

GREEN SHEET REDIGEST

HB 502

2021 Regular Session

Stefanski

MOTOR VEHICLES: Provides relative to dealer warranty compensation

DIGEST

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 wholesales, 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 the provisions of present law and provides that a manufacturer, a distributor, a wholesaler, distributor branch, or factory branch shall be in violation of present law for failing to adequately and fairly compensate a dealer for performing delivery and preparation obligations imposed on the dealer by a manufacturer, distributor, wholesaler, factory branch, or distributor branch.

Present law provides that in no event shall any manufacturer or distributor pay its dealer at a price or rate for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind.

Proposed law provides that in no event shall any manufacturer, distributor, wholesaler, factory branch, or distributor branch pay a dealer for warranty work less than the rates charged by the dealer to the retail customer of the dealer for non-warranty 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 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 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 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 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.

(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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the reengrossed bill

1. Defines the term "warranty work".
2. Provides for adequate and fair compensation for dealers that perform obligations imposed on him by the manufacturer, distributor, wholesaler, factory branch, or distributor branch.
3. Excludes certain work and services from the calculation of the labor rate or parts mark-up.
4. Adds a process for the manufacturer to request additional repair orders from a dealer.
5. Provides an exception to the one-time rebuttal if relevant information that was not known or could not have been known at the time of the rebuttal is discovered.
6. Specifies that the dealer has 60 days to file a protest with the La. Motor Vehicle Commission.
7. Makes technical amendments.