbursement" laws, the manufacturers have simply levied a surcharge against dealers by creating a new line-item charge on vehicle invoices. This tactic alone would absolutely defeat the entire purpose of this bill. This type of surcharge language has been challenged by manufacturers in other states as an unconstitutional interference with contracts but, has been upheld by courts as valid. Anti-surcharge language has been passed in at least 16 other states.

Page 2, lines 9-20: creates a definitive method of calculating a dealer's average non-warranty parts and labor rates by requiring the dealer to submit to the manufacturer one hundred sequential non-warranty repair orders which contain warranty like parts.

Page 2, lines 21-31: identifies specific items that must be excluded from the parts and labor calculation. These items are non-warranty related or exist outside of typical non-warranty retail repair rates.

Page 3, lines 2-10: states that the method of calculation set forth in paragraph 4 & 5 is presumed to be fair however, the manufacturer may rebut that presumption by substantiating that a particular dealer's rate is unfair when compared to other same line-make dealers in the vicinity. This rebuttal provision helps protect manufacturers.

Page 3, lines 11-15: states that manufacturers must use the dealer's schedule of parts and labor rates and may not require the dealer to engage in unduly burdensome documentation.

Page 3, lines 16-17: restricts a dealer from declaring an updated parts or labor rate to no more than twice per year.

Rep. Ruby #2

3. A motor vehicle manufacturer, factory branch, distributor, or distributor branch must 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.

New language.

- Page 2, line 5 after the word "section" insert "From the dealer."
- Strike the rest of line 5.
- Strike lines 6, 7, 8

3

13.0539.01001
Title.

Prepared by the Legislative Council staff for
Representative Ruby
February 13, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1192

Page 2, line 16, remove "The retail rate customarily charged by the dealer for labor is established by the dealer"

Page 2, replace lines 17 through 20 with:

"The retail rate customarily charged by the dealer for labor is the same process as described in subsection 4 and declaring the average labor rate. The average labor rate is determined by dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by a dealer, the dealer may use the same repair orders to complete each calculation as described in subsection 4."

Renumber accordingly

#4

House Bill 1192
Testimony before House Transportation Committee
Gregg Jacobson, Dealer
Automobile Dealers Association of North Dakota
9:00 a.m., February 15, 2013

2/13/13

Mr. Chairman and members of the committee. My name is Gregg Jacobson, and I am the owner operator of R Z Motors Inc. Hettinger ND. Our company has been servicing rural communities in SW North Dakota for 31 years. I am here today to ask for your support of HB 1192.

In my dealership, warranty work is simply costing me the store. Why? Because warranty work is not being reimbursed by manufacturers at the same rate I charge for non-warranty work. This practice has directly caused the loss of certified technicians in my service bays due to unrealized income. As a rural dealer, I am left unable to compete with other industries and larger metro areas – even though my requirements in terms of training and technology are the same.

At our dealership, we receive payment from customers on a retail basis (meaning not under manufacturer warranty) at a labor rate of $89.00 per hour on cars, vans, SUV's and light trucks. On medium duty trucks, 1 ton and above, our labor rate is $98.00 per hour. We use the Chilton time labor standards to calculate the time required to complete a repair on a retail work order.

To perform the same labor operations on identical vehicles that are under manufacturer warranty, we receive $67.30. Also --- in almost every case --- the time standard to complete those same repairs is 30% less than we charge on a retail basis. The manufacturer is reimbursing our dealership $21.70 per hour less than retail to work on cars, vans, SUV's and light trucks, and $30.70 less per hour on medium duty trucks – and allowing 30% less time to perform the work.

(continued)

This situation has caused my technicians (senior master technicians) to seek employment elsewhere. They make a living based on hours of labor billed out and a commission rate, and they feel it is not even affordable to do warranty work. When warranty work comes to my dealership, my technicians run away. When warranty work comes to my dealership, it is a loss financially from the beginning. Furthermore, that loss must be made up by the dealership and non-warranty customers, which is simply not fair.

Before appearing here today I did a labor study of local Ford and Chrysler dealerships within 150 miles of my location in Hettinger. Remember, I must have the same trained technicians, the same equipment, the same technology, and the same standards as my counterparts across the state, meaning my expense is the same. I found that dealerships in the larger communities receive manufacturer warranty labor reimbursements that are $14.00 per hour higher than our dealership. How can I compete for the same people to repair my customers' vehicles?

Another warranty reimbursement issue is dealership cash flow. Non-warranty customers must pay for their vehicle repairs before the vehicle is released. In most cases, however, it will take between 30 and 90 days for the dealer to be paid by the manufacturer for warranty work. HB 1192 helps to address this issue by requiring manufacturers to pay approved claims within 30 days.

Without this legislation, small dealerships like ours will continue to struggle to keep technicians. **All we are asking for is equal pay for equal work**. Please support HB 1192.

Mr. Chairman, this concludes my testimony. Thank you.

Respectfully,
Gregg Jacobson, owner
R Z Motors Inc.
Hettinger, ND.

#5

Mr. Chairman and Members of the Committee, I am Mr. Michael Gaddie and together with my wife Kathleen Gaddie we own and operate 5 stores in Western North Dakota. Relative to the bill before us I would like to explain our most extreme situation which is our Chrysler Dodge Jeep Store in Williston. Our door rate in that location is $119 light duty and $129 heavy duty. Our warranty rate is $80.07 from Chrysler, which is slightly over 60% of our door rate. We just received this increase to $80.07 on January 1, 2013.

Our cost of labor or the hourly rate our technicians receive is between $30.00-35.00 and can go as high as $40.00 with volume incentives. As you can calculate that can be as high as 50% of our ~~door~~ warranty rate. Our service department has run in the red steadily for the last several years even though our wait time for our customers can be as long as 3 weeks; because there is that much work.

A requirement that the factory pay our door rate would help us regain profitability but also may lessen future increases to our out-of-warranty, cash-paying customers as they take the brunt of labor rate increases. It seems only fair.

Fierce competition with oil fields to train technicians has also been a huge issue. We have lost 3 A level technicians at the Chevrolet store in Minot due to the wages the oil companies are paying.

We have spent years training them sending them to school only to lose them to the oil industry because we cannot afford to pay competitive rates. One of the reasons is we are not receiving comparable reimbursements from our manufacturers.

Examples of other door rates/warranty rates discrepancies are as follow:

- Minot Chevrolet $105-$82.02
- Minot Chrysler $115-$76.80
- Minot Toyota $115-$75
- Minot Mazda $98-61.50
- Minot Hyundai $98-$81.25

#6

HOUSE BILL 1192
WARRANTY REIMBURSEMENT BILL
TESTIMONY BEFORE HOUSE TRANSPORTATION COMMITTEE
9:00 AM., FEBRUARY 15, 2013

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS DAN WILSON; I'M A PARTNER IN CORWIN AUTOMOTIVE GROUP BASED OUT OF FARGO AS WELL AS A BOARD MEMBER OF THE AUTOMOBILE DEALERS OF NORTH DAKOTA. I AM APPEARING IN SUPPORT OF HOUSE BILL 1192 ON BEHALF OF THE CORWIN DEALERSHIPS AND ALL OF NORTH DAKOTA'S FRANCHISED NEW CAR DEALERSHIPS.

EXPANDING ON MATTHEW'S TESTIMONY "DISCOUNTING REIMBURSEMENT RATES ALLOWS MANUFACTURERS TO EFFECTIVELY SHIFT SOME OF THE COST OF WARRANTY REPAIRS TO DEALERS". OUR GROSS PROFIT MARGINS FOR WARRRANTY REIMBURSMENTS FOR PARTS IN STORES THAT ARE IN STATES THAT HAVE PASSED THESE LAWS PREVIOUSLY (MT & MO) ARE ANYWHERE FROM 13.2% TO 15.7% HIGHER. AS SUCH, OUR STORES IN ND THAT DON'T HAVE THIS LAW OR PROTECTIONS ARE AT A DISADVANTAGE TO OUR NEIGHBORS (MT, SD, MN AND 33 OTHER STATES HAVE THESE PROTECTIONS). THE DEALERS IN ND ARE IN EFFECT ABSORBING 13% - 16% OF THE MANUFACTURERS' COSTS.

