

STATE OF NEW YORK

5085--C

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, 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 -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- 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:

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 repairs, extended warranty repairs, factory compensated
7 repairs, recalls, diagnostics, parts and other voluntary stop-sell
8 repairs, and shall compensate each of its franchised motor vehicle deal-
9 ers for all warranty [~~parts and labor~~], recall, diagnostic labor oper-
10 ations and parts where applicable in amounts which reflect reasonable
11 compensation for such work. For purposes of this section, reasonable
12 compensation shall be the reasonable labor time allowances defined by

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

LBD02112-07-4

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

55 § 2. This act shall take effect immediately.