

Proposed Amendment to Senate Bill 303

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On behalf of Nevada Franchised Auto Dealers Association

April 10, 2023

Amendment Summary:

The proposed amendment proposes to make various changes to Senate Bill 303. The changes include, but are not limited to:

- Changing the definitions Sections 2 & 3 related to “Parts” and “Qualifying repair”.
- Changing the definition of “Repair Order” in Section 5.
- Clarifies the definitions of “Warranty agreement” and “Warranty work” in Sections 6 & 7, respectively.
- Changing Section 8 to clarify what would constitute an “unfair act or practice” by the manufacturer.
- Changing Section 9 to clarify the process a dealer must follow to establish or modify the prevailing retail labor rate and parts markup related to a warranty or recall repair.
- Changing Section 10 to clarify the process by which a manufacturer may contest a dealer’s request to modify its rates pursuant to Section 9 of the bill. Further, it changes the time by which the manufacturer shall approve the request and when the request become effective.
- Changes Section 11 to add the term “or reasonable” to Subsection 3 as part of a manufacturer’s basis for calculating the dealer’s mark-up. Further, the amendment proposes to change the time in which the retail labor rate or retail parts markup shall become retroactively effective in Subsection 4(a). Lastly, strikes the term “three times” in Subsection 4(b)(1) and the references to “attorneys fees and costs” Subsection 4(b)(2).

SB303

- Changes Section 12 to clarify the compensation a dealer shall receive with respect to parts supplied by the manufacturer at no or a reduced costs.
- Changes Section 13 to clarify that a manufacturer shall not require a dealer to substitute a sample of a qualifying repair orders “if it would be unreasonable to do so.”
- Changes Section 14 to make clear a manufacturer shall not take adverse action against a dealer solely because it has requested compensation with respect to warranty or recall service.
- Changes Section 16(4) to clarify that a dealers may file an action against a manufacturer for not paying the prevailing labor/parts rate if those rates had not been established. Further references to “is three times” in Subsection 4(a) and all of Subsection 4(b) are struck from the bill.

Proposed Amendment:

Please see attached amendment

SENATE BILL NO. 303—SENATORS DONDERO LOOP, FLORES; DALY,
DONATE, LANGE, NEAL, OHRENSCHALL, PAZINA AND SPEARMAN

MARCH 16, 2023

Referred to Committee on Growth and Infrastructure

SUMMARY—Revises provisions relating to motor vehicles.
(BDR 43-673)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to motor vehicles; providing that it is an unfair act or practice for a manufacturer to not compensate a dealer fairly for warranty work or a recall service or repair or to violate certain provisions; setting forth a process for calculating the rate at which a manufacturer must compensate a dealer for warranty work or a recall service or repair; requiring the Director of the Department of Motor Vehicles to decide certain disputes between a dealer and a manufacturer relating to the payment of compensation to a dealer for warranty work or a recall service or repair; making various other changes relating to motor vehicles; and other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that it is an unfair act or practice for any manufacturer of
2 motor vehicles, trailers or semitrailers to fail to compensate a dealer fairly for labor,
3 parts and other expenses incurred by the dealer under the manufacturer’s warranty
4 agreements or any recall service or repair. (NRS 482.36385) **Section 22** of this bill
5 removes this provision. **Sections 2-16** of this bill set forth new requirements for
6 calculating the compensation that a manufacturer must pay a dealer for such
7 purposes.

8 **Section 8** of this bill provides that it is an unfair act or practice for a
9 manufacturer to: (1) fail to compensate a dealer fairly for labor, parts and other
10 expenses incurred by the dealer for warranty work or a recall service or repair; or
11 (2) violate any of the provisions of **sections 9-15** of this bill. **Section 8** further
12 provides that it shall be deemed that a dealer has been fairly compensated by a
13 manufacturer for warranty work if the manufacturer compensates the dealer for: (1)

14 labor relating to warranty work in an amount that is equal to the prevailing retail
15 labor rate multiplied by the applicable time allowances prescribed in the guide used
16 by the dealer for labor furnished for repairs other than warranty work; and (2) parts
17 relating to warranty work in an amount that is equal to the dealer's cost for the
18 parts, pursuant to **section 12** of this bill, multiplied by the prevailing retail parts
19 markup.

20 **Section 9** of this bill sets forth the process for a dealer to establish or modify
21 the prevailing retail labor rate and prevailing retail parts markup of the dealer.
22 Specifically, **section 9** requires the dealer to submit in writing to the manufacturer
23 the prevailing retail labor rate and prevailing retail parts markup, which must be
24 based on certain qualifying repair orders of the dealer. **Section 9** further requires
25 the dealer to submit certain qualifying repair orders to the manufacturer.