WE WORK IN AN EXTREMELY COMPETITIVE ENVIRONMENT; COMPETITION DRIVES PRICES DOWN. OUR RETAIL CUSTOMERS PAY THE COMPETITIVE, NON-WARRANTY RATE. WHY SHOULDN'T OUR PARTNER THE MANUFACTURE PAY IT AS WELL AND KEEP US ALL ON AN EVEN PLAYING FIELD. IN MANY CASES OUR COSTS FOR WARRANTY REPAIRS ARE MUCH HIGHER THEN OUR NORMAL CUSTOMER PAY WORK, THE MANUFACTURERS REQUIRE US TO PURCHASE SPECIAL TOOLS (THEY AUTOMATICALLY SEND THEM TO YOU, THOUSANDS OF DOLLARS), THEY REQUIRE US TO SEND TECHNICIANS TO TRAINING (BOTH ONLINE AND DESTINATION) AND IT IS NOT UNUSUAL FOR THE TIME FOR THESE WARRANTY REPAIRS TO BE PAID AT A TIME LENGTH THAT IS MUCH SHORTER THEN THE ACTUAL TIME TO PERFOM THE JOB.

AS MATTHEW ALSO STATED IN MANY CASES IT IS THE NORTH DAKOTA WORKER (OUR EMPLOYEES) THAT TAKE A MONETARY HIT FOR THIS REDUCTION IN WARRANTY REIMBURSMENTS FOR PARTS AND LABOR. MANY OF OUR EMPLOYEES ARE ON COMMISSIONED BASED PAY PLANS THAT PAY THEM FOR THE TOTAL SALES OR GROSS PROFIT THAT THEY GENERATE FOR THE DEALERSHIP. IF WE ARE REIMBURSED AT A RATE LESS THAN WHAT A CUSTOMER PAY JOB WILL PAY THEM WHICH JOB DO YOU THINK THEY WOULD RATHER DO. THESE WORKERS JUST LIKE THE DEALERSHIPS DESERVE TO BE PAID FOR THEIR WORK AT RATES THAT ARE COMPETITIVE IN THE NORTH DAKOTA MARKET PLACE.

HOUSE BILL 1192 PROVIDES FOR A SIMPLE AND FAIR SOLUTION TO THIS INEQUITY OF PAYMENT FOR SERVICES RENDERED. IT WILL HELP TO PUT DEALERSHIPS IN NORTH DAKOTA ON A LEVEL PLAYING FIELD WITH OUR NEIGHBORING STATES AND 30+ STATES AROUND THE COUNTRY.

MR. CHAIRMAN, THIS CONCLUDES MY TESTIMONY. THANK YOU.

DANIEL M. WILSON

#7

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1192

Page 1, line 13, after "service" add "pursuant to paragraph 5 in this section"

Page 1, line 15, after "parts" add "pursuant to paragraph 4 in this section"

Page 2, lines 1, remove "Failure to fully compensate includes a"

Page 2, remove lines 2 through 8

Page 2, line 11, replace "sixty" with "ninety"

Page 2, replace lines 16 through 20 with:

5. The retail rate customarily charged by the dealer for labor shall be established by the same process as described in paragraph 4 and declaring the average labor rate. The average labor rate shall be determined by dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by a dealer, the dealer may use the same repair orders to complete each calculation as described in paragraph 4.

Page 2, line 26, remove "c. Engine assemblies and transmission assemblies;"

Page 2, line 31, remove "f. Tires;"

Page 3, replace lines 2 through 10 with:

"7. The dealer's proposed parts markup rate and labor rate must go into effect thirty days following the manufacturer's approval. The manufacturer shall be deemed to have approved the proposed rate if the manufacturer does not rebut it within thirty days, and the dealer has properly submitted the required documentation to validate a proposed rate. 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 same line-make vehicles, not later than thirty days after submission. If the dealer's proposed parts markup rate or 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 pursuant to paragraph 4 and 5."

Page 3, replace lines 16 and 17 with:

"9. A dealer or manufacturer may demand that the average parts markup or labor rate be calculated pursuant to the process described in paragraphs 4 and 5 of this section, 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 labor rate may not be made within twelve months of the last labor rate declaration. In the event of a parts markup or labor rate demand by either the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation pursuant to paragraphs 4 and 5 in this section."

Renumber accordingly

#8

Jeffrey Perry
Regional Director
State Government Relations

General Motors Company
300 Renaissance Center
Detroit, MI 48265
Phone: 313-667-0946
Fax: 248-267-4451

February 15, 2013

Chairman Ruby and Members of the House Transportation Committee:

Thank you for the opportunity to speak here today. I'm Jeff Perry and I am here today representing General Motors to discuss House Bill 1192 and its impact on General Motors, the U.S. automobile industry and consumers both in North Dakota and throughout the United States.

Since the recession of 2009, the automobile industry and General Motors have come back strong. Our dealer network is stronger than ever, with dealers reporting strong sales and record profits; GM has launched numerous award winning products; brought to market landmark technology innovations; announced large scale investments in research and development, our plants, and people; and posted strong sales and profitability performance. Performance that allows us to support 28 GM dealerships throughout the state, 2 North Dakota based suppliers, and over 288,000 vehicle owners in North Dakota.

Unfortunately, House Bill 1192 threatens the industry progress and dealer/manufacturer relationships. It mandates unnecessary and unjustified artificial price increases upon manufacturers and encourages dealers to raise retail consumer repair rates. House Bill 1192 proposes overreaching legal protections for North Dakota automobile dealers and places the state in the position of having to pick winners and losers in private agreements, interfering with private contracts, and pushing constitutional boundaries.

House Bill 1192 would mandate that a manufacturer reimburse warranty repairs to a dealer at full dealer declared retail rates. In fact, the rate that manufacturers will have to pay for warranty repairs will actually be a "super retail" rate since the provisions of the bill also allow a dealer exclude a list of common repairs from the rate calculation that would otherwise tend to lower the dealer's average retail repair rates; effectively mandating the manufacturer to pay the highest repair rates of any customer in the dealer's service department. The state already prohibits a manufacturer from selling its own products or permitting warranty repairs to be done anywhere but at an authorized dealership. The dealers essentially have a state mandated monopoly and are now seeking to obtain state mandated profits as well. Most if not all manufacturers already reimburse dealers for warranty parts and labor at a rate to cover the dealer's cost plus a substantial profit for the repair. But the dealers want more. If the dealers are already being reimbursed for warranty repair work at a profit, what specifically is the state "protecting" the dealers from? The issue being presented in House Bill 1192 is not a question of warranty work being performed at a loss (or even breakeven) versus warranty work performed at a profit. The question that House Bill 1192 asks the state to decide is "profit, or more profit". Additionally, since the state mandates that warranty repair work be performed at an authorized

dealership, the dealer is not required to take any action to get the work. The dealer does not advertise for warranty work, nor does the dealer market or solicit warranty work. Yet the costs associated with marketing, soliciting, and advertising in order to attract a retail (after warranty) customer can be a significant. Additionally, most businesses, dealerships included, regularly provide volume discount rates to their largest customers. Yet the manufacturers, the largest single customer in any dealership service department, would be denied even the opportunity to obtain a discounted rate.

As if forcing an unnecessary artificial price increase upon manufacturers were not enough, HB 1192 goes further to also ban manufacturers from “in any way” recovering the incremental costs that result from these policies. Costs that are unique to doing business in North Dakota. In practice, every business must recover its costs or it will go out of business. Even dealers cost recover state mandated and other business costs directly from their customers by charging a “doc fee” or “administrative fee”. In other industries where the state inserts itself to control pricing, like utilities, the state specifically grants a right to recover costs from consumers. Automobile manufacturers should be afforded this same right. Ultimately, by prohibiting a manufacturer from recovering the unique incremental costs of doing business in North Dakota as a pass through to consumers in North Dakota, the state is effectively forcing manufacturers to spread the cost to consumers and dealers outside the state by raising prices across the board. This outcome raises potential problems with the United States Constitution dormant commerce clause and is in fact the very same issue currently before a federal district court in Florida.

