STATE OF NEW YORK

5085--A

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sens. KENNEDY, GALLIVAN, MATTERA, MURRAY, OBERACKER, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to requiring motor vehicle dealer franchisors to fully compensate franchised motor vehicle dealers for warranty service agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 465 of the vehicle and traffic law, as amended by chapter 26 of the laws of 2014, is amended to read as follows:

1. Every franchisor shall properly fulfill any warranty agreement and/or franchisor's service contract**, including but not limited to all warranty repairs, extended warranty repairs, factory compensated repairs, recalls, diagnostics, parts and other voluntary stop-sell repairs,** and shall compensate each of its franchised motor vehicle dealers for **all** warranty [~~**parts and labor**~~]**, recall, diagnostic labor operations and parts where applicable** in amounts [~~**which reflect reasonable compensation for such work**~~] **equal to the applicable labor time guide utilized for retail customer paid labor operations by a franchised motor vehicle dealer. In no event shall such compensation fail to include full compensation for diagnostic work, as well as repair service, labor, and parts. Additionally, if a technician is required to communicate with a technical assistance center, engineering or some external manufacturer source in order to provide a warranty repair, the manufacturer shall pay for the time from start of communications (including hold time) until the communication is complete**. All warranty claims and/or claims under a franchisor's service contract made by franchised motor vehicle dealers shall be paid within thirty days following their approval. For **diagnosis work,** parts reimbursement, other than components, systems, fixtures,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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appliances, furnishings, accessories and features of a house coach that are designed, used and maintained primarily for nonvehicular residential purposes, and for labor reimbursement, reasonable compensation shall not be less than the price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers. **In the event that a time guide has not been agreed to for warranty repairs, or said time guide does not define time for an applicable warranty repair, the franchisor's time guide shall be used, multiplied by one and one-half.** For purposes of this section, the price and rate charged by the franchised motor vehicle dealer for parts may be established by submitting to the franchisor one hundred sequential nonwarranty customer-paid service repair orders or the number of sequential nonwarranty customer-paid service repair orders written within a ninety day period, whichever is less, covering repairs made no more than one hundred eighty days before the submission, and declaring the price and rate, including average markup for the franchised motor vehicle dealer as its reimbursement rate. The reimbursement rate so declared shall go into effect thirty days following the declaration and shall be presumed to be reasonable, however a franchisor may rebut such presumption by showing that such rate so established is unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line make. The franchised motor vehicle dealer shall not request a change in the reimbursement rate more often than once in each calendar year. In establishing the labor reimbursement rate, the franchisor shall not require a franchised motor vehicle dealer to establish said rate by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, a transaction by transaction calculation. For the purposes of this section, the following parts or types of repairs shall be excluded from the parts and/or labor calculations and the franchisor's reimbursement requirements under this section: (a) parts sold at wholesale; (b) tires; (c) routine maintenance not covered under any retail customer warranty such as fluids, filters and belts not provided in the course of repairs; (d) vehicle reconditioning; and (e) batteries replaced as part of a routine maintenance operation. If the franchisor rejects the declaration or attempts to rebut the declaration because of an error in the dealer's submission, the franchisor shall identify with specificity the reason for rejection and identify the error or errors within the submission. In the event the franchisor rejects or rebuts the dealer's initial declaration, the dealer shall have the opportunity, within sixty days to resubmit the full and corrected declaration addressing the alleged error or errors identified by the franchisor. The franchisor shall respond within sixty days. The one hundred eighty day requirement for the repair orders shall be stayed from the date of initial submission. In any action or proceeding held pursuant to this subdivision, the franchisor shall have the burden of proving that the rate declared by the dealer was unreasonable as described in this subdivision and that the proposed adjustment of the average percentage markup or rejection of the submission is reasonable pursuant to the provisions of this subdivision. **No debit reduction or charge back of any item on a warranty repair order shall be made absent a finding of fraud or illegal actions by the dealer. No franchisor shall impose any form of cost recovery fees or surcharges against a franchised motor vehicle dealer for payments made in accordance with this subdivision. There shall be no reduction in payments under this subdivision due to preestablished market norms or market averages.**

Franchisors are prohibited from establishing restrictions or limitations of customer repair frequency due to failure rate indexes or national failure averages. A warranty claim timely made shall not be deemed invalid solely because unavailable parts cause additional use and mileage on the vehicle. If a franchisor imposes a recall or stop sale on any new vehicle in a franchised motor vehicle dealer's inventory that prevents the sale of the vehicle, the franchisor shall compensate the motor vehicle dealer for any interest and storage until the vehicle is repaired and made ready for sale.

§ 2. This act shall take effect immediately.