26 **Section 10** of this bill authorizes a manufacturer to contest the material
27 accuracy of the prevailing retail labor rate and prevailing retail parts markup of a
28 dealer not later than 30 days after receiving the qualifying repair orders from the
29 dealer. If a manufacturer contests the material accuracy of any such rate or markup,
30 **section 10** requires the manufacturer to provide the dealer with the manufacturer's
31 calculation of the prevailing retail labor rate and prevailing retail parts markup of
32 the dealer. If a dealer agrees with a manufacturer's contest of the material accuracy
33 of the prevailing retail labor rate or prevailing retail parts markup based on a
34 dealer's submission of inaccurate or nonqualifying repair orders, **section 10**
35 authorizes the dealer to submit replacement qualifying repair orders and update the
36 prevailing retail labor rate or prevailing retail parts markup calculation based on the
37 replacement repair orders, as applicable. Such a submission by a dealer will not be
38 considered a new submission for the purposes of **section 9** and will be deemed
39 submitted as of the date of the original submission.

40 **Section 11** of this bill authorizes a dealer to file a protest with the Director of
41 the Department of Motor Vehicles if the dealer does not agree with the
42 manufacturer's calculations of the prevailing retail labor rate and prevailing retail
43 parts markup. If the Director receives such a protest, the Director is required to hold
44 a hearing to decide the prevailing retail labor rate or prevailing retail parts markup
45 of the dealer, as applicable. **Sections 18-21** of this bill make conforming changes to
46 apply existing provisions of law relating to conducting discovery and hearings held
47 by the Director relating to certain other actions between a dealer and a
48 manufacturer to the protests provided for in **section 11**.

49 **Section 12** provides that if a manufacturer furnishes or causes to be furnished
50 parts to a dealer at no cost or a reduced cost for purposes of performing warranty
51 work or a recall service or repair, the manufacturer is required to compensate the
52 dealer for the dealer's costs for the parts, if any, plus an amount that is equal to the
53 dealer's prevailing retail parts markup multiplied by the fair market wholesale
54 value of the parts. **Section 12** further sets forth the calculation for the fair market
55 wholesale value of the parts.

56 **Section 13** of this bill prohibits a manufacturer from: (1) establishing or
57 implementing a special part or component number for parts used in warranty work
58 if doing so will result in lower compensation to the dealer; or (2) requiring,
59 influencing or attempting to influence a dealer to implement or change the price for
60 which the dealer sells parts or provides labor for any retail repair by taking certain
61 action.

62 **Section 14** of this bill prohibits a manufacturer from taking or threatening to
63 take adverse action against a dealer who requests compensation for warranty work
64 or a recall service or repair at the dealer's prevailing retail labor rate and prevailing
65 retail parts markup by taking certain actions.

66 **Section 15** of this bill prohibits, with certain exceptions, a manufacturer from
67 recovering or attempting to recover any portion of its costs for compensating a
68 dealer for warranty work or a recall service or repair.

69 **Section 16** of this bill authorizes a dealer to file a protest with the Director of
70 the Department if the manufacturer does not compensate a dealer for warranty work
71 or a recall service or repair that is based on the dealer's prevailing retail labor rate
72 and prevailing retail parts markup. **Sections 18-21** make conforming changes to
73 apply existing provisions of law relating to conducting discovery and holding
74 hearings held by the Director relating to certain other actions between a dealer and
75 a manufacturer to the protests provided for in **section 16**.
76 **Sections 2-7** of this bill, respectively, define the terms "parts," "qualifying
77 repair," "qualifying repair order," "repair order," "warranty agreement" and
78 "warranty work."
79 **Section 17** of this bill makes a conforming change to indicate the proper
80 placement of **sections 2-16** in the Nevada Revised Statutes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 482 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 16, inclusive, of this
3 act.