General Motors believes that manufacturers and dealers must work together to help create a stronger industry, but the provisions of this bill fail to address any legitimate problem while driving a wedge between us and running counter to a productive partnership. Since the issues within House Bill 1192 are strictly matters between private parties that present no reasonable state issue.

We urge that the Committee give a "Do Not Pass" recommendation on House Bill 1192 unless and until the parties are able to come to a full and complete agreement on its terms.

Thank you for your time.

#1

AGREED UPON AMENDMENTS TO HOUSE BILL NO. 1192

Page 1, line 12, after "less than the" insert "average"

Page 1, line 13, after the word "service" insert "pursuant to paragraph 5 in this section"

Page 1, line 15, replace "current" with "average"

Page 1, line 15, after "parts" insert "pursuant to paragraph 4 in this section"

Page 2, line 11, replace "sixty" with "ninety"

Page 2, lines 16-20, replace all lines with:

"5. The retail rate customarily charged by the dealer for labor shall be established by the same process as described in paragraph 4 and declaring the average labor rate. The average labor rate shall be determined by dividing the amount of the dealer's total labor sales by the number of total labor 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 described in paragraph 4."

Page 3, line 3, replace "declaration" with "manufacturer's approval"

Page 3, line 5, remove "unfair and"

Page 3, line 6, after "in" insert "an economically similar area of"

Page 3, line 6, replace "vicinity" with "state"

Page 3, line 7, after the first "the" insert "dealer's declaration of the"

Page 3, line 7, remove "of the"

Page 3, line 7, after "or" insert "average"

Page 3, replace lines 16-17 with:

"9. A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated pursuant to the process described in paragraphs 4 and 5 of this section, 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. In the event of a parts markup or labor rate demand by either the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation pursuant to paragraphs 4 and 5 in this section."

Renumber Accordingly

#2

ALLIANCE OF AUTOMOBILE MANUFACTURER'S
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1192

Page 2, line 1, remove "Failure to fully compensate includes a" Vote #4

Page 2, remove lines 2 through 8

Page 2, remove line 26 Approved Vote #2

~~Page 2, remove line 31~~

Renumber Accordingly

#3

ADAND AMENDMENTS

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1192

2/20/13 version 1.11

Page 2, line 5, replace "or seeks to recover legal costs and expenses incurred by the dealers in" with "from the dealer."

Page 2, lines 6-8, remove all lines

#4

February 20, 2013

Honorable Dan Ruby, Chairman
House Transportation Committee
North Dakota House of Representatives
Bismarck, North Dakota 58505

Re: HB 1192 – Motor Vehicle Dealer Warranty Reimbursement – Oppose Unless Amended

Dear Representative Ruby:

Thank you for your assistance and the Committee's work to bring the parties together in an effort to reach a negotiated resolution to HB 1192. Unfortunately, we have been unable to reach an agreement over two outstanding issues that are critical to preserving balance in the marketplace and could ultimately harm consumers. Therefore, the Alliance of Automobile Manufacturers remains opposed to this legislation unless all of our amendments are adopted.

State motor vehicle franchise law uniquely regulates the private business agreements between motor vehicle manufacturers and dealers. As such, changes to existing law should be examined carefully and come as the result of a pervasive problem. The Alliance worked in good faith with the Automobile Dealers Association of North Dakota (ADAND) through multiple discussions to reach consensus on this legislation. The Alliance made significant concessions during these negotiations:

- Manufacturers will now be required to pay dealers a significantly higher rate for warranty work on both parts and labor.
- The bill clarifies the formula for determining the rate by which manufacturers will reimburse dealers for warranty work for both parts and labor.
- The bill stipulates a timeframe for when reimbursement must occur.

Unfortunately, two provisions of this bill continue to cause great concern. With regard to paragraph 3 of Section 1, related to the manufacturer's right to recover costs ("cost recovery"), the Alliance cannot concur with this provision and strongly believes that it should be struck from the legislation. It is simply not sound public policy for free markets or consumers.

Only new vehicle dealers are authorized to perform warranty repairs. It is a captive business for dealers with no competition from independent repair shops and no selling expense. The language in paragraph 3 is anticompetitive and could result in an incentive for dealers to raise their non-warranty retail prices for labor and parts. This provision unfairly mandates that a manufacturer subsidize any unreasonably high

warranty reimbursement price the dealer chooses to charge. Cost recovery is a rarely used tool, but is an important to maintaining balance in the marketplace. The Committee received testimony that neither South Dakota nor Minnesota has the cost recovery ban language and that in these states, manufacturers are not presently exercising the provision.

Furthermore, cost recovery ban language is the subject of federal litigation in Florida that could be resolved in the months ahead. It is simply unnecessary for North Dakota to enact the cost recovery prohibition ahead of guidance from the courts and before the new warranty reimbursement system is put into place and given an opportunity to work. We respectfully urge the Committee to support the amendment that strikes paragraph 3.

Finally, the purported purpose of HB 1192 is to require manufacturers to pay dealers the same "retail rate" that they charge everyday customers. However, the bill creates unnecessary loopholes skewed toward the dealer with regard to the calculation of that rate. Paragraph 6 contains a list of seven normal services offered by dealers. Specifically, the bill removes engine assemblies, transmission assemblies and tires from the calculation of the retail rate. The Alliance believes that the only purpose of excluding these services is to create an artificially high retail rate.

We respectfully urge the Committee to support the amendment that deletes engine assemblies, transmission assemblies and tires from the list of exclusions in the rate calculation.

For the reasons stated above, the Alliance respectfully requests that your Committee adopt all of the amendments proposed by the Alliance today.

Sincerely,

Matthew Godlewski
Vice President, State Affairs

cc: Members of the House Transportation Committee

Attachment #1 page 1

House Bill 1192
Testimony before Senate Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
9:00 a.m., March 21, 2013

2/20/13

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in Support of House Bill 1192 on behalf of the Automobile Dealers Association of North Dakota which represents approximately 100 of our state's franchised new car dealerships.

In 2012 the total annual retail sales of motor vehicles in North Dakota exceeded $2 Billion dollars which equates to over 8% of our state's total retail sales. Our dealerships employ almost 3,800 people with annual statewide payroll of over $180 Million dollars.

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 have been compensating dealers for warranty work at a rate that is arbitrarily set by the manufacturer. These rates are not consistent with the dealer's labor rate and parts markup rate for non-warranty repair work.

Manufacturers contractually require dealers to perform warranty repair; they can't turn it away. Dealers do not have the ability to negotiate a fair rate of payment from the manufacturers. Manufacturer contracts 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 a "contract of adhesion" meaning it is non-negotiable. In the interest of bringing balance to these contractual relationships, your North Dakota automobile dealers are asking for your support of HB 1192.

continued…

Why the need for this legislation:

1. Most manufacturers require dealers, by contract, to perform warranty repair and use OEM parts that are purchased from the manufacturers. This service and parts policy is essential to both the dealer and manufacturer customer satisfaction programs.

2. Manufacturers require warranty work to be performed by manufacturer certified technicians. For example, any engine work must be performed by a technician certified in powertrains. Certifications can be very expensive as it involves online courses and destination, in-person training. Dealerships are required to pay for all of the expenses associated with training their technicians.

3. Some manufacturers are paying dealers only 75% or less of the market rate for repairs. This is especially problematic in Western North Dakota as our dealers are in fierce competition with the oil fields for technicians. Dealers are struggling to retain "manufacturer qualified" technicians and must pay these techs a premium to keep them at the dealership in order to fulfill the manufacturers' requirements. The manufacturers then turn around and reduce the dealers' reimbursement rate for the work that these technicians perform.

4. Discounting reimbursement rates allows manufacturers to effectively shift some of the cost of warranty repair to dealers and non-warranty customers.

