

# Customer Price Protection Statutes

Alabama  
Alaska  
Arizona  
Arkansas  
Colorado  
Connecticut  
Delaware  
Florida

Georgia  
Hawaii  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
Kentucky

Louisiana  
Maine  
Maryland  
Massachusetts  
Michigan  
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Missouri  
Montana

Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
New York  
North Carolina  
North Dakota

Ohio  
Oklahoma  
Oregon  
Pennsylvania  
Rhode Island  
South Dakota  
Texas  
Utah

Vermont  
Virginia  
Washington  
West Virginia  
Wisconsin

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## ALABAMA

### § 8-20-7. Warranty obligations to dealers.

- (b) In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work, service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by the dealer, in the community in which the dealer is doing business, and in no event shall such compensation of a dealer for warranty services including labor and parts, be less than the rates or prices charged by such dealer for like service to retail customers for nonwarranty service, repairs, and parts, provided that such prices and rates are not unreasonable. This subsection does not apply to compensation for parts, systems, fixtures, appliances, furnishings, accessories, and features of a motor home that are designed, used, and maintained primarily for non-vehicular residential purposes, or parts related to motorcycle repairs.



## ALASKA:

### § 45.25.210. Rates for warranty and other work.

- (a) A manufacturer shall provide each of its new motor vehicle dealers with the schedule of compensation that the manufacturer shall pay to the new motor vehicle dealer for warranty work that the manufacturer requires the new motor vehicle dealer to perform for the manufacturer's products.
- (b) The schedule of compensation must include compensation for parts and labor and must comply with this section. The compensation for parts must include the average retail percentage markup that the new motor vehicle dealer charges.
- (c) Unless otherwise agreed to by the manufacturer and the new motor vehicle dealer, the rates in the schedule of compensation may not be less than the rates that the new motor vehicle dealer charges retail customers for similar nonwarranty service work.



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## ARIZONA

### § 28-4451. Product liability; audits.

- D. The compensation that the manufacturer or distributor pays to a new motor vehicle dealer for diagnostic work, repair service and labor shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work or services to be performed. The compensation that the manufacturer or distributor pays to the new motor vehicle dealer for parts used in warranty or recall related service shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section.
- E. The new motor vehicle dealer may declare the retail rates that it customarily charges for parts or labor or both parts and labor by submitting to the manufacturer or distributor the lesser of one hundred sequential, nonwarranty, customer-paid service repair orders or ninety consecutive days of customer-paid service repair orders for warranty-like repairs made not more than one hundred eighty days before the submission. The new motor vehicle dealer's retail labor rate shall be determined by dividing the amount of the dealer's total labor sales contained in the submitted repair orders by the total number of labor hours that generated those sales. The new motor vehicle dealer's retail rate for parts shall be a percentage determined by dividing the total sales for parts in the submitted repair orders by the new motor vehicle dealer's total cost for those parts, minus one, multiplied by one hundred to produce a percentage. Declared rates are presumed to be fair and reasonable except that a manufacturer or distributor, within thirty days after receiving the new motor vehicle dealer's submission, may rebut the presumption by reasonably substantiating that the rate or rates are inaccurate or unreasonable compared to other similarly situated same line-make new motor vehicle dealers in this state. The new motor vehicle dealer's declared parts, labor or both parts and labor rates shall go into effect thirty days following the manufacturer's or distributor's receipt of the declaration, unless the manufacturer or distributor timely sends a rebuttal of the declared rate or rates to the new motor vehicle dealer. If any of the declared rates are rebutted, the manufacturer or distributor shall propose an adjustment of the rebutted rate or rates within thirty days after receiving the new motor vehicle dealer's submission. If the new motor vehicle dealer does not agree with the proposed adjusted rate or rates, it may file a protest with the director within thirty days after receipt of the manufacturer's or distributor's proposal. If a protest is timely filed, the director shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on the protest if any available manufacturer or distributor mediation opportunity has been used and was unsuccessful in reaching an agreement between the parties.



## ARKANSAS

### § 23-112-313. Warranty agreements.



- (2) In the determination of what constitutes reasonable compensation for warranty or recall work and service under this subsection, the principal factor to be considered is the prevailing wage rates, exclusive of routine maintenance, that are being charged by the dealers in the relevant market area in which the motor vehicle dealer is doing business.
  - (3) The compensation of a motor vehicle dealer for warranty or recall service shall not be less than the rates charged by the motor vehicle dealer for like service to retail customers for nonwarranty service and repairs provided the rate is comparable to the rate of other same line-make dealers in an economically similar area or the dealer's competitive market area.
  - (d) (1) (A) The pricing for a recalled part shall not be reduced to an amount that is less than the original dealer cost or price for the same part unless the manufacturer obtains a discounted rate for the recalled part from a supplier.
    - (B) A recalled part is considered the same part if it is substantially the same part regardless of the part number.
  - (2) A part-by-part analysis is not required to determine the retail rate for parts.
  - (3) The parts mark-up shall not be substituted for a handling allowance or similar pricing amount that results in the reduction of compensation for the dealer.
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## COLORADO

### § 44-20-141.5 Fulfillment and compensation for warranty and recall obligations - definitions



- (f) "Retail parts markup percentage" means the percentage markup on parts calculated by the motor vehicle dealer in accordance with subsection (4) of this section that a manufacturer is required to pay a motor vehicle dealer in accordance with subsection (2) of this section.
  - (2) At a motor vehicle dealer's request, a manufacturer shall timely compensate the motor vehicle dealer at the retail labor rate and the retail parts markup percentage in accordance with subsection (3) of this section for all labor performed and parts used by the motor vehicle dealer for covered repairs performed in accordance with the warranty obligation, if the retail labor rate and retail parts markup percentage are reasonably consistent with the requirements of this section that concern the retail labor rate and parts markup percentage.
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## CONNECTICUT

### § 42-133s. Obligations of manufacturers and distributors. Retail rate for parts and labor. Establishment, rebuttal and protest. Hearings. Dealer's claims.



- (b) The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or sixty consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup. The average

of the markup rates shall be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than thirty days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line-make vehicles. The retail rate shall go into effect thirty days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the commissioner not later than thirty days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of this subsection.

- (c) The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor all nonwarranty customer-paid service repair orders covering repairs made during the month prior to the submission and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The average labor rate shall be presumed to be fair and reasonable, provided a manufacturer or distributor may, not later than thirty days after submission, rebut such presumption by reasonably substantiating that such rate is unfair and unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line-make vehicles. The average labor rate shall go into effect thirty days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of such declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate based on such rebuttal not later than thirty days after submission. If the dealer does not agree with the proposed average labor rate, the dealer may file a protest with the commissioner not later than thirty days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average labor rate is fair and reasonable pursuant to the provisions of this subsection.
- (d) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation: (1) Repairs for manufacturer or distributor special events, specials or promotional discounts for retail customer repairs; (2) parts sold at wholesale; (3) engine assemblies and transmission assemblies; (4) routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; (5) nuts, bolts, fasteners, and similar items that do not have an individual part number; (6) tires; and (7) vehicle reconditioning.
- (e) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

## DELAWARE

### § 4903. Sales incentives; warranty and predelivery obligations to new motor vehicle dealers.

- (1) For the purposes of this provision, the dealer's rate charged to nonwarranty customers for parts and labor shall be established by the dealer submitting to the manufacturer 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering like repairs made no more than 180 days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within 30 days after the initial submission to the manufacturer and shall be presumed to be fair and reasonable. However, within 30 days following receipt of the declared schedule of compensation from the dealer, the manufacturer may make reasonable requests for additional information supporting the declared schedule of compensation. The 30-day time frame in which the manufacturer shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every 9 months.

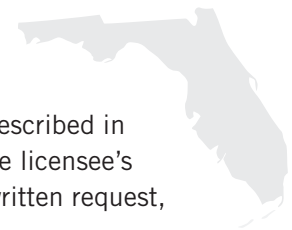


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## FLORIDA

### § 320.696. Warranty responsibility.

- (3) (a) A licensee shall compensate a motor vehicle dealer for parts used in any work described in subsection (1). The compensation may be an agreed percentage markup over the licensee's dealer cost, but if an agreement is not reached within 30 days after a dealer's written request, compensation for the parts is the greater of:
1. The dealer's arithmetical mean percentage markup over dealer cost for all parts charged by the dealer in 50 consecutive retail customer repairs made by the dealer within a 3-month period before the dealer's written request for a change in reimbursement pursuant to this section, or all of the retail customer repair orders over that 3-month period if there are fewer than 50 retail customer repair orders in that period. The motor vehicle dealer shall give the licensee 10 days' written notice that it intends to make a written request to the licensee for a warranty parts reimbursement increase and permit the licensee, within that 10-day period, to select the initial retail customer repair for the consecutive repair orders that will be attached to the written request used for the markup computation, provided that if the licensee fails to provide a timely selection, the dealer may make that selection. No repair order shall be excluded from the markup computation because it contains both warranty, extended warranty, certified pre-owned warranty, maintenance, recall, campaign service, or authorized goodwill work and a retail customer repair. However, only the retail customer repair portion of the repair order shall be included in the computation and the parts described in paragraph (b) shall be excluded from the computation;
  2. The licensee's highest suggested retail or list price for the parts; or
  3. An amount equal to the dealer's markup over dealer cost that results in the same gross profit percentage for parts used in work done under subsection (1) as the dealer receives for parts used in the customer retail repairs, as evidenced by the average of said dealer's gross profit percentage in the dealer's financial statements for the 2 months preceding the dealer's request.



