

AN ACT

RELATING TO TRADE PRACTICES; AMENDING SECTIONS OF CHAPTER 57, ARTICLE 16 NMSA 1978 TO PROVIDE FOR COMPENSATION FOR PARTS UNDER WARRANTY CLAIMS; PROVIDING A TIME PERIOD FOR AN AUDIT OF A WARRANTY CLAIM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 57-16-7 NMSA 1978 (being Laws 1973, Chapter 6, Section 7, as amended) is amended to read:

"57-16-7. WARRANTY CLAIMS--PAYMENT.--

A. Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation for a warranty claim shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and shall not be less than the schedule of compensation for an existing dealer as of July 1, 2011.

B. 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 the dealer believes is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

C. 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. 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.

D. A dealer shall not be granted an increase in the average percentage markup or labor and diagnostic work rate more than twice in one calendar year.

E. All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided that the claim has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect or false claims for a period of six months following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

F. All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is

required to pay that claim within thirty days of receipt of the claim.

G. A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition.

H. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes."

SECTION 2. Section 57-16-7.1 NMSA 1978 (being Laws 1997, Chapter 14, Section 2) is amended to read:

"57-16-7.1. SALES AND SERVICE INCENTIVES--AUDIT.--A manufacturer or distributor may audit a claim for sales and service incentives only during the six-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011. _____