   In other cases, it is the North Dakota worker that takes the monetary hit as some technicians are paid on commission as a percent of the repair revenue. When the manufacturer requires a dealer to accept below market reimbursement rates the worker must also take a reduction in pay.

5. This legislation is not unique. 44 other states have adopted warranty reimbursement laws (36 parts rates, 44 labor rates) including Minnesota, South Dakota, and Montana. HB 1192 puts North Dakota on a more level playing field with these other states. In fact, the majority of the provisions in this bill are fashioned after law that already exists in other states.

6. Under ND law, farm equipment manufacturers are currently required to reimburse dealers at their non-warranty labor rates. We believe it is fair to make this concept apply to auto dealers as well.

HB 1192 provides for a simple but fair process to establish the rate at which dealers are reimbursed for warranty work using the dealer's average customer-paid, non-warranty rate. This solution is equitable to both the dealer and the manufacturer.

Our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with auto manufacturers. It is important to note that we have also built several protections into this bill for the manufacturers....we want fairness for both parties.

Mr. Chairman, this bill has already had many amendments made to it in an effort to address the manufacturers' concerns. We agreed to all of those amendments except one. We are now respectively asking this body to pass this bill without further amendments.

(Bill Review and Explanation on Page 4)

Mr. Chairman, this concludes my testimony. Thank you.

Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota

Bill Review and Explanation:

Page 1, lines 7-16: requires manufacturers to provide adequate time allowances and reasonable compensation for warranty repairs, parts, and labor. The hourly labor rate and parts rate may not be less than a dealer's non-warranty customer pay rate.

Page 1, lines 17-23: requires manufacturers to approve or deny a claim within 30 days. Following manufacturer approval, the claim must be paid within 30 days. This provision allows manufacturers to require that claims be submitted in a manner that is acceptable to them.

Page 2, lines 1-7: prevents manufacturers from attempting to hit dealers with a surcharge in order to make this legislation of no effect. In other states which have passed "warranty reimbursement" laws, the manufacturers have simply levied a surcharge against dealers by creating a new line-item charge on vehicle invoices. This tactic alone would absolutely defeat the entire purpose of this bill. This type of surcharge language has been challenged by manufacturers in other states as an unconstitutional interference with contracts but, has been upheld by courts as valid. Anti-surcharge language has been passed in at least 16 other states.

Page 2, lines 8-21: creates a definitive method of calculating a dealer's average non-warranty parts and labor rates by requiring the dealer to submit to the manufacturer one hundred sequential non-warranty repair orders which contain warranty like parts.

Page 2, lines 22-31: identifies specific items that must be excluded from the parts and labor calculation. These items are non-warranty related or exist outside of typical non-warranty retail repair rates.

Page 3, lines 2-10: states that the method of calculation set forth in paragraph 4 & 5 is presumed to be fair however, the manufacturer may rebut that presumption by substantiating that a particular dealer's rate is unfair when compared to other same line-make dealers in the state. This rebuttal provision helps to protect manufacturers.

Page 3, lines 11-15: states that manufacturers must use the dealer's schedule of parts and labor rates and may not require the dealer to engage in unduly burdensome documentation.

Page 3, lines 16-22: allows both a dealer or manufacturer to demand that a new parts or labor rate be declared. However, the demand may not be made within 12 months of the last declaration.

ATTACHMENT #2

AMENDMENT TO ENGROSSED HOUSE BILL 1192

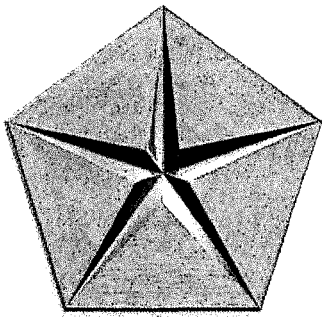
Page 2, line 4, replace "charge, surcharge," with "charge or surcharge"

Page 2, line 5, overstrike "or other imposition"

Page 2, line 7, after "dealer" insert "provided, however, that a manufacturer may impose a separate charge or surcharge if such charge or surcharge appears on the vehicle invoice and the dealer is permitted to pass it through to the final purchaser of the vehicle"

Renumber accordingly

ATTACHMENT #3 pages 1



CHRYSLER

North Dakota Senate Transportation Committee

Testimony
March 21, 2013

Ms. Christine Estereicher
Senior Manager, State Relations

Mr. Chairman and members of the Senate Transportation Committee, thank you for the opportunity to speak to you today. My name is Christine Estereicher. I'm a Senior Manager of State Relations for Chrysler Group. I'm pleased to be here today to express Chrysler's concerns about HB 1192.

By way of background, Chrysler Group LLC was formed in 2009 as part of a global strategic alliance with Fiat S.p.A. We produce Chrysler, Jeep®, Dodge, Ram, Fiat and SRT vehicles as well as Mopar parts. With the resources, technology, and worldwide distribution network required to compete on a global scale, this alliance builds on Chrysler Group's culture of innovation, first established by Walter P. Chrysler in 1925, and Fiat's complementary technology that dates back to its founding in 1899.

Headquartered in Auburn Hills, Michigan, Chrysler employs over 64,000 people worldwide. In North America, Chrysler has 32 manufacturing plants, 21 parts distribution centers, and 9 business centers.

As we continue to emerge from recent difficult times, Chrysler takes great pride in the strong relationships we have with our 2,400 dealers across the country.

Dealer franchise laws in each state regulate the private business relationship and contractual agreements we have with our dealers. The bill you are considering today, HB 1192, includes language that would change how manufacturers compensate dealers for warranty repairs and parts.

Generally, automakers set warranty reimbursement rates for dealers based upon a volume discount. Warranty and recall work is a captive business for dealers. Dealers do not have to compete with independent repair shops or advertise for this business.

As currently written, HB 1192 would prohibit automakers, like Chrysler, from setting a contracted-for bulk repair rate for warranty and recall work with our dealers. The bill mandates that Chrysler and other auto manufacturers pay a premium rate over what the dealer normally charges retail customers for similar repairs. Generally, a dealer's best customer would receive the best discount. But by way of this bill, the State of North Dakota would mandate that the dealer's best customer would be charged a premium rate for parts and labor.

It is worth noting that dealers set retail labor rates, not manufacturers. Increasing retail rates charged to manufacturers on warranty repairs could lead to higher retail labor rates to customers.

It is Chrysler's current policy to provide dealers with an annual warranty labor rate increase. If Chrysler is mandated by the State to pay a premium rate established by the dealer, why would we continue to pay dealers annual increases? We would have to review the annual increase policy.

Another area for you to consider is service contracts. A customer buys a service contract to protect his or her family from increased repair costs and the security of knowing that their vehicle has an extended warranty from the manufacturer. Service contract work is included in the warranty rate, so again, if Chrysler is prohibited from recovering costs from a dealer, we could be forced to increase the costs of service contracts to compensate for the double dipping by the dealership. These potential cost increases could price some North Dakota customers out of the service contract market.

ATTACHMENT #3 [illegible]

Chrysler understands we have to pay a rate that supports the dealer's overhead, but mandating a premium rate on labor and parts could:

- Increase the manufacturer's cost of doing business in the state;
- Lead to the elimination of the annual warranty rate increases Chrysler pays dealers;
- Increase the costs of vehicles, retail repair rates and service contracts for North Dakota customers; and
- Decrease vehicle sales in North Dakota resulting in a tax revenue drop.

Most states – including North Dakota, South Dakota, and Minnesota – do not prohibit manufacturers from recovering the costs of doing business in a state. HB 1192 would change that. It would require a manufacturer to absorb the higher costs mandated by the new law instead of recovering them. Where cost recovery is employed, manufacturers do so to keep balance in the marketplace and limit excessive labor and parts rates, which ultimately impact consumers. If Chrysler as an auto manufacturer can't recover the funds to support ourselves through surcharges, then the only way we can do it is to increase the price of our cars, which would hurt all customers, reduce dealership sales and therefore decrease state tax receipts.

