

2021 Regular Session

HOUSE BILL NO. 502

BY REPRESENTATIVES STEFANSKI AND THOMPSON AND SENATORS
ABRAHAM AND HENSGENS

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 by
 11 a dealer in order to fulfill the obligations of a manufacturer, distributor, wholesaler,
 12 factory branch, or distributor branch warranty. "Warranty work" shall also include
 13 work arranged to be performed by a dealer if such work is authorized by the
 14 manufacturer, distributor, wholesaler, factory branch, or distributor branch in order
 15 to fulfill the obligations of a manufacturer, distributor, wholesaler, factory branch,
 16 or distributor branch warranty.

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 expenses incurred by such dealer to perform ~~under and comply~~
 21 ~~with a manufacturer's or a distributor's warranty agreement~~ warranty work and the
 22 delivery and preparation obligations imposed on the dealer by a manufacturer,
 23 distributor, wholesaler, factory branch, or distributor branch.

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

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

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

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

6 (b) Parts sold at wholesale.

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

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

10 (e) Installations of accessories.

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

13 (g) Vehicle reconditioning.

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

15 (i) Repairs for which volume discounts have been negotiated with
16 government agencies, insurers, or service contract providers.

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

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

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

22 (m) Body shop repairs of conditions caused by collision, road hazard, the
23 force of the elements, vandalism, theft, or owner, operator, or third party negligence
24 or deliberate act.

25 (9)(a) 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 receives the submission unless,
28 within the forty-five day period, the manufacturer, distributor, wholesaler, factory
29 branch, or distributor branch rebuts the presumption.

1 **(b)** If the manufacturer, distributor, wholesaler, factory branch, or distributor
2 branch determines from any set of qualifying repair orders submitted by the dealer
3 that the parts mark-up, labor rate, or both, calculated in accordance with the
4 provisions of this Subsection, is substantially higher or lower than the rate currently
5 on record with the manufacturer, distributor, wholesaler, factory branch, or
6 distributor branch for labor, parts, or if applicable, both, the manufacturer,
7 distributor, wholesaler, factory branch, or distributor branch may request in writing,
8 within forty-five days of receipt of the submitted parts mark-up or labor rate,
9 additional repair orders for a period of either thirty days prior to or thirty days
10 subsequent to the time for which the repair orders were submitted for purposes of
11 establishing or modifying a rate. The manufacturer, distributor, wholesaler, factory
12 branch, or distributor branch shall have forty-five days from receiving the additional
13 repair orders to rebut the presumption in accordance with the provisions of this
14 Paragraph, provided that any rebuttal utilizing the additional repair orders shall
15 conform to the requirements of Paragraphs (4), (5), and (8) of this Subsection.

16 **(c)** The manufacturer, distributor, wholesaler, factory branch, or distributor
17 branch may rebut the presumption by doing all of the following:

18 **(i)** Reasonably substantiating that the submission is materially inaccurate and
19 by providing a full explanation of any and all reasons.

20 **(ii)** Producing evidence validating each reason.

21 **(iii)** Producing a copy of all calculations used to demonstrate any material
22 inaccuracies.

23 **(iv)** Producing a proposed adjusted parts mark-up, labor rate, or if applicable,
24 both, based upon the qualified repair orders submitted by the dealer.

25 **(10)** Subject to the provisions of Paragraph (9) of this Subsection, the
26 manufacturer, distributor, wholesaler, factory branch, or distributor branch shall not
27 submit more than one rebuttal to the dealer and shall not add to, expand, supplement,
28 or otherwise modify any element, including but not limited to any grounds for
29 contesting the parts mark-up or labor rate, except upon the discovery of relevant

1 information that was not known or could not have been known at the time of issuing
2 the rebuttal.

3 (11) If the dealer and the manufacturer, distributor, wholesaler, factory
4 branch, or distributor branch do not agree on the parts mark-up or labor rate, the
5 dealer may file a protest with the Louisiana Motor Vehicle Commission within sixty
6 days of receiving the manufacturer's rejection and proposal. The commission shall
7 notify the manufacturer, distributor, wholesaler, factory branch, or distributor branch
8 and schedule a hearing. The manufacturer, distributor, wholesaler, factory branch,
9 or distributor branch shall have the burden of proving by a preponderance of the
10 evidence that the dealer's submitted parts mark-up or labor rate was materially
11 inaccurate as described in Paragraph (9) of this Subsection. If the Louisiana Motor
12 Vehicle Commission decides in favor of the dealer, any increase in the dealer's parts
13 mark-up or labor rate shall be effective, retroactively, forty-five days following the
14 manufacturer, distributor, wholesaler, factory branch, or distributor branch's receipt
15 of the original submission.

16 (12) If a manufacturer, distributor, wholesaler, factory branch, or distributor
17 branch furnishes a part to a dealer, at either no cost or a reduced cost, to use in
18 performing warranty work, the manufacturer, distributor, wholesaler, factory branch,
19 or distributor branch shall compensate the dealer for the part in the same manner as
20 warranty parts compensation under this Section by compensating the dealer on the
21 basis of the dealer's mark-up on the cost for the part as listed in the manufacturer,
22 distributor, wholesaler, factory branch, or distributor branch's price schedule, minus
23 the cost for the part.

24 (13) A manufacturer, distributor, wholesaler, factory branch, or distributor
25 branch may not require a dealer to establish the parts mark-up or labor rate
26 customarily charged by the dealer for parts or labor by an unduly burdensome or
27 time-consuming method or by requiring information that is unduly burdensome or
28 time-consuming to provide, including but not limited to part-by-part or transaction-
29 by-transaction calculations.

