

2021 Regular Session

HOUSE BILL NO. 502

BY REPRESENTATIVE STEFANSKI

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) "Franchisor" means a manufacturer, distributor, wholesaler, factory
12 branch, or distributor branch, or any affiliate, officer, agent, or other representative,
13 which authorizes, requires, or requests a dealer to perform warranty work.

14 (b) "Franchisor's warranty" means and includes a new motor vehicle
15 warranty, a recall, a certified pre-owned warranty, or any other obligation of a
16 franchisor to repair or replace a defect in a vehicle or part.

17 (c) "Parts" means parts, accessories, and components, including engine,
18 transmission, and other parts assemblies, and replacement parts, accessories, and
19 components.

1 (d) "Qualifying repair" means a repair to a vehicle included within the
2 franchisor's new motor vehicle warranty, except when the vehicle, on which the
3 repair was performed, exceeds the chronological or mileage limit of the warranty,
4 and the repair does not otherwise constitute warranty work and does not include any
5 of the work described in Paragraph (8) of this Subsection.

6 (e) "Qualifying repair order" means a repair order that encompasses, in
7 whole or in part, a qualifying repair or repairs.

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

13 (g) "Warranty work" means work, including but not limited to diagnostic
14 labor, performed or arranged to be performed by a dealer in order to fulfill the
15 obligations of a franchisor's warranty, which is required, requested, or approved by
16 a franchisor or which a franchisor has agreed to pay, or to fulfill the delivery and
17 preparation obligations imposed on the dealer by a franchisor.

18 A.(1)(2) It shall be a violation of this Chapter for a ~~manufacturer, a~~
19 ~~distributor, a wholesaler, distributor branch or factory branch, or officer, agent or~~
20 ~~other representative thereof~~ franchisor to fail to adequately and fairly compensate its
21 dealers for labor, parts, and other expenses incurred by such dealer to perform ~~under~~
22 ~~and comply with a manufacturer's or a distributor's warranty agreement~~ warranty
23 work.

24 (2)(3) In no event shall any ~~manufacturer or distributor~~ franchisor pay its
25 ~~dealers at a price or rate~~ a dealer an amount of money for warranty work that is less
26 than that charged by the dealer to the ~~retail customers~~ retail customer of the dealer
27 for ~~nonwarranty~~ non-warranty work of like kind. Time allowances for the
28 performance of warranty work shall be reasonable and adequate in relation to the

1 nature and scope of the work, using the actual time required by a qualified technician
2 of ordinary skill to perform the work.

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

4 (4)(a) Subject to the provisions of Subparagraph (b) of this Paragraph, the
5 parts mark-up or labor rate customarily charged by the dealer may be established or
6 modified at the election of the dealer by submitting, by electronic transmission or
7 tangible delivery to the franchisor, 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 franchisor either of the following:

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

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

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

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

6 (a) Repairs subject to franchisor discounts, such as special events, special
7 promotions, 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, or brakes, including alignments,
14 wheel or 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, fleet owners, extended warranty or service contract
19 providers, or other third-party payors.

20 (j) Repairs of conditions caused by collision, road hazard, the force of the
21 elements, vandalism, theft, or owner, operator, or third-party negligence or deliberate
22 act.

23 (k) Parts that do not have individual part numbers.

24 (l) Franchisor approved and reimbursed goodwill repairs or reimbursements.

25 (m) Window replacements, window etchings, window tints, protective films,
26 or other masking products.

27 (9) The submitted parts mark-up or labor rate shall be presumed accurate,
28 and shall go into effect thirty days after the franchisor's receipt of the submission,

1 unless, within the thirty-day period, the franchisor rebuts the presumption. The
2 franchisor may rebut the presumption by 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 or labor rate, based upon
9 the qualified repair orders submitted by the dealer.

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

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

23 (12) If a franchisor furnishes a part to a dealer, at either no cost or a reduced
24 cost, to use in performing warranty work, the franchisor shall compensate the dealer
25 for the part in the same manner as warranty parts compensation under this Section
26 by compensating the dealer on the basis of the dealer's mark-up on the cost for the
27 part as listed in the franchisor's price schedule, minus the cost for the part.

28 (13) A franchisor may not require a dealer to establish the rate customarily
29 charged by the dealer for parts or labor by an unduly burdensome or time-consuming

1 method or by requiring information that is unduly burdensome or time-consuming
2 to provide, including but not limited to part-by-part or transaction-by-transaction
3 calculations.

4 ~~(4)~~ (14) All claims made by the dealer for compensation under this
5 Subsection shall be paid within thirty days after approval and shall be approved or
6 disapproved within thirty days after receipt. When any claim is disapproved, the
7 dealer shall be notified in writing of the grounds for disapproval.

8 ~~(5)~~ (15) The obligations in this Subsection as they relate to recreational
9 products may be modified by contract.

10 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 502 Engrossed

2021 Regular Session

Stefanski

Abstract: Provides relative to dealer warranty compensation.

Proposed law provides definitions for franchisor, franchisor's warranty, parts, qualifying repair, qualifying repair order, repair order, and warranty work.

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 franchisor pay a dealer an amount of money 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 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 or labor rate customarily charged by the dealer may be established or modified at the election of the dealer by submitting, by electronic transmission or tangible delivery, to the franchisor, 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 or parts mark-up shall submit to the franchisor 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 franchisor 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 franchisor 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 franchisor and schedule a hearing.

Proposed law provides that the burden of proof shall be placed on the franchisor and the franchisor 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, thirty days following the franchisor's receipt of the original submission.

Proposed law provides that if a franchisor furnishes a part to a dealer, at a reduced cost or at no cost, to use in performing warranty work, the franchisor 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 franchisor's price schedule, minus the cost for the part.

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