

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1515**

Introduced by

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

Senators Hogan, Hogue, Klein

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

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

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

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

7 1. a. A motor vehicle manufacturer or distributor shall ~~include reasonable-~~  
8 ~~compensation for diagnostic work, as well as repair service, parts, and labor, in~~  
9 ~~warranty work compensation. In addition, a motor vehicle manufacturer shall~~  
10 ~~provide adequate time allowances for diagnosis and performance of warranty-~~  
11 ~~work and service for the work performed. The hourly labor rate paid by a motor~~  
12 ~~vehicle manufacturer to the dealer for warranty services may~~reasonably  
13 compensate its dealers for labor and parts provided by the dealer in connection  
14 with the following manufacturer or distributor sponsored, issued, or required  
15 items:

16 (1) Preelivery preparation.

17 (2) Installation of accessories or components required by the manufacturer or  
18 distributor to be installed before the sale of a vehicle to a consumer.

19 (3) Diagnostic work.

20 (4) Maintenance programs.

21 (5) Extended warranty.

22 (6) Certified preowned warranty.

1           (7) Service contracts.

2           (8) Parts exchange programs.

3           (9) Recall, goodwill, and warranty work performed by the dealer.

4           b. Reasonable compensation for labor for the services identified in subdivision a  
5           may not be less than the average retail rate charged by the dealer for like service  
6           to nonwarranty customers for nonwarranty service as provided under  
7           subsection 5. A motor vehicle manufacturer may not reimburse a dealer for parts  
8           used in the performance of warranty repair at a lower rate multiplied by the time  
9           guide used by the dealer for nonwarranty customer-paid service repair orders. To  
10           establish a time guide, a dealer shall provide written notice to the manufacturer or  
11           distributor with the name of the time guide the dealer uses. The manufacturer or  
12           distributor may not require the dealer to provide any other information to establish  
13           the time guide the dealer uses. If no time guide exists for a warranty repair,  
14           compensation for warranty labor must equal the dealer's average retail rate  
15           multiplied by the time spent to complete the repair, and may not be less than the  
16           time charged to a retail customer for the same or similar work provided. A dealer  
17           shall use time allowances for the diagnosis and performance of work and service  
18           which are reasonable and adequate for a qualified technician to perform the work  
19           or services. Reasonable compensation for parts for the services identified in  
20           subdivision a may not be less than the average retail rate customarily charged by  
21           the dealer for these parts as provided under subsection 4.

22           2. A dealer shall submit a claim for reimbursement for services within ninety days from  
23           the completion of the services identified in subdivision a of subsection 1. A motor  
24           vehicle manufacturer or distributor shall pay a dealer on a claim made by a dealer  
25           under this section within thirty days of the approval of the claim. The manufacturer or  
26           distributor shall either approve or disapprove a claim within thirty days after the claim  
27           is submitted to the manufacturer or distributor. The manufacturer or distributor may  
28           prescribe the manner in which and the forms on which the dealer must present the  
29           claim. A claim not specifically disapproved in writing within thirty days after the  
30           manufacturer or distributor receives the claim must be construed to be approved and  
31           the manufacturer or distributor shall pay the claim within thirty days. If a manufacturer

1           or distributor disapproves a claim in writing within thirty days, the manufacturer or  
2           distributor shall contemporaneously provide the dealer with a detailed written  
3           explanation of the reason the claim was disapproved. The dealer has thirty days from  
4           the receipt of the disapproval to resubmit a corrected claim.

5           3. A motor vehicle manufacturer, ~~factory branch,~~ or distributor, ~~or distributor branch~~ shall  
6           fully compensate its motor vehicle dealers licensed in this state for ~~warranty parts,~~  
7           ~~work, and service~~ and labor specified in this section. Failure to fully compensate  
8           includes a reduction in the amount due under this section to the dealer or imposing a  
9           separate charge, surcharge, or other imposition by which the motor vehicle  
10          manufacturer, ~~factory branch,~~ or distributor, ~~or distributor branch~~ seeks to recover the  
11          costs of complying with this section from the dealer.

12          4. The retail rate customarily charged by the dealer for parts is established by the dealer  
13          submitting to the manufacturer or distributor one hundred sequential nonwarranty  
14          customer-paid service repair orders that contain warranty-like parts or ninety  
15          consecutive days of nonwarranty customer-paid service repair orders that contain  
16          warranty-like parts, whichever is less, covering repairs made no more than one  
17          hundred eighty days before the submission and declaring the average percentage  
18          markup.