If a licensee reduced the suggested retail or list price for any replacement part or accessory, it also shall reduce, by at least the same percentage, the cost to the dealer for the part or accessory. The dealer's markup or gross profit percentage shall be uniformly applied to all of the licensee's parts used by the dealer in performing work covered by subsection (1).

- (b) In calculating the compensation to be paid for parts by the arithmetic mean percentage markup over dealer cost method in paragraph (a), parts discounted by a dealer for repairs made in group, fleet, insurance, or other third-party payer service work; parts used in repairs of government agencies' repairs for which volume discounts have been negotiated; parts used in special event, specials, or promotional discounts for retail customer repairs; parts sold at wholesale; parts used for internal repairs; engine assemblies and transmission assemblies; parts used in retail customer repairs for routine maintenance, such as fluids, filters and belts; nuts, bolts, fasteners, and similar items that do not have an individual part number; and tires shall be excluded in determining percentage markup over dealer cost.
- (c) If a licensee furnishes a part or component to a motor vehicle dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the licensee shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this subsection, less the dealer cost for the part or component as listed in the licensee's price schedule.
- (b) Compensation paid by a licensee to a motor vehicle dealer may be an agreed hourly labor rate. If, however, an agreement is not reached within 30 days after the dealer's written request, the dealer may choose to be paid the greater of:
  - 1. The dealer's hourly labor rate for retail customer repairs, determined by dividing the amount of the dealer's total labor sales for retail customer repairs by the number of total labor hours that generated those sales for the month preceding the request, including the work in paragraph (c); or
  - 2. An amount equal to the dealer's markup over dealer cost that results in the same gross profit percentage for labor hours performed in work covered by subsection (1) as the dealer receives for labor performed in its customer retail repairs, as evidenced by the average of said dealer's gross profit percentage in the dealer's financial statements provided to the licensee for the 2 months preceding the dealer's written request, if the dealer provides in the written request the arithmetical mean of the hourly wage paid to all of its technicians during that preceding month. The arithmetical mean shall be the dealer cost used in that calculation.

After an hourly labor rate is agreed or determined, the licensee shall uniformly apply and pay that hourly labor rate for all labor used by the dealer in performing work under subsection (1). However, a licensee shall not pay an hourly labor rate less than the hourly rate it was paying to the dealer for work done under subsection (1) on January 2, 2008. A licensee shall not eliminate flat-rate times from, or establish an unreasonable flat-rate time in its warranty repair manual, warranty time guide, or any other similarly named document. A licensee shall establish reasonable flat-rate labor times in its warranty repair manuals and warranty time guides for newly introduced model motor vehicles which are at least consistent with its existing documents. As used in this subsection, the terms "retail customer repair" and "similar work" are not limited to a repair to the same model vehicle or model year, but include prior repairs that resemble but are not identical to the repair for which the dealer is making a claim for compensation.

- (c) In determining the hourly labor rate calculated under subparagraph (b)1., a dealer's labor charges for internal vehicle repairs; vehicle reconditioning; repairs performed for group, fleet, insurance, or other third-party payers; discounted repairs of motor vehicles for government agencies; labor used in special events, specials, or express service; and promotional discounts shall not be included as retail customer repairs and shall be excluded from such calculations.

## GEORGIA

### **§ 10-1-641. Dealer's predelivery preparation, warranty service, and recall work obligations to be provided in writing; recovery of costs.**



- (2) (A) In the determination of what constitutes reasonable compensation for parts and labor under this Code section, the principal factors to be considered shall be the retail price paid to dealers for parts and the prevailing hourly labor rates paid to dealers doing the repair, work, or service and to other dealers in the community in which the dealer doing the repair, work, or service is doing business for the same or similar repair, work, or service. However, in no event shall parts reimbursement paid to the dealer be less than the retail rates customarily charged by the dealer, as established pursuant to this paragraph, and the rates for parts and labor charged by other similarly situated franchised dealers in a comparable geographic area in this state offering the same line-make vehicles.

### **§ 10-1-645. Uniform warranty reimbursement policy amongst dealers.**

- (a) Any motor vehicle franchisor and at least a majority of its dealers of the same line make may agree in an express written contract, citing this Code section, upon a uniform warranty reimbursement policy used by contracting dealers to perform warranty repairs. The policy shall only involve either reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. Reimbursement for parts under the agreement shall be used instead of the dealers' prevailing retail price charged by that dealer for the same parts as defined in Code Section 10-1-644 to calculate compensation due from the franchisor for parts used in warranty repairs. This Code section does not authorize a franchisor and its dealers to establish a uniform hourly labor reimbursement.
- (b) Each franchisor shall only have one such agreement with each line make. Any such agreement shall:
- (1) Establish a uniform parts reimbursement rate. The uniform parts reimbursement rate shall be greater than the franchisor's nationally established parts reimbursement rate in effect at the time the first such agreement becomes effective; however, any subsequent agreement shall result in a uniform reimbursement rate that is greater or equal to the rate set forth in the immediately prior agreement;
  - (2) Apply to all warranty repair orders written during the period that the agreement is effective;
  - (3) Be available, during the period it is effective, to any motor vehicle dealer of the same line make at any time and on the same terms; and
  - (4) Be for a term not to exceed three years so long as any party to the agreement may terminate the agreement upon the annual anniversary of the agreement and with 30 days' prior written notice; however, the agreement shall remain in effect for the term of the agreement regardless of the number of dealers of the same line make that may terminate the agreement.
- (c) (1) As used in this subsection, the term "costs" means the difference between the uniform reimbursement rate set forth in an agreement entered into pursuant to subsection (b) of this Code section and the prevailing retail price charged by that dealer received by those dealers of the same line make.
- (2) A franchisor that enters into an agreement with its dealers may seek to recover its costs from only those dealers that are receiving their prevailing retail price charged by that dealer under Code Section 10-1-644 as follows:
- (A) The costs shall be recovered only by increasing the invoice price on new vehicles received by those dealers not a party to an agreement under this Code section; and

- (B) Price increases imposed for the purpose of recovering costs under this Code section may vary from time to time and from model to model but shall apply uniformly to all dealers of the same line make in the State of Georgia that have requested reimbursement for warranty repairs at their prevailing retail price charged by that dealer, except that a franchisor may make an exception for vehicles that are titled in the name of a consumer in another state.

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## HAWAII

### § 437-56. Reimbursement for parts.

- (a) In no event shall any manufacturer or distributor pay its dealers a markup on parts for warranty work that is less than that charged by the dealer to the retail customers of the dealer; provided that such dealer's retail parts markup is not unreasonable when compared with that of same line make authorized franchise dealers of the manufacturer or distributor for identical merchandise or services in the State.
- (b) The retail markup charged by the dealer shall be established by submitting to the manufacturer or distributor a sufficient quantity of numerically consecutive repair orders from the most recent months to provide one hundred qualifying customer-paid repair orders. For a dealer unable to provide one-hundred qualifying customer-paid repair orders out of all numerically consecutive repair orders within the two-month period prior to the submission, the dealer shall submit customer service repair orders of all types, including customer pay, warranty, and internal, for that two-month period. The repair orders shall contain the price and percentage markup. Dealers shall declare in their submission the average markup the dealer is declaring as its new parts reimbursement rate. The declared parts reimbursement markup shall take effect within ninety days after initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The ninety-day timeframe in which the manufacturer or distributor shall make the declared parts reimbursement markup effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the parts reimbursement markup more than once every twelve months.
- (c) In determining qualifying repair orders for parts, the following work shall not be included: repairs for manufacturer or distributor special events; repairs covered by any insurance or service contract, federal, state, or local government legislated vehicle emission or safety inspections; parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; engine assemblies and transmission assemblies; routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs; nuts, bolts, fasteners, and similar items that do not have an individual part number; tires; and vehicle reconditioning.

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## IDAHO

### § 49-1626. Payment for delivery preparation and warranty service..

- (11) The schedule of compensation for warranty parts and labor shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty parts and labor; provided that such dealer's retail rate is not unreasonable when compared with other motor vehicle franchises from the same or competitive lines for similar merchandise or services in the geographic area in which the dealer is engaged in business.

- (a) For purposes of determining the schedule of compensation paid to a dealer by the manufacturer or distributor, the following shall not be considered in determining amounts charged by the dealer to retail customers:
  - (i) Menu-priced parts or services;
  - (ii) Repairs for manufacturer or distributor special events;
  - (iii) Repairs covered by any insurance or service contract;
  - (iv) Vehicle emission or safety inspections required by federal, state or local governments;
  - (v) Parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles;
  - (vi) Engine assemblies and transmission assemblies;
  - (vii) Routine maintenance not covered under any retail customer warranty including, but not necessarily limited to, maintenance involving fluids, filters and belts not provided in the course of repairs;
  - (viii) Nuts, bolts, fasteners and similar items that do not have an individual part number;
  - (ix) Tires; or
  - (x) Vehicle reconditioning.
- (b) The dealer shall establish their schedule of compensation under the provisions of this section by submitting to the manufacturer or distributor one hundred (100) sequential customer paid service repair orders or ninety (90) days of customer paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission of such customer paid service repair orders and declaring the schedule of compensation. The new schedule of compensation shall take effect within ninety (90) days after the initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, within thirty (30) days following receipt of the declared schedule of compensation from the dealer, the manufacturer or distributor may make reasonable requests for additional information supporting the declared schedule of compensation. The ninety (90) day time frame in which the manufacturer or distributor shall make the schedule of compensation effective shall commence following receipt from the dealer of any reasonably requested supporting information. No manufacturer or distributor shall require a motor vehicle dealer to establish a schedule of compensation by any other methodology or require supportive information that is unduly burdensome or time consuming to provide including, but not limited to, part by part or transaction by transaction calculations. The dealer shall not request a change in the schedule of compensation more than once every twelve (12) months.

