

# STATE OF NEW YORK

4066--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 9, 2023

Introduced by M. of A. BURGOS, SILLITTI, GALLAGHER, FAHY, BRAUNSTEIN, CLARK, FALL, SEPTIMO, MAMDANI, RIVERA, DURSO, MILLER, LUNSFORD, DARLING, SANTABARBARA, DeSTEFANO, J. A. GIGLIO, SMITH, K. BROWN -- read once and referred 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

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

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