

2021 Regular Session

HOUSE BILL NO. 502

BY REPRESENTATIVES STEFANSKI AND THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES: Provides relative to dealer warranty compensation

1 AN ACT

2 To amend and reenact R.S. 32:1262(A), relative to motor vehicles; to provide for warranty  
3 work on motor vehicles or motor vehicle parts; to provide for repair orders; to  
4 provide for parts mark-ups or labor rates; to provide for definitions; and to provide  
5 for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 32:1262(A) is hereby amended and reenacted to read as follows:

8 §1262. Warranty; compensation; audits of dealer records

9 A.(1) For the purpose of this Section, the following terms have the meanings  
10 ascribed to them:

11 (a) "Manufacturer, distributor, wholesaler, factory branch, or distributor  
12 branch's warranty" means and includes a new motor vehicle warranty, a recall, or a  
13 certified pre-owned warranty of a manufacturer, distributor, wholesaler, factory  
14 branch, or distributor branch to repair or replace a defect in a vehicle or part.

15 (b) "Parts" means parts and components of a motor vehicle, including  
16 engine, transmission, other parts assemblies, and manufacturer replacement parts.

17 (c) "Qualifying repair" means a repair to a vehicle included within the  
18 manufacturer, distributor, wholesaler, factory branch, or distributor branch's original  
19 new motor vehicle warranty, except that the vehicle, on which the repair was  
20 performed exceeds the chronological or mileage limit of the warranty, and the repair

1 does not otherwise constitute warranty work and does not include any of the work  
2 described in Paragraph (8) of this Subsection.

3 (d) "Qualifying repair order" means a repair order that encompasses, in  
4 whole or in part, a qualifying repair or repairs.

5 (e) "Repair order" means an invoice paid by a retail customer and closed at  
6 the time of submission, which encompasses one or more repairs to or other work on  
7 a vehicle, and reflecting, in the case of a parts mark-up submission, the cost of each  
8 part and its sale price, and in the case of a labor rate submission, the labor hours  
9 charged to each job and the sale price of such labor.

10 (f) "Warranty work" means work, including diagnostic labor, performed or  
11 arranged to be performed by a dealer in order to fulfill the obligations of a  
12 manufacturer, distributor, wholesaler, factory branch, or distributor branch's  
13 warranty, which is required by a manufacturer, distributor, wholesaler, factory  
14 branch, or distributor branch to fulfill the delivery and preparation obligations  
15 imposed on the dealer by a distributor, wholesaler, factory branch, or distributor  
16 branch.

17 (2) It shall be a violation of this Chapter for a manufacturer, a distributor, a  
18 wholesaler, distributor branch or factory branch ~~, or officer, agent or other~~  
19 ~~representative thereof~~ to fail to adequately and fairly compensate its dealers for  
20 labor, parts, and other reasonable expenses incurred by such dealer to perform ~~under~~  
21 ~~and comply with a manufacturer's or a distributor's warranty agreement~~ warranty  
22 work.

23 (2)(3) In no event shall any manufacturer, ~~or distributor, wholesaler, factory~~  
24 ~~branch, or distributor branch~~ pay its dealers at a price or rate a dealer an amount of  
25 money for warranty work that is less than that charged by the dealer to the ~~retail~~  
26 ~~customers~~ retail customer of the dealer for ~~nonwarranty~~ non-warranty qualifying as  
27 work of like kind. Time allowances for the performance of warranty work shall be  
28 reasonable and adequate in relation to the nature and scope of the work for a  
29 qualified technician of ordinary skill to perform the work.

1           ~~(3) Warranty work includes parts and labor performed.~~

2           (4)(a) Subject to the provisions of Subparagraph (b) of this Paragraph, the  
3           parts mark-up or labor rate customarily charged by the dealer may be established or  
4           modified at the election of the dealer by formally submitting in writing, to the  
5           representative or pre-designated representative of the manufacturer, distributor,  
6           wholesaler, factory branch, or distributor branch, by electronic transmission or  
7           tangible delivery, either of the following:

8           (i) All consecutive repair orders that include one hundred sequential  
9           qualifying repair orders.

10          (ii) All repair orders closed during any period of ninety consecutive days.

11          (b) A dealer submitting repair orders pursuant to Subparagraph (a) of this  
12          Paragraph shall submit the option that produces the fewer number of repair orders,  
13          which includes repairs made no more than one hundred eighty days before the  
14          submission.

15          (5) The dealer shall calculate the labor rate by determining the total charges  
16          for labor from the qualified repairs submitted and dividing that amount by the total  
17          number of hours that produced the total charges. The dealer shall calculate the parts  
18          mark-up by determining the total charges for parts from the qualified repairs  
19          submitted, dividing that amount by the total cost of the purchase of such parts,  
20          subtracting one from that amount, and multiplying by one hundred to produce a  
21          percentage.

22          (6) A dealer seeking to establish or modify the warranty labor rate or parts  
23          mark-up shall submit to the manufacturer, distributor, wholesaler, factory branch, or  
24          distributor branch either of the following:

25          (a) A single set of repair orders for the purpose of calculating both the labor  
26          rate and parts mark-up.