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## ILLINOIS

### § 815 ILCS 710-6. Warranty agreements; claims; approval; payment; written disapproval.



- (b) In no event shall such compensation fail to include reasonable compensation for diagnostic work, as well as repair service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this Section, the principal factor to be given consideration shall be the prevailing wage rates being paid by the dealer in the relevant market area in which the motor vehicle dealer is doing business, and in no event shall such compensation of a motor vehicle dealer for warranty service be less than the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs. The franchiser shall reimburse the franchisee for any parts provided in satisfaction of a warranty at the prevailing retail price charged by that dealer for the same parts when not provided in satisfaction of a warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchiser for identical merchandise in the geographic area in which the motor vehicle franchisee is

engaged in business. All claims, either original or resubmitted, made by motor vehicle dealers hereunder and under Section 5 for such labor and parts shall be either approved or disapproved within 30 days following their submission. All approved claims shall be paid within 30 days following their approval. The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and each such notice shall state the specific grounds upon which the disapproval is based. The motor vehicle dealer shall be permitted to correct and resubmit such disapproved claims within 30 days of receipt of disapproval. Any claims not specifically disapproved in writing within 30 days from their submission shall be deemed approved and payment shall follow within 30 days. The manufacturer or franchiser shall have the right to require reasonable documentation for claims and to audit such claims within a one year period from the date the claim was paid or credit issued by the manufacturer or franchiser, and to charge back any false or unsubstantiated claims. The audit and charge back provisions of this Section also apply to all other incentive and reimbursement programs for a period of one year after the date the claim was paid or credit issued by the manufacturer or franchiser. However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this State that the claim is fraudulent.

- (c) The motor vehicle franchiser shall not, by agreement, by restrictions upon reimbursement, or otherwise, restrict the nature and extent of services to be rendered or parts to be provided so that such restriction prevents the motor vehicle franchisee from satisfying the warranty by rendering services in a good and workmanlike manner and providing parts which are required in accordance with generally accepted standards. Any such restriction shall constitute a prohibited practice.
- (d) For the purposes of this Section, the “prevailing retail price charged by that dealer for the same parts” means the price paid by the motor vehicle franchisee for parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee’s average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchiser and sold at retail. The motor vehicle franchisee may establish average percentage markup under this Section by submitting to the motor vehicle franchiser 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the motor vehicle franchiser and adjustment of the average percentage markup based on that audit. Any audit must be conducted within 30 days following the declaration. Only retail sales not involving warranty repairs, parts covered by subsection (e) of this Section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchiser shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year.
- (e) If a motor vehicle franchiser supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee’s average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchiser. The requirements of this subsection (e) shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee.

## INDIANA

### 9-32-13-15. Payment of dealer for labor costs; uniform hourly labor reimbursement rate.



It is an unfair practice for a manufacturer or distributor to fail to compensate a dealer at the dealer's retail rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise, or fail to compensate a dealer anything less than the dealer's retail rate for labor and parts under the manufacturer's warranty agreements as long as the dealer's retail rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by similarly situated repair facilities in Indiana.

### 9-32-13-16. Uniform warranty reimbursement policies; contents.

- (a) A manufacturer or distributor and at least thirty percent (30%) of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work and service to be performed. The manufacturer or distributor:
  - (1) may have only one (1) contract with regard to each line make; and
  - (2) must have a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.
- (b) A contract described in subsection (a) must meet the following criteria:
  - (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.
  - (2) Apply to all warranty repair orders written while the agreement is in effect.
  - (3) At any time during the period the contract is in effect:
    - (A) be available to any franchisee of the same line make as the franchisees that entered into the contract with the manufacturer or distributor; and
    - (B) be available to a franchisee of the same line make on the same terms as apply to the franchisees that entered into the contract with the manufacturer or distributor.
  - (4) Be for a term not to exceed three (3) years.
  - (5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.
  - (6) Remain in effect for the entire original period if the manufacturer and at least one (1) franchisee remain parties to the policy.
- (c) A manufacturer or distributor that enters into a contract with its franchisees under subsection (a) shall do the following:

- (1) Certify to the secretary under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.
- (2) File a copy of the contract with the secretary at the time of the certification.
- (3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

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## IOWA

### § 322A.5. Warranties and recalls.

In determining the schedule of compensation for parts, the franchiser may multiply the price paid by the franchisee for parts, including all shipping costs and other charges, by the sum of one and the franchiser's average percentage markup. The franchiser's average percentage markup is calculated by subtracting one from the result of dividing the total amounts charged by the franchisee for parts used in warranty-like repairs by the total cost to the franchisee for the parts in the retail service orders submitted pursuant to subparagraph (3).

- (a) The franchisee may establish its average percentage markup for parts or its labor rate by submitting to the franchiser copies of one hundred sequential retail service orders paid by the franchiser's customers, or all of the franchiser's retail service orders paid by the franchiser's customers in a ninety-day period, whichever is less, for services provided within the previous one-hundred-eighty-day period. The franchiser shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

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## KANSAS

### § 8-2415. Correction of warranty defects; compensation to dealer; promotional allowances or incentive payments; claim for reimbursement from dealer.

In determining the schedule of compensation for parts, the first or second stage manufacturer or distributor may multiply the price paid by the dealer for parts, including all shipping costs and other charges, by the sum of one and the dealer's average percentage markup. The dealer's average percentage markup is calculated by subtracting one from the result of dividing the total amounts charged by the dealer for parts used in warranty-like repairs by the total cost to the dealer for the parts in the retail service orders submitted pursuant to subparagraph (C).

- (C) (i) The dealer may establish its average percentage markup for parts or its labor rate by submitting to the first or second stage manufacturer or distributor copies of 100 sequential retail service orders paid by the dealer's customers, or all of the dealer's retail service orders paid by the dealer's customers in a 90-day period, whichever is less, for services provided within the previous 180-day period. The first or second stage manufacturer or distributor shall not consider retail service orders or portions of retail service orders attributable to routine maintenance such as tire service or oil service.

## KENTUCKY

### **§ 190.046 Compensation to dealer for work performed under warranty; reasonable compensation; submission, determination, and payment of dealer's claims; compensation to dealer...**



- (2) In the determination of what constitutes “reasonable compensation” under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. “Reasonable compensation” shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer’s license application by KRS 190.030. A manufacturer or distributor shall not require unreasonable proof to establish “reasonable compensation.”

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## LOUISIANA

### **§ 32-1262. Warranty; compensation; audits of dealer records.**



- A. (1) It shall be a violation of this Chapter for a manufacturer, a distributor, a wholesaler, distributor branch or factory branch, or officer, agent or other representative thereof to fail to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by such dealer to perform under and comply with a manufacturer’s or a distributor’s warranty agreement.
- (2) In no event shall any manufacturer or distributor pay its dealers 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.
- (3) Warranty work includes parts and labor performed.

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## MAINE

### **§ 1176. Warranty.**

If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations, in the case of motor vehicles over 10,000 pounds gross vehicle weight rating, shall adequately and fairly compensate the franchisee for any parts so provided and, in the case of all other motor vehicles, shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty. A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section. For purposes of this section, the retail rate customarily charged by the franchisee for parts may be established by submitting to the franchisor 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail rate, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving



routine maintenance such as changing the oil and oil filter and not involving accessories may be considered in calculating the average percentage markup. A franchisor may not require a franchisee to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A franchisee may not change the average percentage markup more than 2 times in one calendar year. Further, the franchisor shall reimburse the franchisee for any labor so performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; as long as the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, Section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 60 days of its approval. All the claims must be either approved or disapproved within 60 days of their receipt. A claim may be submitted within 90 days after the performance of services. When a claim is disapproved, the franchisee that submitted the claim must be notified in writing of the claim's disapproval within that period, together with the specific reasons for its disapproval. A franchisor may not, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards..