19          5. The retail rate customarily charged by the dealer for labor must be established using  
20          the same process as provided under subsection 4 and declaring the average labor  
21          rate. The average labor rate must be determined by dividing the amount of the  
22          dealer's total labor sales by the number of total hours that generated those sales. If a  
23          labor rate and parts markup rate are simultaneously declared by the dealer, the dealer  
24          may use the same repair orders to complete each calculation as provided under  
25          subsection 4.

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

- 29          a. Repairs for manufacturer or distributor special events, specials, or promotional  
30             discounts for retail customer repairs;  
31          b. Parts sold at wholesale;

- 1           c. Parts or labor used in manufacturer or distributor sponsored programs that  
2           restrict the pricing for repairs;
- 3           d. Routine maintenance not covered under any retail customer warranty, including  
4           fluids, filters, and belts not provided in the course of repairs;
- 5           ~~d.e.~~ Nuts, bolts, fasteners, and similar items that do not have an individual part  
6           number;
- 7           e. Tires
- 8           f. Replacement or work on tires, including wheel or tire rotations or balancing, or  
9           replacements of brakes, including brake drums, rotors, shoes, or pads; and
- 10          ~~f.g.~~ Vehicle reconditioning-;
- 11          h. Alignments, unless necessary as part of a mechanical repair;
- 12          i. Batteries, other than electric vehicle or hybrid vehicle propulsion batteries;
- 13          j. Repairs of a motor vehicle owned by the dealer or an employee of the dealer;
- 14          k. Installation of accessories;
- 15          l. Repairs to or with aftermarket parts;
- 16          m. Repairs performed on motor vehicles of a line make other than that for which the  
17          dealer is franchised by the motor vehicle manufacturer.
- 18          7. a. The average of the parts markup rates and labor rate calculated under  
19          subsections 4 and 6 is presumed to be fair and reasonable and must go into  
20          effect thirty days following the manufacturer's approval receipt of the submission  
21          subject to the manufacturer or distributor's ability to contest the rate as provided  
22          in this subsection. The motor vehicle manufacturer or distributor may not issue  
23          more than one notice to the dealer contesting any declared labor rate or parts  
24          markup, and may not add to, expand, supplement, or otherwise modify any  
25          reason for contesting the declared rate or parts markup. A manufacturer or  
26          distributor may rebut the presumption by reasonably substantiating that a rate is  
27          unreasonable in light of the practices of all other franchised motor vehicle dealers  
28          in an economically similar area of the state offering the dealer's declaration of the  
29          same line-make vehicles, not later than thirty days after submission. If the  
30          average parts markup rate or average labor rate is rebutted, or both, the  
31          manufacturer or distributor shall propose an adjustment of the average

1           percentage markup based on that rebuttal not later than thirty days after  
2           submission contest the material accuracy of the rate calculated under this section  
3           by providing a written objection to the dealer within thirty days after receiving the  
4           dealer's submission, and shall:

5           (1) Provide the dealer with a copy of all calculations used by the motor vehicle  
6           manufacturer or distributor to make the determination of the dealer's labor  
7           rate or parts markup, a written explanation of the basis for any inaccuracy  
8           alleged by the motor vehicle manufacturer or distributor, and evidence  
9           substantiating any written explanation.

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

12          (3) Commence paying the dealer at the proposed adjusted labor rate or parts  
13          markup determined by the motor vehicle manufacturer or distributor as  
14          provided in this section. This section applies to all proposed adjusted labor  
15          rates or parts markups, even if the motor vehicle manufacturer's or  
16          distributor's determination of the labor rate or parts markup is different from  
17          the labor rate or parts markup provided in the dealer's submission.

18          b. If a motor vehicle manufacturer or distributor fails to comply with the  
19          requirements of subdivision a within thirty days of receipt of submission, the  
20          submission is approved.

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

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

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

1 services identified in subdivision a of subsection 1, the motor vehicle  
2 manufacturer or distributor shall compensate the dealer in the same manner as  
3 parts compensation under this section by paying the dealer for the dealer's cost  
4 of the part, if any, plus an amount equal to the dealer's parts markup, multiplied  
5 by the wholesale value of the part. The wholesale value of the part must be the  
6 greater of:

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

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

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

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

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

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

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

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

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

29 (2) Acting in bad faith; or

30 (3) Hindering, delaying, or rejecting the proper and timely payment of  
31 compensation due to a dealer under this section, provided nothing in this

1                                    paragraph may restrict or impair audits or chargebacks conducted in  
2                                    accordance with section 51-07-02.4.  
3        12. This section applies to all manufacturers and distributors as defined by section  
4                                    51-07-00.1, and any other person that supplies a component or part installed on a new  
5                                    motor vehicle for which the warranty of the component or part is warranted by another  
6                                    person that is not the manufacturer.