One fact to note, HB 1192 would only eliminate automakers' ability to recover costs, thereby encouraging dealers to charge excessive parts and labor rates; it would not limit the dealers' ability to cost recover. North Dakota law already permits dealers to surcharge on a new car invoice to recover their own business costs.

HB 1192 asks the State of North Dakota to pick business winners and losers and limit the freedom to contract between two willing parties in the private marketplace. We encourage you to oppose this bill.

Thank you for your time today. I would be happy to answer any questions.

ATTACHMENT #4 page 1

Jeffrey Perry
Regional Director
State Government Relations

General Motors Company
300 Renaissance Center
Detroit, MI 48265
Phone: 313-667-0946
Fax: 248-267-4451

March 21, 2013

Chairman Oehlke and Members of the Senate Transportation Committee:

Thank you for the opportunity to speak here today. I'm Jeff Perry and I am here today representing General Motors to discuss House Bill 1192 and its impact on General Motors, the U.S. automobile industry and consumers both in North Dakota and throughout the United States.

Since the recession of 2009, the automobile industry and General Motors have come back strong. Auto manufacturers are profitable again and according to the National Automobile Dealers Association, dealers enjoyed record pretax profits of nearly $850,000 *per store* on average in the first 11 months of 2012. GM has also launched numerous award winning products; brought to market landmark technology innovations; announced large scale investments in research and development, our plants, and people; and posted strong sales and profitability performance. Performance that allows us to support over 28 GM dealerships throughout the state, 2 North Dakota based suppliers, and over 288,000 vehicle owners in North Dakota.

In 2011 the North Dakota legislature was asked to bring forth changes to the state automobile dealer franchise laws to broaden protections and contractual rights of dealers. HB 1192 again asks the legislature to extend still more significant statutory protections not generally afforded to other independent business owners or residents in the state, and places the state in the position of having to pick winners and losers among private parties and interfering with private contracts.

House Bill 1192 would add provisions into the law that would institute state mandated guaranteed profits for dealers above and beyond the already profitable reimbursement levels that manufacturers pay dealers for performing warranty work. No other business owner enjoys such lucrative state protection and guaranteed profits in its dealings with other private parties. Despite this unusual circumstance, we have worked diligently with the North Dakota Automobile Dealers Association to reach a compromise on the terms of these state mandated pricing provisions. However, one significant issue remains that we have been unable to reach agreement on.

Section 1, paragraph 3 of the bill includes language that would prohibit manufacturers from taking any action to recover the incremental costs associated with state mandated warranty reimbursement profit increases. This is frequently referred to as a ban on cost recovery. In conceding to compromise language that will award the dealers increased warranty reimbursement rates in the state of North Dakota, manufacturers must at least have some way to recover those increased costs. The concept is simple. Businesses that don't cover their costs

go out of business. In fact, even North Dakota dealers engage in direct cost recovery everyday by charging non-negotiable "document and administrative fees" to consumers on their final purchase contracts. In fact the average "document fee" charged by dealers in North Dakota exceeds $140 per vehicle. Additionally, in other industries where government inserts itself to control pricing, like utilities, businesses are specifically granted a right to recover incremental costs from its customers. Manufacturers should be permitted the same rights to cover the incremental cost increase caused by a state mandated price increase in our warranty reimbursement rates. Ultimately, if manufacturers are prohibited from recovering the unique incremental costs of doing business in North Dakota as a pass through to consumers in North Dakota, the state is effectively forcing manufacturers to spread the cost to consumers and dealers outside the state by raising prices throughout the country. This outcome raises potential problems with the United States Constitution commerce clause and is in fact the very same issue currently before a federal district court in Florida.

General Motors believes that manufacturers and dealers are working together to help create a stronger industry, but there are provisions of this bill that simply run counter to a productive partnership. We ask that the members of the committee recommend "do not pass", unless and until HB 1192 is amended to remove the cost recovery prohibition language.

Thank you for your time.

Attachment #1

Mr. Chairman and Members of the Committee, I am Michael Gaddie and together with my wife, Kathleen Gaddie, we own and operate five dealerships in western North Dakota. Relative to the bill before us, I would like to explain our most extreme situation, which is our Chrysler Dodge Jeep store in Williston. Our door rate in that location is $119 for light duty and $129 for heavy duty. Our warranty rate is $80.07 from Chrysler, which is slightly over 60% of our door rate. We just received the increase to $80.07 on January 1, 2013.

Our cost of labor, which is the hourly rate our technicians receive, is between $30 - $35 and can go as high as $40 with volume incentives. As you can calculate that can be as high as 50% of our $80.07 warranty rate. Our service department has run in the red steadily for the last several years even though our wait time for our customers can be as long as three weeks; because there is that much work.

A requirement that the factory pay our door rate would help us regain profitability but also may lessen future increases to our out-of-warranty, cash-paying customers as they take the brunt of labor rate increases. It seems only fair.

Fierce competition with the oil fields to keep trained technicians has also been a huge issue. We have lost three A level technicians at the Chevrolet store in Minot due to the wages the oil companies are paying. There are other, more extreme instances, but I don't have actual numbers. We have spent years training the technicians and sending them to school, only to lose them to the oil industry because we cannot afford to pay competitive rates. One of the reasons is that we are not receiving comparable reimbursements from our manufacturers.

Examples of other door rates / warranty rates discrepancies are as follows:

- Minot Chevrolet $105 - $82.02
- Minot Chrysler $115 - $76.80
- Minot Toyota $115 - $75
- Minot Mazda $98 - $61.50
- Minot Hyundai $98 - $81.25

AT / ATTACHMENT # 2 page 1

House Bill 1192
Testimony before Senate Transportation Committee
Gregg Jacobson, Dealer
Automobile Dealers Association of North Dakota
9:30 a.m., March 28, 2013

3/26/13

Mr. Chairman and members of the committee. My name is Gregg Jacobson, and I am the owner operator of R Z Motors Inc. Hettinger ND. Our company has been servicing rural communities in SW North Dakota for 31 years. I am here today to ask for your support of HB 1192.

In my dealership, warranty work is simply costing me the store. Why? Because warranty work is not being reimbursed by manufacturers at the same rate I charge for non-warranty work. This practice has directly caused the loss of certified technicians in my service bays due to unrealized income. As a rural dealer, I am left unable to compete with other industries and larger metro areas – even though my requirements in terms of training and technology are the same.

At our dealership, we receive payment from customers on a retail basis (meaning not under manufacturer warranty) at a labor rate of $89.00 per hour on cars, vans, SUV's and light trucks. On medium duty trucks, 1 ton and above, our labor rate is $98.00 per hour. We use the Chilton time labor standards to calculate the time required to complete a repair on a retail work order.

To perform the same labor operations on identical vehicles that are under manufacturer warranty, we receive $67.30. Also --- in almost every case --- the time standard to complete those same repairs is 30% less than we charge on a retail basis. The manufacturer is reimbursing our dealership $21.70 per hour less than retail to work on cars, vans, SUV's and light trucks, and $30.70 less per hour on medium duty trucks – and allowing 30% less time to perform the work.

(continued)

This situation has caused my technicians (senior master technicians) to seek employment elsewhere. They make a living based on hours of labor billed out and a commission rate, and they feel it is not even affordable to do warranty work. When warranty work comes to my dealership, my technicians run away. When warranty work comes to my dealership, it is a loss financially from the beginning. Furthermore, that loss must be made up by the dealership and non-warranty customers, which is simply not fair.

Before appearing here today I did a labor study of local Ford and Chrysler dealerships within 150 miles of my location in Hettinger. Remember, I must have the same trained technicians, the same equipment, the same technology, and the same standards as my counterparts across the state, meaning my expense is the same. I found that dealerships in the larger communities receive manufacturer warranty labor reimbursements that are $14.00 per hour higher than our dealership. How can I compete for the same people to repair my customers' vehicles?

Another warranty reimbursement issue is dealership cash flow. Non-warranty customers must pay for their vehicle repairs before the vehicle is released. In most cases, however, it will take between 30 and 90 days for the dealer to be paid by the manufacturer for warranty work. HB 1192 helps to address this issue by requiring manufacturers to pay approved claims within 30 days.