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## MARYLAND

### § 15-212. Refusal, suspension, or revocation of manufacturer or distributor license.



- (3) (i) For purposes of paragraph (2) of this subsection, the dealer's labor rate or parts mark-up percentage shall be established by a submission to the licensee of whichever of the following produces fewer repair orders closed, as of the date of submission, within the preceding 180 days:
1. 100 qualifying sequential customer-paid repair orders; or
  2. 90 days of qualifying customer-paid repair orders.
- (ii) With respect to parts, a schedule of compensation established under this subsection shall be equal to the parts mark-up percentage as reflected in qualifying repair orders, calculated by dividing the total charges for parts in the repair orders by the total dealer cost for the parts minus one.
- (iii) 1. A dealer may not make a submission under this subsection more than once in 1 year.
2. For purposes of subsubparagraph 1 of this subparagraph, a revision or supplement to a submission to correct or clarify the submission does not constitute a new submission.
- (4) Repair orders for labor or parts in connection with any of the following may not constitute a qualifying repair order under paragraph (2) of this subsection:
- (i) Accessories;
  - (ii) Repairs for manufacturer, distributor, or factory branch special events, promotions, or service campaigns;
  - (iii) Repairs related to collision;
  - (iv) Vehicle emission or safety inspections required by law;
  - (v) Parts sold, or repairs performed, at wholesale or for insurance carriers, or other third-party payors;
  - (vi) Routine maintenance not covered under any warranty, including maintenance involving fluids, filters, and belts not provided in the course of repairs;

- (vii) Nuts, bolts, fasteners, and similar items that do not have an individual parts number;
  - (viii) Tires;
  - (ix) Vehicle reconditioning;
  - (x) Goodwill or policy repairs or replacements; or
  - (xi) Repairs on vehicles from a different line-make.
- (5) If a licensee gives a dealer a part at no cost to use in performing a repair under a recall, campaign service action, or warranty repair, the licensee shall compensate the dealer for the part by paying the dealer the parts mark-up percentage established under this subsection on the cost for the part listed on the licensee's price schedule.

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## MASSACHUSETTS

### § 9. Delivery and preparation obligations; express warranty agreements; audit of claims.



- (b) (1) A manufacturer or distributor shall specify in writing to each of its dealers the dealer's obligations for predelivery preparation and warranty service on its products and shall compensate the dealer for such preparation and service. A manufacturer or distributor shall within a reasonable time fulfill its obligations under all express warranty agreements made by it with respect to a product manufactured, distributed or sold by it and shall adequately and fairly compensate any motor vehicle dealer who, under its franchise obligations, furnishes labor, parts and materials under the warranty or maintenance plan, extended warranty, certified preowned warranty or a service contract, issued by the manufacturer or distributor or its common entity, unless issued by a common entity that is not a manufacturer; to fulfill a manufacturer or distributor's delivery or preparation procedures or to repair a motor vehicle as a result of a manufacturer or distributor's or common entity's recall, campaign service, authorized goodwill, directive or bulletin. For the purposes of motor vehicle dealers, fair and adequate compensation shall not be less than the rate and price customarily charged for retail customer repairs and computed under paragraph (2); provided, however, that fair and adequate compensation shall, for purposes of this section for powersport vehicles, be computed at the rate normally charged by the motor vehicle dealer to the public for the labor and materials and shall include a fair charge for diagnostic and test services; provided, further, that fair and adequate compensation shall, for purposes of this section for recreational vehicles, be computed at the rate normally charged by the motor vehicle dealer to the public for the labor and shall include a fair charge for diagnostic and test services and shall be computed for the materials at the rate of not less than actual wholesale cost, plus a handling charge of 30 per cent of the cost and the cost, if any, of freight to return the warranty materials to the manufacturer. For the purposes of this subsection, "labor" shall include time spent by employees for diagnosis and repair of a vehicle, "parts" shall include replacement parts and accessories and "retail customer repair" shall mean work, including parts and labor, performed by a dealer which does not come within a manufacturer's, distributor's or its common entity's warranty, extended warranty, certified preowned warranty, service contract or maintenance plan and excludes parts and labor described in clause (iii) of paragraph (2).
- (2) (i) In determining the rate and price customarily charged by the motor vehicle dealer to the public for parts, the compensation may be an agreed percentage markup over the dealer's cost under a writing separate and distinct from the franchise agreement signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's written request to be compensated under this section, compensation for parts shall be calculated by utilizing the method described in this paragraph.

The retail rate customarily charged by the dealer for parts shall be established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty or customer-paid service repair orders or 60 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, each of which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The average of the markup rates shall be presumed to be fair and reasonable. The retail rate shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on the rebuttal not later than 30 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file an action in a court of competent jurisdiction not later than 30 days after receipt of the proposal by the manufacturer or distributor. In an action commenced under this paragraph, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was inaccurate or unreasonable.

- (ii) The retail rate customarily charged by the dealer for labor may be established by submitting to the manufacturer or distributor 100 sequential nonwarranty, customer-paid service repair orders or 60 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, covering repair orders made not more than 180 days before the submission and dividing the amount of the dealer's total labor sales by the number of total labor hours that generated those sales. The average labor rate shall be presumed to be fair and reasonable. The average labor rate shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average labor rate based on the rebuttal not later than 30 days after submission. If the dealer does not agree with the proposed average labor rate, the dealer may file an action in a court of competent jurisdiction not later than 30 days after receipt of the proposal by the manufacturer or distributor. In any action commenced under this paragraph, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was inaccurate or unreasonable.
- (iii) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation: (a) routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; (b) items that do not have an individual part number such as some nuts, bolts, fasteners and similar items; (c) tires; and (d) vehicle reconditioning.
- (iv) If a manufacturer or distributor furnishes a part or component to a dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

## MICHIGAN

### § 445.1577a. Warranty chargebacks; reasonable compensation for parts reimbursement and labor rates; factors



Sec. 17a.

- (1) The principal factors in determining what constitutes reasonable compensation for parts reimbursement and labor rates for purposes of section 17(1)1 are as follows:
  - (a) The retail price charged for parts by other similarly situated new motor vehicle dealers in a comparable geographic area in this state that offer the same line-make of vehicles.
  - (b) The retail labor rates of other similarly situated new motor vehicle dealers in a comparable geographic area in this state that offer the same line-make of vehicles.
- (2) All of the following apply for purposes of subsection (1):
  - (a) A new motor vehicle dealer that is demanding warranty compensation from a manufacturer at a rate that exceeds the agreed-upon rates shall establish the retail rate it customarily charges for parts by submitting to the manufacturer 100 consecutive and sequential nonwarranty customer-paid service repair orders that contain repairs for like services or all nonwarranty customer-paid service repair orders covering a period of 90 consecutive days, whichever is less. A dealer shall not submit a service repair order under this subsection that covers repairs made more than 180 days before the date of the submission.
  - (b) If a manufacturer determines from any set of repair orders submitted under subdivision (a) that the calculated retail markup rate for parts or the retail labor rate is substantially higher or lower than the rate currently on record with the manufacturer, the manufacturer may request additional documentation for a period of either 60 days before or 60 days after the time period for which the repair orders were submitted for purposes of an adjustment.
  - (c) A new motor vehicle dealer's retail rate percentage for parts is calculated by determining the dealer's total parts sales in the submitted repair orders and dividing that amount by the dealer's total cost for the purchase of those parts, subtracting 1 from that amount, and then multiplying by 100. The manufacturer must approve or disapprove the declared retail rate within 45 days after the date of submission by the dealer. The declared retail rate is effective beginning 30 days after approval by the manufacturer, unless the manufacturer disapproves and timely contests the dealer's declared rate. If a manufacturer fails to disapprove within 45 days following submission by the dealer, the declared retail rate is considered approved. A new motor vehicle dealer's retail rate for labor is calculated by determining the dealer's total labor sales from the submitted repair orders and dividing that amount by the total number of hours that generated those sales. The manufacturer must approve or disapprove the declared retail rate within 45 days after the date the dealer submits the repair orders. The declared retail labor rate is effective beginning 30 days after approval by the manufacturer, unless the manufacturer disapproves and timely contests the dealer's declared rate.
  - (d) A manufacturer may contest a new motor vehicle dealer's declared retail markup rate for parts or retail labor rate not later than 45 days after submission and declaration of the retail markup rate for parts or retail labor rate by the dealer by reasonably substantiating that the rate is inaccurate, incomplete, or unreasonable in light of the factors described in subsection (1). In contesting a new motor vehicle dealer's declared rate, a manufacturer shall provide a written explanation of the reasons for disagreement with the declared rate. If the declared retail markup rate for parts or retail labor rate is contested, then the manufacturer shall propose an adjustment of the rate. If the manufacturer contests the dealer's declared parts or labor rate, the parties shall attempt to resolve the dispute through an internal dispute resolution procedure of the manufacturer, if available, provided that the dispute resolution procedure occurs within a reasonable amount of time that does not exceed 45 days after notification of disagreement with the dealer's declared rate.

## MINNESOTA

### 80E.041. Warranty obligations to dealers.



Subdivision 1. Requirements. Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer shall compensate the new motor vehicle dealer for warranty service parts and labor required of the new motor vehicle dealer by the manufacturer. Compensation for parts used in warranty service must include the motor vehicle dealer's actual cost of the part plus a reasonable percentage markup or be calculated as described in subdivision 2 at the election of the dealer. Compensation for labor used in warranty service must be reasonable and may at the election of the dealer be determined as described in subdivision 4. This section applies to all warranty repair service performed by the dealer for the manufacturer or with the approval of the manufacturer and for which the dealer is entitled to compensation or reimbursement from the manufacturer.

Subd. 2. Retail rate for parts.

