

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 123

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

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. Every manufacturer, distributor or
representative shall properly fulfill any warranty agreement
and adequately and fairly compensate each of its motor vehicle
dealers for labor, parts and other expenses incurred by the
dealer to perform the required warranty repairs. All
compensation for labor shall be the same as the dealer would~~

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underscored material = new
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1 ~~have made to and collected from an individual retail customer~~
2 ~~for the same repairs if performed in the normal course of~~
3 ~~business not covered by a warranty. Compensation for parts~~
4 ~~shall be in an amount not less than the manufacturer's warranty~~
5 ~~reimbursement rate for parts or the amount received by the~~
6 ~~motor vehicle dealer from retail customers for parts used in~~
7 ~~non-warranty work of like kind. All claims made by motor~~
8 ~~vehicle dealers pursuant to provisions of this section and~~
9 ~~Section 57-16-6 NMSA 1978 shall be paid within thirty days~~
10 ~~following their approval. All claims shall be either approved~~
11 ~~or disapproved within thirty days after their receipt, and when~~
12 ~~any claim is disapproved, the motor vehicle dealer who submits~~
13 ~~it shall be notified in writing of its disapproval within that~~
14 ~~period, and each notice shall state the specific grounds upon~~
15 ~~which the disapproval is based. Any special handling of claims~~
16 ~~required by the manufacturer, distributor or representative not~~
17 ~~uniformly required of all dealers of that make may be enforced~~
18 ~~only after thirty days' notice in writing and upon good and~~
19 ~~sufficient reason. A manufacturer or distributor may audit a~~
20 ~~warranty claim only during the twelve-month period immediately~~
21 ~~following payment or credit issued for the claim; however, this~~
22 ~~limitation shall not apply if there is a reasonable suspicion~~
23 ~~of fraud.~~

24 ~~B.]~~ A. Each manufacturer shall specify in its
25 franchise agreement, or in a separate written agreement, with

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1 each of its dealers licensed in this state, the dealer's
2 obligation to perform warranty work or service on the
3 manufacturer's products. Each manufacturer shall provide each
4 of its dealers with a schedule of compensation to be paid to
5 the dealer for any warranty work or service, including parts,
6 labor and diagnostic work, required of the dealer by the
7 manufacturer in connection with the manufacturer's products.
8 The schedule of compensation for a warranty claim shall not be
9 less than the rates charged by the dealer for similar service
10 to retail customers for nonwarranty service and repairs and
11 shall not be less than the schedule of compensation for an
12 existing dealer as of July 1, 2011.

13 B. The rates charged by the dealer for nonwarranty
14 service or work for parts means the price paid by the dealer
15 for those parts, including all shipping and other charges,
16 increased by the franchisee's average percentage markup. A
17 dealer shall establish and declare the dealer's average
18 percentage markup by submitting to the manufacturer one hundred
19 sequential customer-paid service repair orders or ninety days
20 of customer-paid service repair orders, whichever is less,
21 covering repairs made no more than one hundred eighty days
22 before the submission. A change in a dealer's established
23 average percentage markup takes effect thirty days following
24 the submission. A manufacturer shall not require a dealer to
25 establish average percentage markup by another methodology. A

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1 manufacturer shall not require information that the dealer
2 believes is unduly burdensome or time-consuming to provide,
3 including, but not limited to, part-by-part or transaction-by-
4 transaction calculations.

5 C. A manufacturer shall compensate a dealer for
6 labor and diagnostic work at the rates charged by the dealer to
7 its retail customers for such work. If a manufacturer can
8 demonstrate that the rates unreasonably exceed those of all
9 other franchised motor vehicle dealers in the same relevant
10 market area offering the same or a competitive motor vehicle
11 line, the manufacturer is not required to honor the rate
12 increase proposed by the dealer. If the manufacturer is not
13 required to honor the rate increase proposed by the dealer, the
14 dealer is entitled to resubmit a new proposed rate for labor
15 and diagnostic work.

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

19 E. All claims for warranty work for parts and labor
20 made by dealers under this section shall be submitted to the
21 manufacturer within one year of the date the work was
22 performed. All claims submitted must be paid by the
23 manufacturer within thirty days following receipt, provided
24 that the claim has been approved by the manufacturer. The
25 manufacturer has the right to audit claims for warranty work

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1 and to charge the dealer for any unsubstantiated, incorrect or
2 false claims for a period of six months following payment.
3 However, the manufacturer may audit and charge the dealer for
4 any fraudulent claims during any period for which an action for
5 fraud may be commenced under applicable state law.

6 F. All claims submitted by dealers on the forms and
7 in the manner specified by the manufacturer shall be either
8 approved or disapproved within thirty days following their
9 receipt. The manufacturer shall notify the dealer in writing
10 of any disapproved claim and shall set forth the reasons why
11 the claim was not approved. Any claim not specifically
12 disapproved in writing within thirty days following receipt is
13 approved, and the manufacturer is required to pay that claim
14 within thirty days of receipt of the claim.

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

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

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

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1 "57-16-7.1. SALES AND SERVICE INCENTIVES--AUDIT.--A
2 manufacturer or distributor may audit a claim for sales and
3 service incentives only during the [~~twenty-four month~~] six-
4 month period immediately following payment or credit issued for
5 the claim; however, this limitation shall not apply if there is
6 a reasonable suspicion of fraud."

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

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[bracketed material] = delete

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