Without this legislation, small dealerships like ours will continue to struggle to keep technicians. **All we are asking for is equal pay for equal work**. Please support HB 1192.

Mr. Chairman, this concludes my testimony. Thank you.

Respectfully,
Gregg Jacobson, owner
R Z Motors Inc.
Hettinger, ND.

1192 Warranty Reimbursement

Mr. Chairman & members of the committee, my name is Mark Helbling and I am appearing today on behalf of myself. I am the Director of fixed operations at Corwin Honda; part of the Corwin Automotive group of Fargo.

HB 1192 is a very important bill to North Dakota's automobile dealership employees. It has a direct impact on our ability to earn a living. Here are three of the ways in which our business and its employees are disadvantaged by unfair manufacturer reimbursement rates:

1. Auto dealers in North Dakota are paid less by manufacturers for warranty repair than they are by non-warranty customers. We are paid on average 9% less at Honda and 13% less at our Chrysler store than our customer pay rate. In an average month, our three facilities write approximately 1400 warranty repair orders. We average about one hour per warranty repair. It is roughly $21,000 a month in lost revenue.

2. Our employees are directly affected because they are paid a commission based on a percentage of the repair revenue. When the dealership is forced to accept a below market warranty rate, be it time paid to perform the repair or the amount collected, we employees get paid less. The manufacturer promises the customer that it will pay for warranty repairs. In reality, dealership employees are routinely preforming warranty repairs at reduced pay rates to help the manufacturer.

(continued)

3. Our parts personnel are paid a salary and a percentage of the gross profit that their department generates in a month. The manufacturers are reimbursing us for warranty repair parts at a rate that is 14 to 16% less than our non-warranty customers pay for THE SAME part. Our parts personnel loose on average $2,500.00 annually because of this.

North Dakota auto dealerships are an essential part of our state's economy, our transportation system, and our way of life. We employees work very hard to do the best job we can for our customers and the franchises we represent. For the sake of our customers, we need to provide excellent vehicle warranty work. For the sake of our dealership and our employees, we need to do it in a financially sound manner. We respectfully ask this body to support HB 1192, requiring manufacturers to reimburse dealerships for warranty repairs at free market, non-warranty rates.

Thank You,

Mark Helbling

ATTACHMENT #3 of page 2

Account Options: Current service account
Service Advisor Number: 4105, 9106
Labor Class: Customer pay
Exclude Labor Types: CE, CEC, CTAX
Exclude Op Codes: n/a
xclude Labor Ops with Zero Labor: Y

A-NO..	SA-NAME..	C	#RO5	#OPS	HRS-SLD	HRS/RO	LBR-SALE$.	LBR$/RO..	PTS-SALE$.	PTS$/RO..	MISC-SALE	MSC$/RO	TOT-SALE$.	T$/RO..	ELA...
4105	BJERK	C	30	50	66.60	2.22	7359.02	245.30	6584.89	219.50	0.00	0.00	13943.91	464.80	110.50
TOTAL	BJERK		30	50	66.60	2.22	7359.02	245.30	6584.89	219.50	0.00	0.00	13943.91	464.80	110.50
9106	KJERMSTAD	C	90	155	207.50	2.31	22211.38	246.79	19812.49	220.14	0.00	0.00	42023.87	466.93	107.04
TOTAL	KJERMSTAD		90	155	207.50	2.31	22211.38	246.79	19812.49	220.14	0.00	0.00	42023.87	466.93	107.04
GRAND	TOTAL		120	205	274.10	2.28	29570.40	246.42	26397.38	219.98	0.00	0.00	55967.78	466.40	107.88

Account Option: Current service account
Service Advisor Number: 4105, 9106
Labor Class: Warranty pay
Exclude Labor Types: WAC, WH
Exclude Op Codes: n/a
xclude Labor Ops with Zero Labor: Y

A-NO..	SA-NAME..	C	#ROS	#OPS	HRS-SLD	HRS/RO	LAB-SALE$.	LAB$/RO..	PTS-SALE$.	PTS$/RO..	MISC-SALE	MSC$/RO	TOT-SALE$.	TOT$/RO..	GLA...
4105	BJERK	W	32	35	16.00	0.50	1584.00	49.50	1034.82	32.34	0.00	0.00	2618.82	81.84	99.00
TOTAL	BJERK		32	35	16.00	0.50	1584.00	49.50	1034.82	32.34	0.00	0.00	2618.82	81.84	99.00
9106	KJERMSTAD	W	199	270	132.50	0.67	13116.30	65.91	13961.87	70.16	0.00	0.00	27078.17	136.07	98.99
TOTAL	KJERMSTAD		199	270	132.50	0.67	13116.30	65.91	13961.87	70.16	0.00	0.00	27078.17	136.07	98.99
GRAND	TOTAL		231	305	148.50	0.64	14700.30	63.64	14996.69	64.92	0.00	0.00	29696.99	128.56	98.9[illegible]

ATTACHMENT #3 pages

SA-No	SA-Name	CLS	# ROs	# OPs	HRS-Sold	HRS/RO	LBR-Sale$	LBR$/RO	PTS-Sale$	PTS$/RO	Misc-Sale	Misc$/RO	Total-Sale$	Total$/RO	ELR
2067	ERICKSON	C	3	3	3.4	1.13	337.38	112.46	268.18	89.39	0	0	605.56	201.85	99.23
TOTAL	ERICKSON		3	3	3.4	1.13	337.38	112.46	268.18	89.39	0	0	605.56	201.85	99.23
4455	LANCMAN	C	10	15	32.9	3.29	3578.65	357.87	3321.4	332.14	0	0	6900.05	690.01	108.77
TOTAL	LANCMAN		10	15	32.9	3.29	3578.65	357.87	3321.4	332.14	0	0	6900.05	690.01	108.77
599	HUTCHEN!	C	1	1	3	3	345	345	69.38	69.38	0	0	414.38	414.38	115.00
TOTAL	HUTCHEN!		1	1	3	3	345	345	69.38	69.38	0	0	414.38	414.38	115.00
715	STRAND	C	1	1	0.3	0.3	8	8	13.95	13.95	0	0	21.95	21.95	26.67
TOTAL	STRAND		1	1	0.3	0.3	8	8	13.95	13.95	0	0	21.95	21.95	26.67
7356	HITTERDAI	C	1	1	0.3	0.3	8	8	13.95	13.95	0	0	21.95	21.95	26.67
TOTAL	HITTERDAI		1	1	0.3	0.3	8	8	13.95	13.95	0	0	21.95	21.95	26.67
90	COSSETTE	C	98	133	161.9	1.65	16165.63	164.96	10417.81	106.3	0	0	26583.44	271.26	99.85
TOTAL	COSSETTE		98	133	161.9	1.65	16165.63	164.96	10417.81	106.3	0	0	26583.44	271.26	99.85
9627	MUELLER	C	2	2	2.1	1.05	202.19	101.1	193.12	96.56	0	0	395.31	197.66	96.28
TOTAL	MUELLER		2	2	2.1	1.05	202.19	101.1	193.12	96.56	0	0	395.31	197.66	96.28
GRAND	TOTAL		116	156	203.9	1.76	20644.85	177.97	14297.79	123.26	0	0	34942.64	301.23	101.25

