

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 502 by Representative Stefanski

MOTOR VEHICLES: Provides relative to dealer warranty compensation

Synopsis of Senate Amendments

1. Changes the definition of "warranty work".
2. Removes a condition that expenses incurred by a dealer to perform warranty work be considered "reasonable" in order for compensation to be mandatory.
3. Adds the delivery and preparation obligations imposed on the dealer by a manufacturer, distributor, wholesaler, factory branch, or distributor branch to the types of expenses that mandate compensation to the dealer.
4. Changes "work of like kind" to "repairs" in reference to a non-warranty qualifying performance.
5. Removes repairs for which discounts have been negotiated with extended warranty contract providers from the list of items not to be considered in calculating the labor rate or parts mark-up.
6. Adds body shop repairs of conditions caused by collision, road hazard, the force of the elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate act to the list of items not to be considered in calculating the labor rate or parts mark-up.
7. Adds a provision that allows a manufacturer, distributor, wholesaler, factory branch, or distributor branch to request additional repair orders for the 30 day period before or after repair orders were submitted for purposes of establishing or modifying a rate, in instances where the original parts mark-up or labor rate is substantially higher or lower than the rate on record at that time.
8. Changes the standards necessary to rebut the presumption that a parts mark-up or labor rate is accurate and therefore to be effective, from showing that any one of four conditions are met to showing that all four of the conditions are met.
9. Creates an exception to the prohibition against filing more than one rebuttal and adding to, expanding, supplementing, or modifying a rebuttal, in instances where relevant information that was not known, or could not have been known, at the time of issuing a rebuttal is discovered.
10. Limits the time in which a dealer may file a protest arising out of a failure to agree on the parts mark-up or labor rate to within 60 days of receiving the manufacturer's rejection and proposal.
11. Makes technical changes.

Digest of Bill as Finally Passed by Senate

Proposed law provides definitions for manufacturer, distributor, wholesaler, factory branch, or distributor branch's warranty, parts, qualifying repair, qualifying repair order, repair order, and warranty work.

Present law provides that a manufacturer, a distributor, a wholesaler, distributor branch, or factory branch, or officer, agent, or other representative thereof shall be in violation of present law for failing to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by such dealer to perform under and comply with the manufacturer's or a distributor's warranty agreement. Proposed law retains present law in part, but removes an officer, agent, or representative thereof from the list of potential violators.

Present law prohibits a manufacturer or distributor from paying its dealers at a price or rate for warranty work that is less than that charged by the dealer to the retail customer of the dealer for non-warranty work of like kind.

Proposed law retains present law in part but adds wholesaler, factory branch, or distributor branch to the list of actors prohibited from engaging in the actions provided for in present law and changes the standard for comparison from the charge for non-warranty work of like kind to the charge for non-warranty qualifying repairs.

Proposed law provides that time allowances for the performance of warranty work shall be reasonable and adequate in relation to the nature and scope of the work for a qualified technician of ordinary skill to perform work.

Proposed law provides that time allowances for the performance of warranty work shall be reasonable and adequate in relation to the nature and scope of the work, using the actual time required by a qualified technician of ordinary skill to perform the work.

Proposed law provides that subject to the provisions of proposed law, the parts mark-up, labor rate, or both customarily charged by the dealer may be established or modified at the election of the dealer by submitting, in writing, to the representative or pre-designated by electronic transmission or tangible delivery, to the manufacturer, distributor, wholesaler, factory branch, or distributor branch, either of the following:

- (1) All consecutive repair orders that include 100 sequential qualifying repair orders.
- (2) All repairs order closed during any period of 90 consecutive days.

Proposed law provides that a dealer submitting repair orders pursuant to proposed law shall submit the option that produces the fewer number of repair orders. Proposed law further provides that in making this determination, the dealer should consider repairs made no more than 180 days before the submission.

Proposed law provides that a dealer seeking to establish or modify the warranty labor rate, parts mark-up, or both shall submit to the manufacturer, distributor, wholesaler, factory branch, or distributor branch either of the following:

- (1) A single set of repair orders for the purpose of calculating both the labor rate or parts mark-up.
- (2) A single set of repair orders for the purpose of calculating only the labor rate or parts mark-up.

Proposed law provides that a dealer may not establish or modify the parts mark-up or labor rate more than once per a 12-month period.

Proposed law provides for the calculation of parts mark-up and labor rates and excludes certain repair and other services from the calculation.

Proposed law allows the manufacturer, distributor, wholesaler, factory branch, or distributor branch to request additional repair orders from the dealer if it is determined that the parts mark-up, labor rate, or both, calculated in accordance with proposed law is substantially higher or lower than the rate currently on record with the manufacturer, distributor,

wholesaler, factory branch, or distributor branch for labor parts, or both. Proposed law provides that the manufacturer, distributor, wholesaler, factory branch, or distributor branch has 45 days from receiving the additional repairs to rebut the presumption of accuracy.

Proposed law provides that in order to rebut the presumption the manufacturer, distributor, wholesaler, factory branch, or distributor branch shall do all of the following:

- (1) Reasonably substantiate that the submission is materially inaccurate and provide a full explanation of any and all reasons.
- (2) Produce evidence validating each reason.
- (3) Produce a copy of all calculations used to demonstrate any material inaccuracies.
- (4) Produce a proposed adjusted parts mark-up, labor rate, or both, based upon the qualified repair orders submitted by the dealer.

Proposed law provides that the manufacturer, distributor, wholesaler, factory branch, or distributor branch shall not submit more than one rebuttal to the dealer and shall not add, expand, supplement, or otherwise modify any element, including but not limit to any grounds for contesting the parts mark-up or labor rate mark-up, except upon discovery of relevant information that was not known or could not have been known at the time of issuing the rebuttal.

Proposed law provides that if the dealer and the manufacturer, distributor, wholesaler, factory branch, or distributor branch do not agree on the parts mark-up or labor rate, the dealer may file a protest with the Louisiana Motor Vehicle Commission within 60 days of receiving the manufacturer's rejection and proposal. Proposed law further provides that the commission shall notify the manufacturer, distributor, wholesaler, factory branch, or distributor branch and schedule a hearing.

Proposed law provides that if the commission decides in favor of the dealer, any increase in the dealer's parts mark-up or labor rate shall be effective, retroactively, forty-five days following the manufacturer, distributor, wholesaler, factory branch, or distributor branch's receipt of the original submission.

Proposed law provides that if a manufacturer, distributor, wholesaler, factory branch, or distributor branch furnishes a part to a dealer, at a reduced cost or at no cost, to use in performing warranty work, the manufacturer, distributor, wholesaler, factory branch, or distributor branch shall compensate the dealer for the part in the same manner as warranty parts compensation under proposed law by compensating the dealer on the basis of the dealer's mark-up on the cost for the part as listed in the manufacturer, distributor, wholesaler, factory branch, or distributor branch's price schedule, minus the cost for the part.

Proposed law prohibits a manufacturer, distributor, wholesaler, factory branch, or distributor branch from requiring a dealer to establish the rate customarily charged by the dealer by an unduly burdensome or time consuming method or by requiring the submission of information that is unduly burdensome or time consuming to provide.

(Amends R.S. 32:1262(A))