

STATE OF NEW YORK

5085

2023-2024 Regular Sessions

IN SENATE

February 22, 2023

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

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:

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

4 1. Every franchisor shall properly fulfill any warranty agreement
5 and/or franchisor's service contract, including but not limited to all
6 warranty and factory compensated repairs, recalls, and other voluntary
7 stop-sell repairs, and shall compensate each of its franchised motor
8 vehicle dealers for warranty parts and labor and diagnostic work in
9 amounts which reflect reasonable compensation for such work. In no event
10 shall such compensation fail to include full compensation for diagnostic
11 work, as well as repair service, labor, and parts. Additionally, if a
12 technician is required to communicate with a technical assistance
13 center, engineering or some external manufacturer source in order to
14 provide a warranty repair, the manufacturer shall pay for the time from
15 start of communications (including hold time) until the communication is
16 complete. All warranty claims and/or claims under a franchisor's service
17 contract made by franchised motor vehicle dealers shall be paid within
18 thirty days following their approval. For diagnosis work, parts
19 reimbursement, other than components, systems, fixtures, appliances,
20 furnishings, accessories and features of a house coach that are
21 designed, used and maintained primarily for nonvehicular residential
22 purposes, and for labor reimbursement, reasonable compensation shall not
23 be less than the price and rate charged by the franchised motor vehicle
24 dealer for like services to non-warranty and/or non-service contract

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

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

1 failure averages. A warranty claim timely made shall not be deemed
2 invalid solely because unavailable parts cause additional use and mile-
3 age on the vehicle. If a franchisor imposes a recall or stop sale on
4 any new vehicle in a franchised motor vehicle dealer's inventory that
5 prevents the sale of the vehicle, the franchisor shall compensate the
6 motor vehicle dealer for any interest and storage until the vehicle is
7 repaired and made ready for sale.

8 § 2. This act shall take effect immediately.