ELR = expected labor rate

ATTACHMENT #9 page 6

WARRANTY

SA-No	SA-Name	CLS	# ROs	# OPs	HRS-Sold	HRS/RO	LBR-Sale$	LBR$/RO	PTS-Sale$	PTS$/RO	Misc-Sale	Misc$/RO	Total-Sale$	Total$/RO	ELR
2067	ERICKSON	W	210	442	254.5	1.21	24223.02	115.35	30153.81	143.59	0	0	54376.83	258.94	95.18
TOTAL	ERICKSON		210	442	254.5	1.21	24223.02	115.35	30153.81	143.59	0	0	54376.83	258.94	95.18
2084	SHIELDS	W	121	125	39.9	0.33	1376.77	11.38	2685.32	22.19	0	0	4062.09	33.57	34.51
TOTAL	SHIELDS		121	125	39.9	0.33	1376.77	11.38	2685.32	22.19	0	0	4062.09	33.57	34.51
2371	LANCMAN	W	13	21	13.2	1.02	1287.07	99.01	2244.48	172.65	0	0	3531.55	271.66	97.51
TOTAL	LANCMAN		13	21	13.2	1.02	1287.07	99.01	2244.48	172.65	0	0	3531.55	271.66	97.51
4455	LANCMAN	W	110	161	79.9	0.73	6472.07	58.84	6655.37	60.5	0	0	13127.44	119.34	81.00
TOTAL	LANCMAN		110	161	79.9	0.73	6472.07	58.84	6655.37	60.5	0	0	13127.44	119.34	81.00
45	TEBERG	W	122	237	163.62	1.34	15712.17	128.79	12755.65	104.55	0	0	28467.82	233.34	96.03
TOTAL	TEBERG		122	237	163.62	1.34	15712.17	128.79	12755.65	104.55	0	0	28467.82	233.34	96.03
599	HUTCHEN!	W	81	81	24.9	0.31	698.85	8.63	17551.32	216.68	0	0	18250.17	225.31	28.07
TOTAL	HUTCHEN!		81	81	24.9	0.31	698.85	8.63	17551.32	216.68	0	0	18250.17	225.31	28.07
715	STRAND	W	58	70	36.3	0.63	2484.24	42.83	2302.59	39.7	0	0	4786.83	82.53	68.44
TOTAL	STRAND		58	70	36.3	0.63	2484.24	42.83	2302.59	39.7	0	0	4786.83	82.53	68.44
7356	HITTERDAI	W	137	139	42.7	0.31	1231.63	8.99	2707.48	19.76	0	0	3939.11	28.75	28.84
TOTAL	HITTERDAI		137	139	42.7	0.31	1231.63	8.99	2707.48	19.76	0	0	3939.11	28.75	28.84
7722	BERGSTRO	W	23	23	6.9	0.3	184	8	410.39	17.84	0	0	594.39	25.84	26.67
TOTAL	BERGSTRO		23	23	6.9	0.3	184	8	410.39	17.84	0	0	594.39	25.84	26.67
90	COSSETTE	W	202	389	245.1	1.21	23592.48	116.79	26313.86	130.27	0	0	49906.34	247.06	96.26
TOTAL	COSSETTE		202	389	245.1	1.21	23592.48	116.79	26313.86	130.27	0	0	49906.34	247.06	96.26
9627	MUELLER	W	357	700	437.1	1.22	42252.75	118.36	54869.2	153.7	0	0	97121.95	272.05	96.67
TOTAL	MUELLER		357	700	437.1	1.22	42252.75	118.36	54869.2	153.7	0	0	97121.95	272.05	96.67
GRAND	TOTAL		1434	2388	1344.12	0.94	119515.1	83.34	158649.5	110.63	0	0	278164.5	193.98	88.92

ATTACHMENT #3 page 1

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Select Vehicle | New TSBs | Technician's Reference

Component Search: OK

Conversion Calculator

2

2012 Honda Accord V6-3.5L

Vehicle Level → Engine, Cooling and Exhaust → Cooling System → Water Pump → Parts Information

Parts Information

Part	OEM Part	Price
Water Pump		
Water Pump		
8 - Coupe	19200R70A11	$144.75
Sedan		
8 - Magna Powertrain	19200R70A11	$144.75

Labor	Skill Level	Mfg. Warranty	Standard
Water Pump			
Replace	B	2.8	4.0

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Recording segment: 23:17 - 24:53

ATTACHMENT #3 page 3

2012 Honda Accord V6-3.5L

Parts Information

Part	OEM Part	Price
Radiator		
Radiator		
Coupe		
1 - Manual Trans	19010R72A02	$352.65
1 - Auto Trans	19010R70A53	$352.65
1 - Sedan	19010R70A53	$352.65

Labor	Skill Level	Mfg. Warranty	Standard
Radiator			
Replace	B	0.8	1.1
NOTE			
With Auto Trans, Add	B	0.3	0.4

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ATTACHMENT #3 page 4

2012 Honda Accord V6-3.5L

Parts Information

Part	OEM Part	Price
Blower Motor		
Blower Motor	79310TA0A01	$81.88

Labor	Skill Level	Mfg. Warranty	Standard
Blower Motor			
Replace	B	0.2	0.4
Does Not Include: Refrigerant Recovery Or Evacuate & Recharge AC System.			

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ATTACHMENT #3 page 1

2012 Honda Accord V6-3.5L

Parts Information

Part	OEM Part	Price
Thermostat		
Thermostat		
5 - Coupe	19301P8EA10	$36.95
Includes: Thermostat Gasket.		
5 - Sedan	19301P8EA10	$36.95
Includes: Thermostat Gasket.		

Labor	Skill Level	Mfg. Warranty	Standard
Thermostat			
Replace	B	0.6	0.8

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HONDA BUSINESS MANAGEMENT OPERATING GUIDELINES 20

Measure	Guide	Definition	Calculation
Parts Dept Gross Per Person (per month)	≥ $13,000 per month	Productivity measurement of Parts Department personnel,	Total Parts Department Gross Profit ÷ by Total# Parts Department Personnel
Gross Profit Retentions-Part Sales	a) 40-43% b) 38-40% c) 27-31% d) 28.6% e) 30-32% f) 35-40% g) 18-22% h) 20-22% i) ≥ 32%	The percentage of Gross Profit retained from Part Sales. Measured in the following Part Sales categories: a) Customer RO b) Express Service RO c) Body Shop RO d) Warranty RO e) Internal RO f) Counter Retail g) Wholesale Collision h) Wholesale Mechanical i) Total Parts Dept	Gross Profit ÷ Sales by Part sale type.
Wholesale Collision Sales PNVS	$500 PNVS	Measure of wholesale collision Sales effectiveness relative to dealership new vehicle volume	YTD Wholesale Collision Sales ÷ YTD # New retail Unit Sales
Wholesale Mechanical Sales PNVS	≥ $185 PNVS	Measure of Wholesale Mechanical Sales effectiveness relative to dealership new vehicle volume	YTD Wholesale Mechanical Sales ÷ YTD # New retail Unit Sales
Gross Profit Retentions-Accessory Sales	a) 30-35% b) 28.6% c) 30-32% d) 30-34% e) 18-20%	The percentage of Gross Profit retained from Parts Department Accessory Sales. Measured in the following Accessory Sales categories: a) Customer & Body RO b) Warranty RO c) Internal RO-Honda d) Counter Retail e) Wholesale	Gross Profit ÷ Sales by Accessory Sales type
Total Parts Dept GP as a % of Parts Dept Total Sales	27 – 36%	The percentage of Gross Profit retained from the Parts Dept total Sales	Total Parts Dept Gross Profit ÷ Total Parts Dept Sales
Internal RO Accessory Sales PNVS	$150 - $175 PNVS	Internal accessory Sales on a per new vehicle basis	Internal RO Accessory Sales ÷ # new unit Sales

ATTACHMENT # 9 page 1

CUSTOMER #: 430277

47237

ACCOUNTING

DUPLICATE 2
PAGE 1

CORWIN
HONDA
201 40th Street S - Fargo, ND 58103
(701) 282-7000 - 1-800-416-5226

HOME: CONT:
BUS: CELL:

** PRE-INVOICE **
SERVICE ADVISOR: 9106 BRANDON HJERMSTAD

COLOR	YEAR	MAKE/MODEL	VIN	LICENSE	MILEAGE IN/ OUT	TAG
	12	HONDA ACCORD			14000/14000	T359

DEL DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT	INV. DATE
21MAR12 DD			WAIT 26FEB13		105.00	CASH	22MAR13

