

# STATE OF NEW YORK

5085--B

2023-2024 Regular Sessions

## IN SENATE

February 22, 2023

Introduced by Sens. KENNEDY, ADDABBO, BAILEY, BRISPORT, BROUK, CANZONER-I-FITZPATRICK, CHU, COMRIE, COONEY, FERNANDEZ, GONZALEZ, HARCKHAM, HINCHEY, JACKSON, LANZA, LIU, MANNION, MARTINEZ, MARTINS, MATTERA, MAY, MAYER, MURRAY, MYRIE, OBERACKER, PALUMBO, RAMOS, RIVERA, SALAZAR, SCARCELLA-SPANTON, SKOUFIS, STAVISKY, WEBB, WEIK -- 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 -- reported favorably from said committee and committed to the Committee on Finance -- 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. For purposes of this section, reasonable compensation shall include the reasonable labor time on retail customer paid labor operations by a franchised motor vehicle dealer. 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

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

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1 their approval. For diagnosis work, parts reimbursement, other than  
2 components, systems, fixtures, appliances, furnishings, accessories and  
3 features of a house coach that are designed, used and maintained prima-  
4 rily for nonvehicular residential purposes, and for labor reimbursement,  
5 reasonable compensation shall not be less than the price and rate  
6 charged by the franchised motor vehicle dealer for like services to  
7 non-warranty and/or non-service contract customers. For purposes of  
8 this section, the price and rate charged by the franchised motor vehicle  
9 dealer for parts may be established by submitting to the franchisor one  
10 hundred sequential nonwarranty customer-paid service repair orders or  
11 the number of sequential nonwarranty customer-paid service repair orders  
12 written within a ninety day period, whichever is less, covering repairs  
13 made no more than one hundred eighty days before the submission, and  
14 declaring the price and rate, including average markup for the fran-  
15 chised motor vehicle dealer as its reimbursement rate. The reimbursement  
16 rate so declared shall go into effect thirty days following the declara-  
17 tion and shall be presumed to be reasonable, however a franchisor may  
18 rebut such presumption by showing that such rate so established is  
19 unreasonable in light of the practices of all other franchised motor  
20 vehicle dealers in the vicinity offering the same line make. The fran-  
21 chised motor vehicle dealer shall not request a change in the reimburse-  
22 ment rate more often than once in each calendar year. In establishing  
23 the labor reimbursement rate, the franchisor shall not require a fran-  
24 chised motor vehicle dealer to establish said rate by a methodology, or  
25 by requiring information, that is unduly burdensome or time consuming to  
26 provide, including, but not limited to, a transaction by transaction  
27 calculation. For the purposes of this section, the following parts or  
28 types of repairs shall be excluded from the parts and/or labor calcu-  
29 lations and the franchisor's reimbursement requirements under this  
30 section: (a) parts sold at wholesale; (b) tires; (c) routine maintenance  
31 not covered under any retail customer warranty such as fluids, filters  
32 and belts not provided in the course of repairs; (d) vehicle recondi-  
33 tioning; and (e) batteries replaced as part of a routine maintenance  
34 operation. If the franchisor rejects the declaration or attempts to  
35 rebut the declaration because of an error in the dealer's submission,  
36 the franchisor shall identify with specificity the reason for rejection  
37 and identify the error or errors within the submission. In the event the  
38 franchisor rejects or rebuts the dealer's initial declaration, the deal-  
39 er shall have the opportunity, within sixty days to resubmit the full  
40 and corrected declaration addressing the alleged error or errors identi-  
41 fied by the franchisor. The franchisor shall respond within sixty days.  
42 The one hundred eighty day requirement for the repair orders shall be  
43 stayed from the date of initial submission. In any action or proceeding  
44 held pursuant to this subdivision, the franchisor shall have the burden  
45 of proving that the rate declared by the dealer was unreasonable as  
46 described in this subdivision and that the proposed adjustment of the  
47 average percentage markup or rejection of the submission is reasonable  
48 pursuant to the provisions of this subdivision. A warranty claim timely  
49 made shall not be deemed invalid solely because unavailable parts cause  
50 additional use and mileage on the vehicle.

51 § 2. This act shall take effect immediately.