- (a) The dealer may establish a percentage markup to be applied to the cost of warranty parts by submitting 100 sequential nonwarranty customer-paid service repair orders to the manufacturer which contain warranty-like repairs, or 90 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like repairs, whichever is less, covering repairs made no more than 180 days before the submission.
- (b) A dealer's retail rate for parts shall be calculated by determining the dealer's total parts sales in the submitted service repair orders under paragraph (a) and dividing that amount by the dealer's total cost to purchase the parts, subtracting one from that amount, and then multiplying by 100. A manufacturer may disapprove a dealer's retail rate if:
  - (1) the disapproval is provided to the dealer in writing;
  - (2) the disapproval is sent to the dealer within 30 days of the submission of the retail rate by the dealer to the manufacturer;
  - (3) the disapproval includes a reasonable substantiation that the retail rate submission is inaccurate, incomplete, or unreasonable in light of a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make of vehicles; and
  - (4) the manufacturer proposes an adjustment of the retail rate.
- (c) If a manufacturer fails to approve or disapprove the retail rate within this time period, the retail rate is approved. If a manufacturer disapproves a dealer's retail rate, and the dealer does not agree to the manufacturer's proposed adjustment, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of their failure to agree. If the manufacturer's internal dispute resolution procedure is unsuccessful, or if the procedure is not implemented within a reasonable time after the dealer notifies the manufacturer of their failure to agree, the dealer may use the civil remedies available under section 80E.17. A dealer must file a civil suit under section 80E.17, as permitted by this subdivision, within 60 days of receiving the manufacturer's proposed adjustment to the retail rate, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.
- (d) Charges for the following do not qualify as warranty-like repairs and are excluded from the calculations under this subdivision and subdivision 4:

- (1) repairs including parts and labor for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
- (2) parts sold at wholesale;
- (3) engine assemblies and transmission assemblies if the new motor vehicle dealer agrees to be compensated for those assemblies with a handling charge instead of a retail parts markup;
- (4) parts and labor to perform routine maintenance generally performed at predetermined intervals to keep a vehicle operating properly and not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;
- (5) nuts, bolts, fasteners, and similar items that do not have an individual part number;
- (6) tires and labor to install or repair;
- (7) parts and labor to perform vehicle reconditioning; and
- (8) accessories.

Subd. 3. Parts at no cost or reduced cost. If a manufacturer furnishes a new part to a dealer at no cost or at a reduced cost for use in performing repairs under this section, the manufacturer shall compensate the dealer the amount paid for the part, if any, plus an amount equal to the dealer's established percentage markup multiplied by the fair wholesale value of the part. The fair wholesale value of the part is the maximum of:

- (1) the amount the dealer paid for the part or a substantially identical part if already owned by the dealer;
- (2) the cost of the part shown in a current manufacturer's established price schedule; and
- (3) the cost of a substantially identical part shown in a current manufacturer's established price schedule.

Subd. 5. Time for establishing rate. A dealer shall not be permitted to establish a retail rate for parts or labor more than once per year.

Subd. 6. Requirements for cost recovery.

- (a) Except as provided under paragraph (b), a manufacturer shall not otherwise recover its costs under this section from dealers within this state, including but not limited to a surcharge imposed on a dealer, solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this section.
- (b) A manufacturer may recover its cost for reimbursing a dealer for parts and labor pursuant to this section if:
  - (1) the manufacturer provides written notice at least 60 days in advance of the implementation of cost recovery;
  - (2) the notice includes substantiation of the reasonableness of the cost recovery to be implemented, including by reference to a comparison to the retail rate charged by other similarly situated franchised motor vehicle dealers in a comparable geographic area in the state offering the same line-make of vehicles.

If the dealer does not agree to the amount of the manufacturer's cost recovery, the parties shall use the manufacturer's internal dispute resolution procedure, if any, within a reasonable time after the dealer notifies the manufacturer of its failure to agree. If the dealer is not satisfied with the result of the manufacturer's internal dispute resolution procedure or if, due to the manufacturer, the procedure is not initiated within a reasonable time after the dealer notifies the manufacturer of its failure to agree, the dealer may file a civil suit under section 80E.17, as permitted by this subdivision, within 60 days of receiving the notice that cost recovery will be implemented, or the conclusion of the manufacturer's internal dispute resolution procedure, whichever is later.

- (c) Cost recovery must not be implemented by a manufacturer pending conclusion of the process set forth under paragraph (b) in the case of dealer disagreement with the amount of cost recovery. If cost recovery is allowed at the conclusion of such process, it may be implemented retroactively from the date provided in the notice given under paragraph (b), clause (1).
- (d) As an alternative to the dispute resolution process in paragraph (b), or during the pendency of the dispute resolution process in paragraph (b), the dealer may reduce its retail rate and request that the manufacturer recalculate the amount of cost recovery or abandon the implementation of cost recovery.
- (e) Nothing in this subdivision prohibits a manufacturer from increasing prices for vehicles or parts in the normal course of business.

Subd. 7. Fewer than five dealers in state. If a manufacturer has fewer than five dealers in the state offering the same line-make of vehicle, the comparisons set forth in subdivision 2, paragraph (b), clause (3); subdivision 4, paragraph (b), clause (3); and subdivision 6, paragraph (b), clause (2), may be made by reference to similarly situated franchised motor vehicle dealers in a comparable geographic area in the United States offering the same line-make of vehicle.

Subd. 8. Payment of claims.

- (a) All claims made by new motor vehicle dealers under this section for labor and parts must be paid within 30 days of their approval. Claims must be either approved or disapproved within 30 days after they are submitted to the manufacturer in the manner and on the forms it prescribes. Any claims not specifically disapproved in writing within 30 days after the manufacturer receives them are deemed to be approved and payment must follow within 30 days, provided, however, that the manufacturer retains the right to audit the claims for a period of one year and to charge back any amounts paid on claims not reasonably substantiated or fraudulent claims. The manufacturer has the burden of proving that a claim is not reasonably substantiated or fraudulent.
- (b) The audit and charge back provisions of this subdivision also apply to all other incentive and reimbursement programs that are subject to audit by the manufacturer.
- (c) A manufacturer shall not deny a claim submitted under this section or charge back a claim or payment based solely on the dealer's incidental failure to comply with a claim processing procedure, a clerical error, or other administrative technicality, provided that the failure does not call into question the legitimacy of the claim. The manufacturer shall allow the dealer to resubmit the claim according to reasonable guidelines not later than 30 days after the dealer receives notice of the initial claim denial or charge back.

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## MISSOURI

### **§ 407.828. Franchisor's duties to franchisee—schedule of compensation—claims payment—retail rate calculation—audit authority.**



- 2. The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor for the franchisee to meet its obligations for preparation, delivery, and warranty service. The schedule shall also include reasonable and adequate time allowances for the diagnosis and performance of preparation, delivery, and warranty service to be performed in a careful and professional manner. In the determination of what constitutes reasonable compensation for labor and service pursuant to this section, the principal factor to be given consideration shall be the prevailing wage rates being charged for similar labor and service by franchisees in the market in which the franchisee is doing business, and in no event shall the compensation of a franchisee for labor and service be less than the rates charged by the franchisee for similar labor and service to retail customers for nonwarranty labor and service, provided

that such rates are reasonable. The primary factor in determining a fair and reasonable compensation for parts under this section shall be the prevailing amount charged for similar parts by other same line-make franchisees in the market in which the franchisee is doing business and the fair and reasonable compensation for parts shall not be less than the amount charged by the franchisee for similar parts to retail customers for nonwarranty parts, provided that such rates are reasonable. If another same line-make franchisee is not available within the market, then the prevailing amount charged for similar parts by other franchisees in the market shall be used as the primary factor.

7. In calculating the retail rate customarily charged by the franchisee for parts, service, and labor, the following work shall not be included in the calculation:
  - (1) Repairs for franchisor, manufacturer, or distributor special events, specials, or promotional discounts for retail customer repairs;
  - (2) Parts sold at wholesale;
  - (3) Engine assemblies and transmission assemblies;
  - (4) Routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;
  - (5) Nuts, bolts, fasteners, and similar items that do not have an individual part number;
  - (6) Tires; and
  - (7) Vehicle reconditioning.
8. If a franchisor, manufacturer, importer, or distributor furnishes a part or component to a franchisee, at no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the franchisor shall compensate the franchisee for the part or component in the same manner as warranty parts compensation under this section by compensating the franchisee at the average markup on the cost for the part or component as listed in the price schedule of the franchisor, manufacturer, importer, or distributor, less the cost for the part or component.

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## MONTANA

### § 61-4-204. Filing agreement--product liability



- (4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

## NEBRASKA

### § 60-1438. Manufacturer or distributor; warranty obligation; prohibited acts.



- (2) (a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders for routine maintenance, such as tire repair or replacement and oil and fluid changes, shall not be used.
- (b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

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## NEVADA

### § 482.36385. Unfair practices: Competition by manufacturer, distributor or branch of factory; discrimination; compensation of dealer; failure to pay, approve or disapprove claim or accept amended...



It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to:

3. Fail to compensate a dealer fairly for the work and services which the dealer is required to perform in connection with the delivery and preparation obligations under any franchise, or fail to compensate a dealer fairly for labor, parts and other expenses incurred by the dealer under the manufacturer's warranty agreements or any recall service or repairs. The manufacturer shall set forth in writing the respective obligations of a dealer and the manufacturer in the preparation of a vehicle for delivery, and as between them a dealer's liability for a defective product is limited to the obligation so set forth. Fair compensation includes diagnosis and reasonable administrative and clerical costs. The dealer's compensation for parts and labor to satisfy a warranty or a recall service or repair must not be less than the amount of money charged to its various retail

customers for parts and labor that are not covered by a warranty. If parts are supplied by the manufacturer, including exchanged parts and assembled components, the dealer is entitled with respect to each part to an amount not less than the dealer's normal retail markup for the part. This subsection does not apply to compensation for any part, system, fixture, appliance, furnishing, accessory or feature of a motor home or recreational vehicle that is designed, used and maintained primarily for non-vehicular, residential purposes.