27          (b) A single set of repairs order for the purpose of calculating only the labor  
28          rate or parts mark-up.

1           (7) A dealer may not submit to establish or modify its parts mark-up rate,  
2           labor rate, or both, more than once in a twelve-month period.

3           (8) In calculating the labor rate or parts mark-up, the following shall not be  
4           included:

5           (a) Repairs subject to manufacturer, distributor, wholesaler, factory branch,  
6           or distributor branch's discounts, such as special events, special promotions,  
7           coupons, or service campaigns.

8           (b) Parts sold at wholesale.

9           (c) Repairs of vehicles owned by the dealer or an employee.

10          (d) Routine maintenance, including but not limited to replacements of fluids,  
11          filters, batteries, bulbs, belts, nuts, bolts, or fasteners.

12          (e) Installations of accessories.

13          (f) Replacement of or work on tires, wheels, including alignments, wheel or  
14          tire rotations, or replacements of brake drums, rotors, shoes, or pads.

15          (g) Vehicle reconditioning.

16          (h) Safety or emission inspections required by law.

17          (i) Repairs for which volume discounts have been negotiated with  
18          government agencies, insurers, extended warranty or service contract providers, or  
19          other third-party payors.

20          (j) Parts that do not have individual part numbers.

21          (k) Manufacturer, distributor, wholesaler, factory branch, or distributor  
22          branch's approved and reimbursed goodwill repairs or reimbursements.

23          (l) Windshield replacements, window etchings, window tints, protective  
24          films, or other masking products.

25          (9) The submitted parts mark-up or labor rate shall be presumed accurate,  
26          and shall go into effect forty-five days after the manufacturer, distributor,  
27          wholesaler, factory branch, or distributor branch's receipt of the submission unless,  
28          within the forty-five day period, the manufacturer, distributor, wholesaler, factory  
29          branch, or distributor branch rebuts the presumption. The manufacturer, distributor,

1 wholesaler, factory branch, or distributor branch may rebut the presumption by  
2 showing any of the following:

3 (a) By reasonably substantiating that the submission is materially inaccurate  
4 and by providing a full explanation of any and all reasons.

5 (b) By producing evidence validating each reason.

6 (c) By producing a copy of all calculations used to demonstrate any material  
7 inaccuracies.

8 (d) By producing a proposed adjusted parts mark-up, labor rate, or both,  
9 based upon the qualified repair orders submitted by the dealer.

10 (10) Subject to the provisions of Paragraph (9) of this Subsection, the  
11 manufacturer, distributor, wholesaler, factory branch, or distributor branch shall not  
12 submit more than one rebuttal to the dealer and shall not add, expand, supplement,  
13 or otherwise modify any element, including but not limited to any grounds for  
14 contesting the parts mark-up or labor rate.

15 (11) If the dealer and the manufacturer, distributor, wholesaler, factory  
16 branch, or distributor branch do not agree on the parts mark-up or labor rate, the  
17 dealer may file a protest with the Louisiana Motor Vehicle Commission. The  
18 commission shall notify the manufacturer, distributor, wholesaler, factory branch,  
19 or distributor branch and schedule a hearing. The manufacturer, distributor,  
20 wholesaler, factory branch, or distributor branch shall have the burden of proving by  
21 a preponderance of the evidence that the dealer's submitted parts mark-up or labor  
22 rate was materially inaccurate as described in Paragraph (9) of this Subsection. If the  
23 Louisiana Motor Vehicle Commission decides in favor of the dealer, any increase  
24 in the dealer's parts mark-up or labor rate shall be effective, retroactively, forty-five  
25 days following the manufacturer, distributor, wholesaler, factory branch, or  
26 distributor branch's receipt of the original submission.

27 (12) If a manufacturer, distributor, wholesaler, factory branch, or distributor  
28 branch furnishes a part to a dealer, at either no cost or a reduced cost, to use in  
29 performing warranty work, the manufacturer, distributor, wholesaler, factory branch,



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 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.

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. 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 the burden of proof shall be placed on the manufacturer, distributor, wholesaler, factory branch, or distributor branch and the manufacturer, distributor, wholesaler, factory branch, or distributor branch must prove by a preponderance of the evidence that the dealer's submitted parts or mark-up or labor rate was materially inaccurate.

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.

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

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Remove the definition of "franchisor".
2. Change references to "franchisor" with "manufacturer, distributor, wholesaler, factory branch, or distributor branch".
3. Add a provision requiring time allowances for performance of warranty work to be reasonable and adequate.
4. Change the required method for submitting documentation.
5. Allow for both mark-up rates and labor rates to be submitted.
6. Remove replacement of brakes from the factors to be considered in calculating rates.
7. Remove repairs which have been negotiated from fleet owners from the factors to be considered in calculating rates.
8. Remove 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 from the factors to be considered in calculating rates.
9. Change the period when rate calculations are presumed to be accurate from 30 days to 45 days.
10. Change the period of rate retroactivity from 30 days to 45 days.
11. Make technical changes.