

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 Assem-
bly, 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 deal-
ers for all warranty ~~[parts and labor]~~, recall, diagnostic labor oper-
ations 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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1 appliances, furnishings, accessories and features of a house coach that
2 are designed, used and maintained primarily for nonvehicular residential
3 purposes, and for labor reimbursement, reasonable compensation shall not
4 be less than the price and rate charged by the franchised motor vehicle
5 dealer for like services to non-warranty and/or non-service contract
6 customers. In the event that a time guide has not been agreed to for
7 warranty repairs, or said time guide does not define time for an appli-
8 cable warranty repair, the franchisor's time guide shall be used, multi-
9 plied by one and one-half. For purposes of this section, the price and
10 rate charged by the franchised motor vehicle dealer for parts may be
11 established by submitting to the franchisor one hundred sequential
12 nonwarranty customer-paid service repair orders or the number of sequen-
13 tial nonwarranty customer-paid service repair orders written within a
14 ninety day period, whichever is less, covering repairs made no more than
15 one hundred eighty days before the submission, and declaring the price
16 and rate, including average markup for the franchised motor vehicle
17 dealer as its reimbursement rate. The reimbursement rate so declared
18 shall go into effect thirty days following the declaration and shall be
19 presumed to be reasonable, however a franchisor may rebut such presump-
20 tion by showing that such rate so established is unreasonable in light
21 of the practices of all other franchised motor vehicle dealers in the
22 vicinity offering the same line make. The franchised motor vehicle deal-
23 er shall not request a change in the reimbursement rate more often than
24 once in each calendar year. In establishing the labor reimbursement
25 rate, the franchisor shall not require a franchised motor vehicle dealer
26 to establish said rate by a methodology, or by requiring information,
27 that is unduly burdensome or time consuming to provide, including, but
28 not limited to, a transaction by transaction calculation. For the
29 purposes of this section, the following parts or types of repairs shall
30 be excluded from the parts and/or labor calculations and the
31 franchisor's reimbursement requirements under this section: (a) parts
32 sold at wholesale; (b) tires; (c) routine maintenance not covered under
33 any retail customer warranty such as fluids, filters and belts not
34 provided in the course of repairs; (d) vehicle reconditioning; and (e)
35 batteries replaced as part of a routine maintenance operation. If the
36 franchisor rejects the declaration or attempts to rebut the declaration
37 because of an error in the dealer's submission, the franchisor shall
38 identify with specificity the reason for rejection and identify the
39 error or errors within the submission. In the event the franchisor
40 rejects or rebuts the dealer's initial declaration, the dealer shall
41 have the opportunity, within sixty days to resubmit the full and
42 corrected declaration addressing the alleged error or errors identified
43 by the franchisor. The franchisor shall respond within sixty days. The
44 one hundred eighty day requirement for the repair orders shall be stayed
45 from the date of initial submission. In any action or proceeding held
46 pursuant to this subdivision, the franchisor shall have the burden of
47 proving that the rate declared by the dealer was unreasonable as
48 described in this subdivision and that the proposed adjustment of the
49 average percentage markup or rejection of the submission is reasonable
50 pursuant to the provisions of this subdivision. No debit reduction or
51 charge back of any item on a warranty repair order shall be made absent
52 a finding of fraud or illegal actions by the dealer. No franchisor
53 shall impose any form of cost recovery fees or surcharges against a
54 franchised motor vehicle dealer for payments made in accordance with
55 this subdivision. There shall be no reduction in payments under this
56 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.