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## NEW HAMPSHIRE

### § 357-C:5. Warranty Obligations, Transportation Damage and Indemnification.



- (B) (i) In determining the rate and price customarily charged by the motor vehicle dealer to the public for parts, the compensation may be an agreed percentage markup over the dealer's cost under a writing separate and distinct from the franchise agreement signed after the dealer's request, but if an agreement is not reached within 30 days after a dealer's written request to be compensated under this section, compensation for parts shall be calculated by utilizing the method described in this paragraph.
- (ii) If the dealer and the manufacturer are unable to agree to a percentage markup as provided by subparagraph (i), the retail rate customarily charged by the dealer for parts that the manufacturer is obligated to pay pursuant to RSA 382-A:2-329, shall be established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty or customer-paid service repair orders or 90 consecutive days of nonwarranty, customer-paid service repair orders, whichever is less, each of which includes parts that would normally be used in warranty repairs and covered by the manufacturer's warranty, covering repairs made not more than 180 days before the submission and declaring the average percentage markup. The retail rate so declared must be reasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. The declared retail rate shall go into effect 30 days following the date on which the dealer submitted to the manufacturer or distributor the required number of nonwarranty or customer-paid service repair orders (hereafter referred to as the "submission date") subject to audit of the submitted nonwarranty or customer-paid service repair orders by the manufacturer or distributor and a rebuttal of the declared retail rate. If the manufacturer or distributor wishes to rebut the declared retail rate it must so inform the dealer not later than 30 days after the submission date and propose an adjustment of the average percentage markup based on the rebuttal not later than 60 days after the submission date. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest at the motor vehicle industry board not later than 90 days after the submission date. In the event a protest is filed, the manufacturer has the burden of proof to establish that the dealer's submission is unreasonable as compared to other same line-make dealers of similar size in the immediate geographic vicinity of the dealer or, if none exist, immediately outside the dealer's geographic relevant market area within this state. In the event a dealer prevails in a protest filed under this provision, the dealer's increased parts and/or labor reimbursement shall be provided retroactive to the date the submission would have been effective pursuant to the terms of this section but for the manufacturer's denial.
- (iii) In calculating the retail rate customarily charged by the dealer for parts, the following work shall not be included in the calculation: routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs; items that do not have an individual part number such as some nuts, bolts, fasteners and similar items; tires; vehicle reconditioning; parts covered by subparagraph (v); repairs for manufacturer special events and manufacturer discounted service campaigns; parts sold at wholesale or parts used in repairs of government agencies' repairs for which

volume discounts have been negotiated by the manufacturer; promotional discounts on behalf of the manufacturer, internal billings, regardless of whether the billing is on an in-stock vehicle; and goodwill or policy adjustments.

- (v) If a motor vehicle franchisor or component manufacturer supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor.

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## NEW JERSEY

### **§ 56:10-15. Motor vehicle franchises; reimbursement of franchisees by franchisors for services in satisfaction of warranty.**



- a. The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, in an amount equal to the prevailing retail price charged by such motor vehicle franchisee for such services and parts in circumstances where such services are rendered or such parts supplied other than pursuant to warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchisor for identical merchandise or services in the geographic area in which the motor vehicle franchisee is engaged in business.
- d. For the purposes of this section, the "prevailing retail price" charged by : (1) a motor vehicle franchisee for parts means the price paid by the motor vehicle franchisee for those parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchisor and sold at retail. The motor vehicle franchisee may establish average percentage markup under this section by submitting to the motor vehicle franchisor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration subject to audit of the submitted repair orders by the motor vehicle franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, parts covered by subsection e. of this section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchisor shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year; and (2) a recreational motor vehicle franchisee for parts means actual wholesale cost, plus a minimum 50% handling charge and any freight costs incurred to return the removed parts to the motor vehicle franchisor.
- e. If a motor vehicle franchisor supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor. The requirements of this section shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the assembly if the assembly had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee.

## NEW MEXICO

### § 57-16-7. Warranty claims; payment.

- C. The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer shall establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer shall not require a dealer to establish average percentage markup by another methodology. A manufacturer shall not require information that is unduly burdensome or time-consuming to provide part-by-part or transaction-by-transaction calculations.

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## NEW YORK

### § 465. Procedures relating to warranties and sales incentives.

1. Every franchisor shall properly fulfill any warranty agreement and/or franchisor's service contract and shall compensate each of its franchised motor vehicle dealers for warranty parts and labor in amounts which reflect fair and reasonable compensation for such work. All warranty claims and/or claims under a franchisor's service contract made by franchised motor vehicle dealers shall be paid within thirty days following their approval. For parts reimbursement, other than components, systems, fixtures, appliances, furnishings, accessories and features of a house coach that are designed, used and maintained primarily for non-vehicular residential purposes, and for labor reimbursement, reasonable compensation shall not be less than the price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers. For purposes of this section, the price and rate charged by the franchised motor vehicle dealer for parts may be established by submitting to the franchisor one hundred sequential nonwarranty customer-paid service repair orders or the number of sequential nonwarranty customer-paid service repair orders written within a ninety day period, whichever is less, covering repairs made no more than one hundred eighty days before the submission, and declaring the price and rate, including average markup for the franchised motor vehicle dealer as its reimbursement rate. The reimbursement rate so declared shall go into effect thirty days following the declaration and shall be presumed to be reasonable, however, a franchisor may rebut such presumption by showing that such rate so established is unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line make. The franchised motor vehicle dealer shall not request a change in the reimbursement rate more often than twice in each calendar year. In establishing the labor reimbursement rate, the franchisor shall not require a franchised motor vehicle dealer to establish said rate by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, a transaction by transaction calculation. For the purposes of this section, the following parts or types of repairs shall be excluded from the parts and/or labor calculations and the franchisor's reimbursement requirements under this section: (a) parts sold at wholesale; (b) tires; (c) routine maintenance not covered under any retail customer warranty such as fluids, filters and belts not provided in the course of repairs; (d) vehicle reconditioning; and (e) batteries replaced as part of a routine maintenance operation. If the franchisor rejects the declaration or attempts to rebut the declaration because of an error in the dealer's submission, the franchisor shall identify with specificity the reason for rejection and identify the error or errors within the submission. In the event the franchisor rejects or rebuts the dealer's initial declaration, the dealer shall have the opportunity, within sixty days to resubmit the full and corrected declaration addressing the alleged error or errors identified by the franchisor. The franchisor shall respond within sixty days. The one

hundred eighty day requirement for the repair orders shall be stayed from the date of initial submission. In any action or proceeding held pursuant to this subdivision, the franchisor shall have the burden of proving that the rate declared by the dealer was unreasonable as described in this subdivision and that the proposed adjustment of the average percentage markup or rejection of the submission is reasonable pursuant to the provisions of this subdivision.

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## NORTH CAROLINA

### § 20-305.1. Automobile dealer warranty obligations.



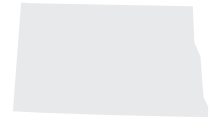
- (a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers in the dealer's market offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the retail rates charged for parts and labor by other franchised dealers who are selling competing line-makes of vehicles within the dealer's market. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is reasonable pursuant to the provisions of this subsection. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer or distributor, that was affirmed at the hearing, shall be effective beginning 30 days following issuance of the final order.
- (a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation:
- (1) Repairs for manufacturer or distributor special events, specials, coupons or promotional discounts for retail customer repairs.
  - (2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs.
  - (3) Engine assemblies.
  - (4) Routine maintenance, including such as fluids, filters, alignments, flushes, oil changes, belts, and brake drum/rotors and shoes/pads not provided in the course of repairs.

- (5) Nuts, bolts, fasteners, and similar items that do not have an individual part number.
  - (6) Tires and vehicle alignments.
  - (7) Vehicle reconditioning.
  - (8) Batteries and light bulbs.
- (a3) If a manufacturer or distributor furnishes a part or component to a dealer, at reduces or no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer on the basis of the dealer's average markup on the cost for the part or component as listed in the manufacturer's or distributor's price schedule less the cost for the part or component.

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## NORTH DAKOTA

### § 51-07-29. Warranty work compensation.



1. A motor vehicle manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a motor vehicle manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed. The hourly labor rate paid by a motor vehicle manufacturer to the dealer for warranty services may not be less than the average rate charged by the dealer for like service to nonwarranty customers for nonwarranty service as provided under subsection 5. A motor vehicle manufacturer may not reimburse a dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the dealer for these parts as provided under subsection 4.
4. The retail rate customarily charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
5. The retail rate customarily charged by the dealer for labor must be established using the same process as provided under subsection 4 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection 4.
6. In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:
  - a. Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
  - b. Parts sold at wholesale;
  - c. Routine maintenance not covered under any retail customer warranty, including fluids, filters, and belts not provided in the course of repairs;
  - d. Nuts, bolts, fasteners, and similar items that do not have an individual part number;
  - e. Tires; and
  - f. Vehicle reconditioning.

