

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1339

Introduced by

Representative M. Johnson

Senator Sorvaag

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota
2 Century Code, relating to reimbursement for warranty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Parts, equipment, and accessory dealers reimbursed for warranty repair.**

7 1. As used in this section:

8 a. "Commercial equipment dealer" means a person that engages in the business of:

9 (1) Selling, at retail, parts for any new or used commercial motor vehicle, truck,
10 or semitrailer, or vehicular implements, commercial equipment, or
11 accessories, or attachment units, designed and used primarily for
12 transporting commodities, merchandise, or commercial cargo; or

13 (2) Repairing new or used commercial motor vehicle, truck, or semitrailer parts,
14 or vehicular implements, commercial equipment or, accessories, or
15 attachment units, designed and used primarily for transporting commodities,
16 merchandise, or commercial cargo.

17 b. "Commercial distributor" means any person that offers for sale, sells, or
18 distributes to a dealer parts for any new commercial motor vehicle, truck, or
19 semitrailer, or vehicular implements, commercial equipment, or accessories, or
20 attachment units, designed and used primarily for transporting commodities,
21 merchandise, or commercial cargo.

22 c. "Commercial manufacturer" means any person engaged in the business of
23 manufacturing or assembling parts for any new commercial motor vehicle, truck,
24 or semitrailer, or vehicular implements, commercial equipment, or accessories, or

1 attachment units, designed and used primarily for transporting commodities,
2 merchandise, or commercial cargo.

3 d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or
4 semitrailer components.

5 2. A commercial manufacturer shall include reasonable compensation for diagnostic
6 work, as well as repair service, parts, and labor, in warranty work compensation. In
7 addition, a commercial manufacturer shall provide adequate time allowances for
8 diagnosis and performance of warranty work and service for the work performed. The
9 hourly labor rate paid by a commercial manufacturer to the commercial equipment
10 dealer for warranty services may not be less than the average rate charged by the
11 commercial equipment dealer for like service to nonwarranty customers for
12 nonwarranty service. A commercial manufacturer may not reimburse a commercial
13 equipment dealer for parts used in the performance of warranty repair at a lower rate
14 than the average retail rate customarily charged by the commercial equipment dealer
15 for these parts as provided under subsection 5.

16 3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made
17 by a commercial equipment dealer under this section within thirty days of the approval
18 of the claim. The commercial manufacturer either shall approve or disapprove a claim
19 within thirty days after the claim is submitted to the commercial manufacturer. The
20 commercial manufacturer may prescribe the manner in which and the forms on which
21 the commercial equipment dealer must present the claim. A claim not specifically
22 disapproved in writing within thirty days after the commercial manufacturer receives
23 the claim must be construed to be approved and the manufacturer shall pay the claim
24 within thirty days.

25 4. A commercial manufacturer, commercial distributor, or commercial distributor branch
26 shall compensate fully its commercial equipment dealers licensed in this state for
27 warranty parts, work, and service specified in this section. Failure to fully compensate
28 includes a reduction in the amount due to the commercial equipment dealer or
29 imposing a separate charge, surcharge, or other imposition by which the commercial
30 manufacturer seeks to recover the costs of complying with this section from the
31 commercial equipment dealer.

- 1 5. The retail rate customarily charged by the commercial equipment dealer for parts is
2 established by the commercial equipment dealer submitting to the commercial
3 manufacturer or commercial distributor one hundred sequential nonwarranty
4 customer-paid service repair orders that contain warranty-like parts or ninety
5 consecutive days of nonwarranty customer-paid service repair orders that contain
6 warranty-like parts, whichever is less, covering repairs made no more than
7 one hundred eighty days before the submission and declaring the average percentage
8 markup.
- 9 6. The retail rate customarily charged by the commercial equipment dealer for labor must
10 be established using the same process as provided under subsection 5 and declaring
11 the average labor rate. The average labor rate must be determined by dividing the
12 amount of the dealer's total labor sales by the number of total hours that generated
13 those sales. If a labor rate and parts markup rate are simultaneously declared by the
14 commercial equipment dealer, the commercial equipment dealer may use the same
15 repair orders to complete each calculation as provided under subsection 5.
- 16 7. In calculating the retail rate customarily charged by the commercial equipment dealer
17 for parts and labor, the following work may not be included in the calculation:
- 18 a. Repairs for commercial manufacturer or commercial distributor special events,
19 specials, or promotional discounts for retail customer repairs;
- 20 b. Parts sold at wholesale; and
- 21 c. Nuts, bolts, fasteners, and similar items that do not have an individual part
22 number.
- 23 8. The average of the parts markup rates and labor rate is presumed to be fair and
24 reasonable and must become effective thirty days following the commercial
25 manufacturer's approval. Not later than thirty days after submission, a commercial
26 manufacturer or commercial distributor may rebut the presumption by reasonably
27 substantiating that a rate is unreasonable in light of the practices of all other
28 commercial equipment dealers in an economically similar area of the state offering the
29 commercial equipment dealer's declaration of the same part, or vehicular implement,
30 equipment, accessory, or attachment unit. If the average parts markup rate or average
31 labor rate, or both are rebutted, the commercial manufacturer or commercial distributor

1 shall propose an adjustment of the average percentage markup based on that rebuttal
2 not later than thirty days after submission.

3 9. Each commercial manufacturer, in establishing a schedule of compensation for
4 warranty work, shall rely on the commercial equipment dealer's written schedule of
5 hourly labor rates and parts and may not obligate any commercial equipment dealer to
6 engage in unduly burdensome or time-consuming documentation of rates or parts,
7 including obligating commercial equipment dealers to engage in transaction
8 by-transaction or part-by-part calculations.

9 10. A commercial dealer or commercial manufacturer may demand the average parts
10 markup or average labor rate be calculated using the process provided under
11 subsections 5 and 6; however, the demand for the average parts markup may not be
12 made within twelve months of the last parts markup declaration and the demand for
13 the average labor rate may not be made within twelve months of the last labor rate
14 declaration. If a parts markup or labor rate is demanded by the commercial equipment
15 dealer or commercial manufacturer, the commercial equipment dealer shall determine
16 the repair orders to be included in the calculation under subsections 5 and 6.