R.O. OPENED	READY	OPTIONS:
12:55 26FEB13	16:18 22MAR13	STK:9004359 1)HN8700 2)K519 3)RADIO#45461

```
LINE OPCODE TECH TYPE A/HRS S/HRS    COST    SALE  COMP    LIST      NET    TOTAL
A CUSTOMER STATES THE ELECTRICAL ISSUES HAVE COME BACK THAT WE RECENTLY
        CORRECTED. NO PASSENGER HEADLIGHT, COMPASS, ETC.
CAUSE: REPLACE DRIVERS MICU
     7471A1 FUSE BOX, DRIVER`S SIDE - REPLACE.
            8417    W  1.10  0.50   1386    4950                   49.50    49.50
        1 38200-TE0-A32 BOX,
        DRIVER FUSE                15758   22061     0  262.63   220.61   220.61
    FC: 06601S/01201
    PART#: 38200-TE0-A32
    COUNT: 1                          15758      22061 TPARTS
    CLAIM TYPE:   QUICK
    AUTH CODE:
                                       1386       4950 TLABOR
  BL HANSEN LEASE #N60733632 CAR RENTAL
                  W                 12000   12000                  120.00   120.00
 14000 REMOVED AND REPLACED THE DRIVERS MICU AGAIN. AFTER-MARKET
 AUTO START REMOVED COMPLETELY FROM VEHICLE. ALL FUNCTIONS WORKING AT
 THIS TIME. 7471A1 .5D 06601S 01201
B 27 POINT COURTESY INSPECTION (NO CHARGE)
     27P 27 POINT COURTESY INSPECTION (NO CHARGE)
            8417   IH  0.00  0.00      0       0                    0.00     0.00
  CONTACT: WILL WAIT...

    DATE    START  FINISH  DURATION  TYPE  TECH    LINE(S)  CHG
03-19-13    14:03   15:09      1.10     W    8417       A
            15:09   15:09      0.00     W    8417       B

ACCOUNT    SALE      COST        CONTROL    ACCOUNT    SALE      COST        CONTROL
46200       4950      1386                 48000      22061     15758
46600      12000     12000                 46300          0         0
26300      39011   *******                 20102          0   *******

      COST, SALE, & COMP TOTALS     29144    39011      0
```

THE CORWIN COMMITMENT
"Your Total Satisfaction"

Your total satisfaction is our #1 concern. Please contact us if you are not 100% satisfied, have any questions, comments, or if we can be of further assistance.

Thank you for your business!

STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item\items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

ALL PARTS NEW ORIGINAL EQUIPMENT UNLESS OTHERWISE SPECIFIED
U-USED R-REBUILT
Y-RECYCLED C-RECONDITIONED

CUSTOMER SIGNATURE

DESCRIPTION	TOTALS
LABOR AMOUNT	0.00
PARTS AMOUNT	0.00
GAS, OIL, LUBE	0.00
SUBLET AMOUNT	0.00
MISC. CHARGES	0.00
TOTAL CHARGES	0.00
LESS ADJUSTMENT	0.00
SALES TAX	0.00
PLEASE PAY THIS AMOUNT	0.00

ACCOUNTING COPY

ATTACHMENT # 4 page 1

House Bill 1192
Testimony before Senate Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota

3/27/13

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in SUPPORT of House Bill 1192 on behalf of the Automobile Dealers Association of North Dakota.

Last week we informed this committee that our dealers need the protection of state law to ensure that there is a baseline of fairness in their contracts with auto manufacturers. You also heard testimony from the manufacturers that this legislation wasn't necessary as they are very willing to sit down with dealers in an effort to negotiate in good faith. Mr. Chairman, that statement is actually quite contrary to reality and the following is an example why:

In 2009 General Motors and Chrysler filed for bankruptcy. Both of them re-emerged as new companies approximately 40 days after their respective filing and that is when the real travesty of the situation became apparent. All 64 of North Dakota's GM and Chrysler dealers had worthless franchise agreements with the old, bankrupt companies.

7 of the 23 Chrysler dealers in North Dakota were terminated and told to shut their doors within 27 days. Additionally, 14 of 41 GM dealerships were told that they would be eliminated. The termination process was so unfair that our U.S. Congress had to step in and pass legislation in an attempt to reinstate some of these dealers. All of the terminated dealerships were profitable, going concern businesses.

Bankruptcy allowed the manufacturers to have an absolute free pass to trample our state laws and the rights of your North Dakota businesses and their employees. The manufacturers now had the ability to write brand new franchise agreements that were entirely unfair.

These new agreements are referred to as Contracts of Adhesion which are not negotiable. They are a take-it or leave-it arrangement under which the dealer had no choice but to sign the contract or not be a dealer.

With this in mind, one of the manufacturers created a contract that forced the dealer to waive all of their rights under our state laws. Since they knew that the dealer would have no rights and no choice but to sign the agreement, they demanded that the dealer must sell as many vehicles as the manufacturer commanded them to and further demanded that the dealer must purchase all of those vehicles from the manufacturer at their command. They also demanded the dealer to abandon any other franchise they had with another manufacturer and maintain exclusive, stand alone facilities for their brand alone. They stripped dealers of their protest rights and retained the ability to force the dealer to move their facilities or establish another dealership right beside the existing dealer. The contract also stated that if the dealer was unable to comply with any of these demands, even through no fault of their own, the manufacturer could immediately terminate them.

These are examples of the manufacturers' willingness to negotiate and conduct business fairly with dealers.

Point #2

The manufacturers, in a written statement, indicated "(The) cost recovery ban language is the subject of federal litigation in Florida that could be resolved in the months ahead. It is simply unnecessary for North Dakota to enact the cost recovery prohibition ahead of guidance from the courts....." Actually, the courts have already provided guidance that anti-surcharge language is necessary to ensure that manufacturers comply with the intent of warranty reimbursement laws.

The State of Maine Case: Several years ago the state of Maine passed warranty reimbursement legislation. The manufacturers, in an effort to sidestep the law, began to levy a surcharge on dealers. A dealer sued the manufacturer stating that the surcharge levy was not in compliance with state law; the courts agreed and the dealer won the case.

ATTACHMENT # 4 page 3

In an effort to clarify the intent of the warranty law, the Maine legislature enacted anti-surcharge language. The manufacturers then sued the state of Maine claiming that the anti-surcharge language was in violation of the U.S. Commerce Clause; that it was a Contracts Clause violation. The manufacturers lost the lawsuit; the court ruled in favor of the state (summary judgment). The manufacturers then filed an appeal in the United States Court of Appeals for the First Circuit. The manufacturers lost that case as well.

The Circuit Court's Conclusion stated:

> "this appeal involves a policy decision by the Main legislature to prevent motor vehicle manufacturers from imposing compulsory discounts on dealers who perform warranty repairs. In the case of a particular manufacturer, that policy decision was negated by a warranty parity surcharge added to the wholesale price of all vehicles sold to Maine dealers. The legislature countered by enacting the recoupment bar (anti-surcharge language) as a means of plugging the loophole and restoring the structural integrity of its original policy..... **Thus, we hold that the Alliance's Commerce Clause claims are without merit.** The Alliance's attempt to dress this case in the raiment of a Contracts Clause violation fares no better. Maine heavily regulates franchise agreements between motor vehicle manufacturers and dealers, and the recoupment bar (anti-surcharge language) does not impermissibly impinge upon those agreements. We need go no further. **The upshot is that the district court's grant of summary judgment in favor of the State was entirely correct**."

The manufacturers' claim that anti-surcharge language is "unconstitutional" has been defeated.

Legislatures on a regular basis regulate the free market and contractual relationships to protect citizen's investments. The UCC, securities law, & corporate law are a few examples. The 44 states with warranty reimbursement laws serve as more examples.

Mr. Chairman, thank you for the opportunity to testify. We now respectively ask this committee to pass this bill without amendment.

Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota

ATTACHMENT #1

13.0539.02001
Title.

Prepared by the Legislative Council staff for
Senate Transportation Committee
April 3, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1192

Page 1, line 12, after "than" insert "ninety-five percent of"

Page 1, line 15, after "than" insert "ninety-five percent of"

Renumber accordingly