## OHIO

### § 4517.52. Franchisor warranty obligations; franchisee to be adequately compensated for warranty and recall work



- (A) Each franchisor shall fulfill warranty and recall obligations of repairing and servicing motor vehicles, including all parts and components manufactured for installation in any motor vehicle.
- (B) Each franchisor shall compensate each of its franchisees for labor and parts used to fulfill warranty and recall obligations of repair and servicing at rates not less than the rates charged by the franchisee to its retail customers for warranty-like labor and parts for nonwarranty work. A franchisee, other than a franchisee that deals in recreational vehicles, may establish rates of compensation for labor performed and parts used by the franchisee for purposes of this section if all of the following apply:

(1) The franchisee submits to the franchisor either of the following:

- (a) One hundred sequential nonwarranty service repair orders for warranty-like repairs that have been paid by a customer and closed by the time of submission;
- (b) All service repair orders for warranty-like repairs, that have been paid by a customer and closed by the time of submission, for a period of ninety consecutive days.

A franchisee either may submit a set of repair orders for purposes of calculating both its retail labor rate and its retail parts markup percentage or may submit separate sets of repair orders for purposes of calculating its retail labor rate and its retail parts markup percentage separately. The repair orders submitted under division (B)(1)(a) or (b) of this section must be from a period occurring not more than one hundred eighty days before the submission.

Subject to division (C)(3) of this section, if a franchisor determines from any set of repair orders submitted under this section that the retail labor rate or parts markup percentage calculated under division (B)(2) or (3) of this section is substantially higher or lower than the rate currently on record with the franchisor for labor or parts, the franchisor may request additional documentation for a period of either ninety days prior to or ninety days subsequent to the time period for which the repair orders were submitted for purposes of an alteration.

- (2) The franchisee calculates its retail labor rate by determining the franchisee's total labor sales from the service repair orders submitted under division (B)(1) of this section and dividing that amount by the total number of labor hours that generated those sales.
- (3) The franchisee calculates its retail parts markup percentage by determining the franchisee's total parts sales from the service repair orders submitted under division (B)(1) of this section and dividing that amount by the franchisee's total cost for the purchase of those parts, subtracting one from that amount, and then multiplying the amount by one hundred.
- (4) In calculating the retail labor rate in division (B)(2) of this section and the retail parts markup percentage in division (B)(3) of this section, the franchisee omits charges for any of the following from the calculation:
  - (a) Manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
  - (b) Parts sold, or repairs performed, at wholesale;
  - (c) Routine maintenance that is not covered under a retail customer warranty, including the replacement of fluids, filters, and belts that are not provided in the course of other repairs;

- (d) Items that do not have individual part numbers, such as nuts, bolts, and fasteners;
  - (e) Vehicle reconditioning;
  - (f) Accessories;
  - (g) Repairs of damage caused by a collision, a road hazard, the force of the elements, vandalism, theft, or operator negligence;
  - (h) Parts sold or repairs performed for insurance carriers;
  - (j) Goodwill or policy repairs or replacements;
  - (k) Repairs for which volume discounts have been negotiated with government agencies or insurance carriers;
  - (l) Repairs performed on vehicles from a different line-make;
  - (m) Replacement of tires or related elements.
- (5) The franchisee provides notice of its retail labor rate and retail parts markup percentage calculated in accordance with this section to the franchisor.
- (C) (1) A franchisor may contest the retail labor rate or retail parts markup percentage that was calculated by the franchisee under division (B) of this section within thirty days after receiving notice from the franchisee. If the franchisor seeks to contest the retail labor rate or retail parts markup percentage, the franchisor shall notify the franchisee that the franchisor believes the rate or markup percentage is materially inaccurate or substantially different than that of other similarly situated, same line-make new motor vehicle dealers in the vicinity, provide a full explanation of the reasons the franchisor disagrees with the rate or markup percentage, provide evidence substantiating the franchisor's position, and propose an adjustment of the contested rate or markup percentage. The franchisor shall not modify its notice to the franchisee or its grounds for contesting the rate or markup percentage after submitting a notice to the franchisee under division (C)(1) of this section.
- (2) If the franchisor does not contest the rate or markup percentage that was calculated by the franchisee under division (B) of this section within thirty days after receiving notice of the rate or markup percentage from the franchisee, the uncontested rate or markup percentage takes effect. The franchisor then shall use the rate and markup percentage to determine compensation for any warranty and recall work and service performed by the franchisee until the rate or markup percentage is modified.
- (3) If the franchisor contests a rate or markup percentage established by the franchisee under division (B) of this section, the franchisor and franchisee shall resolve the disagreement through the franchisor's internal dispute resolution process. However, the franchisee may appeal a determination made as part of the dispute resolution process to a court of competent jurisdiction. Any rate or markup percentage established either through an internal dispute resolution process or by a court as part of an appeal under this section shall be applied retroactively to govern reimbursement for labor or parts, as applicable, beginning thirty days after the date the franchisee submitted the disputed rate or markup percentage under division (B) of this section.
- (4) A franchisee shall not establish or modify a retail labor rate or retail parts markup percentage more frequently than once per calendar year.
- (D) When calculating the compensation that must be provided to a franchisee for labor and parts used to fulfill warranty and recall obligations under this section, all of the following apply:
- (1) The franchisor shall use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician.

- (2) The franchisor shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation.
  - (3) If the franchisor provided a part or component to the franchisee at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the franchisor shall provide to the franchisee an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the franchisor's price schedule by the retail parts markup percentage.
  - (4) A franchisor shall not assess penalties, surcharges, or similar costs to a franchisee, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a franchisee, or otherwise take retaliatory action against a franchisee based on any franchisee's exercise of its rights under this section. It is the burden of the franchisee to prove any claims under division (D)(4) of this section by a preponderance of the evidence. Nothing in this section prohibits a franchisor from increasing the price of a vehicle or part in the normal course of business.
- (E) A franchisor shall not require a franchisee to establish a retail labor rate or retail parts markup percentage using any method that is unduly burdensome or time consuming, or require the use of information that is unduly burdensome or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement. Further, no franchisor shall unilaterally calculate a retail labor rate or retail parts markup percentage for a franchisee.

Divisions (A), (C), (D), and (E) of this section do not apply to franchisors or franchisees who deal in recreational vehicles.

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## OKLAHOMA

### § 565. Denial revocation or suspension of license--Right of first refusal.

- A The Oklahoma Motor Vehicle Commission may deny an application for a license, or revoke or suspend a license or impose a fine not to exceed Ten Thousand Dollars (\$10,000.00) against a manufacturer or distributor or a fine not to exceed One Thousand Dollars (\$1,000.00) against a dealer per occurrence that any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title is violated or for any of the following reasons:
- 9. Being a factory that:
    - b. has failed to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. Adequate compensation for parts shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or ninety (90) consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission and declaring the average percentage markup. Adequate and fair compensation for labor shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential customer-paid service repair orders which contain labor charges, or ninety (90) consecutive days of customer-paid service repair orders which contain labor charges, whichever is less. When submitting repair orders to calculate

a labor rate, a dealer need not include repair orders for routine maintenance. A manufacturer or distributor may, not later than thirty (30) days after submission, rebut that declared rate in writing by reasonably substantiating that the rate is inaccurate or unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar part of the state offering the same line-make vehicles. The retail rate shall go into effect thirty (30) days following the approval by the manufacturer, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment in writing of the average percentage markup based on that rebuttal not later than thirty (30) days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commission not later than thirty (30) days after receipt of that proposal by the manufacturer or distributor. In the event a protest is filed, the manufacturer or distributor shall have the burden of proof to establish the new motor vehicle dealer's submitted rate was inaccurate or unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar part of the state. A manufacturer or distributor may not retaliate against any new motor vehicle dealer seeking to exercise its rights under (i) Vehicle emission or safety inspections required by law;

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## OREGON

### § 650.158. Predelivery preparation and warranty service by dealer.



- (b) (A) For purposes of this subsection and subject to subparagraphs (B) and (C) of this paragraph, to determine compensation under this subsection, a dealer shall propose an hourly rate and an amount for parts that the dealer charges nonwarranty customers by submitting to the manufacturer, distributor or importer copies of 100 sequential nonwarranty service repair invoices that customers paid or 90 consecutive days' worth of nonwarranty service invoices that customers paid, whichever is less, for repairs the dealer made not more than 180 days before the dealer's submission. If the manufacturer, distributor or importer does not contest the dealer's proposal and the dealer otherwise complies with the provisions of this paragraph, the dealer's proposal is presumed to be fair and reasonable.
- (C) A dealer may not include in the dealer's proposal:
- (i) Repairs for a manufacturer's, distributor's or importer's specials, special events or promotional discounts for retail customer repairs;
  - (ii) Parts sold at wholesale;
  - (iii) Routine maintenance that a retail customer warranty does not cover, such as fluids, filters and belts that a dealer uses in performing work other than repairs;
  - (iv) Nuts, bolts, fasteners and similar items that do not have an individual part number; and
  - (v) Vehicle reconditioning.

## PENNSYLVANIA

### § 818.9. Reimbursement for all parts and service required by the manufacturer or distributor; reimbursement audits.



- (2) Compensation for parts, including major assemblies used in warranty service, shall be at the dealer's retail rate. The following shall apply:
- (i) The dealer's retail rate for parts shall be established by the dealer's submitting to the manufacturer or distributor a declaration of the average percentage markup which shall be the lesser of the following orders which cover repairs made no more than 180 days before the submission:
    - (A) One hundred sequential nonwarranty customer-paid service repair orders which contain parts that are used in warranty-like service or repair.
    - (B) Ninety consecutive days of nonwarranty customer-paid service repair orders which contain parts that are used in warranty-like service or repair.
  - (ii) The declaration under subparagraph (i) shall be presumed to be reasonable, except that a manufacturer or distributor may, not later than 60 days after submission, rebut the presumption by substantiating that the declaration is unreasonable or materially inaccurate.
  - (iii) The retail rate shall go into effect 60 days following the declaration under subparagraph (i), unless the franchisor audits the submitted repair orders and a rebuttal under subparagraph (ii) occurs.
  - (iv) If the declared retail rate is rebutted, the manufacturer or distributor shall propose an adjustment of the markup based on the rebuttal no later than 60 days after submission.
  - (v) A manufacturer shall provide written support to the dealer for the rebuttal retail rate that is proposed. If the dealer does not agree with the proposed markup, the dealer may file a protest after receipt of the proposal by the manufacturer or distributor. If a protest is filed, the board shall inform the manufacturer or distributor that a protest has been filed and that a hearing will be held on the protest. In a hearing held under this subparagraph, the manufacturer or distributor shall have the burden of proving that:
    - (A) the retail rate declared by the dealer was unreasonable or materially inaccurate; and
    - (B) the manufacturer's or distributor's proposed adjustment of the markup is reasonable

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## RHODE ISLAND

### § 31-5.1-6. Warranty agreement.



- (a) Every manufacturer shall properly fulfill any warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for labor and parts. In no event shall that compensation fail to include reasonable compensation for diagnostic work, as well as repair service and labor. All claims made by motor vehicle dealers for labor and parts shall be paid in accord with the provisions of this section. Any delay in payment after approval or disapproval that is caused by conditions beyond the reasonable control of the manufacturer shall not constitute a violation of this section. Reimbursement for warranty repairs or diagnostic work shall be at the dealer retail rate in effect at the time the warranty repair or diagnostic work is performed.

## SOUTH DAKOTA

### § 32-6B-61. Schedule of compensation for warranty work.

The schedule of compensation for warranty work shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for diagnosis and performance of warranty work and service shall be adequate for the work to be performed. The hourly labor rate paid to the dealer for warranty services may not be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service. Reimbursement for parts used in the performance of warranty repair may not be less than the current retail rate customarily charged by the vehicle dealer for such parts. Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's written schedule of hourly labor rates and parts and may not obligate any vehicle dealer to engage in unduly burdensome documentation thereof, including, without limitation, obligating vehicle dealers to engage in transaction by transaction calculations.



## TEXAS

### Texas Occupations Code § 2301.002 (37)

“Warranty work” means parts, labor, and any other expenses incurred by a franchised dealer in complying w/ the terms of a manufacturer's or distributor's warranty. ( Texas Occupations Code §2301.402(b) A manufacturer or distributor may not pay or reimburse a dealer an amount of money for warranty work that is less than the amount the dealer charges a retail customer for similar nonwarranty work.



## UTAH

### § 13-14-204. Franchisor's obligations related to service—Franchisor audits—Time limits.

- (3) (a) In the determination of what constitutes reasonable compensation under this section, the principal factor to be considered is the prevailing wage rates being paid by franchisees in the relevant market area in which the franchisee is doing business.
- (b) (i) Compensation of the franchisee for warranty service or recall repair work may not be less than the amount charged by the franchisee for like parts and service to retail or fleet customers, if the amounts are reasonable.
- (ii) In the case of a recreational vehicle franchisee, reimbursement for parts used in the performance of warranty repairs, including those parts separately warranted directly to the consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost plus 20%.
- (iii) For purposes of this Subsection (3)(b)(ii), the term “cost” shall be that same price paid by a franchisee to a franchisor or supplier for the part when the part is purchased for a nonwarranty repair.



## VERMONT

### § 4086. Warranty and predelivery obligations to new motor vehicle dealers.

- (c) For purposes of this section, the “retail amounts customarily charged” by the franchisee for parts may be established by submitting to the manufacturer 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail amount, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the manufacturer and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving routine maintenance such as changing the oil and oil filter, and not involving accessories may be considered in calculating the average percentage markup. A manufacturer may not require a new motor vehicle dealer to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including part-by-part or transaction-by-transaction calculations. A new motor vehicle dealer may not change the average percentage markup more than two times in one calendar year. Further, the manufacturer shall reimburse the new motor vehicle dealer for any labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty, provided the franchisee’s rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer.

## VIRGINIA

### § 46.2-1571. Warranty and sales incentive obligations.

1. Compensation of a dealer for recall or warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer’s or distributor’s original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer’s service department unless the amounts are not reasonable. Recall or warranty parts compensation shall be stated as a percentage of markup, which shall be an agreed reasonable approximation of retail markup and which shall be uniformly applied to all of the manufacturer’s or distributor’s parts unless otherwise provided for in this section. If the dealer and manufacturer or distributor cannot agree on the recall or warranty parts compensation markup to be paid to the dealer, the markup shall be determined by an average of the dealer’s retail markup on all of the manufacturer’s or distributor’s parts as described in subdivisions 2 and 3.
2. For purposes of determining recall or warranty parts and service compensation paid to a dealer by the manufacturer or distributor, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers. For purposes of determining labor compensation for recall or warranty body shop repairs paid to a dealer by the manufacturer or distributor, internal and insurance-paid repairs shall not be considered in determining amounts charged by the dealer to retail customers.
3. Increases in dealer recall or warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup that shall be uniformly applied to all the manufacturer’s or distributor’s parts.
4. In the case of recall or warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years.

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as recall or warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motor vehicles that constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for recall or warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

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## WASHINGTON

### § 46.96.105. Warranty work.



- (a) The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer must establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer may not require a dealer to establish average percentage markup by another methodology. A manufacturer may not require information that the dealer believes is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. In calculating the retail rate customarily charged by the dealer for parts and labor, the following work must not be included in the calculation:
- (i) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
  - (ii) Parts sold at wholesale or at reduced or specially negotiated rates for insurance repairs;
  - (iii) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of repairs;
  - (iv) Nuts, bolts, fasteners, and similar items that do not have an individual part number;
  - (v) Tires;
  - (vi) Batteries and light bulbs; and
  - (vii) Vehicle reconditioning.
- (b) A manufacturer shall compensate a dealer for labor and diagnostic work at the rates charged by the dealer to its retail customers for such work and for any documentation work required by the manufacturer to authorize or verify the work including, but not limited to, photographs, paperwork, and electronic data entry. However, a manufacturer is not required to compensate a dealer more than once for the same documentation work. If a manufacturer can demonstrate that the rates unreasonably exceed those of all other franchised motor vehicle dealers in the same relevant market area offering the same or a competitive motor vehicle line, the manufacturer is not required to honor the rate increase proposed by the dealer. If the manufacturer is not required to honor the rate increase proposed by the dealer, the dealer is entitled to resubmit a new proposed rate for labor and diagnostic work.

## WEST VIRGINIA

### § 17A-6A-8a. Compensation to dealers for service rendered.



- (1) Every motor vehicle manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent or representative thereof, shall:
  - (b) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent or representative thereof; and
- (2) In no event may:
  - (b) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and
  - (c) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.
- (4) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than one hundred eighty days before the submission and declaring the average percentage markup.
- (5) The retail rate customarily charged by the dealer for labor rate must be established using the same process as provided under subsection (4) of this section and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (4) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time, which request shall not be unreasonable denied by the manufacturer.
- (6) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:
  - (a) Repairs for manufacturer or distributor special events, specials or promotional discounts for retain customer repairs;
  - (b) Parts sold at wholesale;
  - (c) Routine maintenance not covered under any retail customer warranty, including fluids, filters and belts not provided in the course of repairs;
  - (d) Nuts, bolts fasteners and similar items that do not have an individual part number;
  - (e) Tires;
  - (f) Vehicle reconditioning.
- (7) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect thirty days following the manufacturer's approval. A manufacturer or distributor may rebut the presumption by a preponderance of the evidence that a rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than thirty days after submission. If the average parts markup rate or average labor rate is rebutted, or both, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.

- (8) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections (4), (5) and (6) of this section and may not obligate any vehicle dealer to engage in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

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## WISCONSIN

### § 218.0125. Warranty reimbursement.



- (b) Reasonable compensation under par. (a) for labor is equal to the dealer's effective nonwarranty labor rate multiplied by the number of hours allowed for the repair under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work. Reasonable compensation under par. (a) for parts is equal to the dealer's cost for the parts multiplied by the dealer's average percentage markup over dealer cost for parts.
- (c)
  - 1. The effective nonwarranty labor rate is determined, using the submitted substantiating orders under sub. (4m)(a)2., by dividing the total customer labor charges for qualifying nonwarranty repairs in the repair orders by the total number of hours that would be allowed for the repairs if the repairs were made under the manufacturer's, importer's, or distributor's time allowances used in compensating the dealer for warranty work.
  - 2. A dealer's average percentage markup over dealer cost for parts is determined, using the submitted substantiating orders under sub. (4m)(a)2., by dividing total charges for parts in the repair orders by the total dealer cost for the parts.
- (4m) (a) To be eligible for compensation for labor or parts under sub. (3m), a dealer shall submit to the manufacturer, importer, or distributor all of the following:
  - 1. A written notice of the claimed effective nonwarranty labor rate or average percentage markup over dealer cost for parts.
  - 2. Either 100 sequential repair orders for qualifying nonwarranty repairs or all repair orders for qualifying nonwarranty repairs performed in a 90-day period, whichever is less. All repair orders under this subdivision must be for repairs made no more than 180 days before the submission.