4 **Sec. 2.** *"Parts" means original ~~or replacement~~ parts,*
5 *accessories, components or systems of a vehicle, ~~including,~~*
6 *~~without limitation, the engine, transmission, an electric vehicle~~*
7 *~~battery and other parts assemblies listed in the manufacturer's parts~~*
8 *catalogue.*

8 **Sec. 3.** *"Qualifying repair" means a warranty-like repair*
9 *to a vehicle that*
10 *would have come within the manufacturer's new motor vehicle*
11 *warranty but for the vehicle having exceeded the time or mileage*
12 *limit of the warranty. The term does not include:*

12 1. *Any routine maintenance, including, without limitation,*
13 *replacement of fluids, filters, batteries, bulbs, belts, nuts, bolts or*
14 *fasteners;*

15 2. *The replacement of or work on tires, wheels ~~or elements~~*
16 *~~related to tires or wheels,~~ including, without limitation, vehicle*
17 *alignment and tire or wheel rotation;*

18 3. *A repair for which a volume discount has been negotiated*
19 *with a governmental agency, ~~insurer, extended warranty or service~~*
20 *~~contract provider or other third party payor;~~*

21 4. *A repair that is the subject of a manufacturer special event,*
22 *promotion or service campaign or a repair that is otherwise*
23 *subject to a manufacturer discount;*

24 5. *A repair of a vehicle that is owned by the dealer or an*
25 *employee of the dealer;*

26 6. *The installation of an accessory on a motor vehicle;*

27 7. *~~A repair of any condition caused by a collision, road~~*
28 *~~hazard, the force of the elements, vandalism, theft or the~~*
29 *~~negligence or deliberate act of the owner, an operator or a~~*

30 ~~third party; Repairs performed in the body shop~~

1 8. Any safety or vehicle emission inspection that is otherwise
2 required by law;

3 9. The reconditioning of a vehicle;

4 10. Any ~~repair or replacement using a part sold at wholesale;~~

5 11. ~~Any repair or replacement using after-market parts;~~

6 12. A goodwill repair or replacement that is approved and
7 reimbursed by the manufacturer; or

8 13. A repair that is performed on a line or make of vehicles
9 for which the dealer is not franchised by the manufacturer.

10 Sec. 4. "Qualifying repair order" means a repair order that
11 encompasses, in whole or in part, one or more qualifying repair.

12 Sec. 5. "Repair order" means an invoice for one or more
13 repairs to a vehicle that is paid by a retail customer and closed as
14 of the time of submission where the invoice includes:

15 1. ~~The prevailing retail parts markup, the cost of each part~~
16 ~~and its sale price; and~~

17 2. ~~The prevailing retail labor rate that reflects the labor hours~~
18 ~~allocated to each job and the sale price of the labor.~~

19
20 Sec. 6. "Warranty agreement" means a manufacturer's new
21 motor vehicle

written express warranty, or certified pre-owned warranty or any
other obligation of

22 a manufacturer to repair or replace a defect in a vehicle or part,

23 including, without limitation, a repair pursuant to a technical

24 service bulletin, customer service campaign or safety recall in

25 accordance with federal law or regulation.

26 Sec. 7. "Warranty work" means ~~transportation, delivery,~~
27 ~~preparatory work and labor, including, without limitation,~~

28 ~~diagnostic labor, performed by or arranged to be performed by a~~

29 ~~dealer in order to fulfill the obligations of a warranty or recall that~~

30 ~~is required, requested or approved by a manufacturer pursuant to~~

31 ~~a warranty agreement. Repairs that are covered by a manufacturer's~~

written express warranty, including reasonable necessary diagnostic
time, and recall repairs.

32 Sec. 8. 1. It is an unfair act or practice for a manufacturer
33 to:

34 (a) Fail to compensate a dealer fairly for labor, and parts and
other

35 expenses incurred by the dealer for warranty work or any recall
36 service or repair; or

37 (b) Violate any provision of sections 9 to 15, inclusive, of this
38 act.

39 2. For purposes of subsection 1, it shall be deemed that a

40 dealer has been fairly compensated by a manufacturer for
41 warranty work if the manufacturer compensates the dealer for:

42 (a) ~~Labor relating to performed for warranty work in an amount~~
43 ~~that is equal~~

43 ~~to the prevailing retail labor rate multiplied by the applicable time~~
44 ~~allowances prescribed in the guide used by the dealer for labor~~

1 ~~furnished for repairs other than warranty work at the dealer's~~
~~prevailing retail labor rate as established by sections 9 and 10 of~~
~~this act.~~

2 (b) ~~Parts relating to used to perform~~ warranty work in an amount
that is equal

3 ~~to the dealer's cost for the parts pursuant to section 12 of this act,~~
4 ~~multiplied by the prevailing retail parts markup as determined by~~
~~sections 9 and 10 of this act.~~

5 ~~Sec. 9. 1. At the request of the dealer, and except Except as~~
~~otherwise provided in this section and~~

6 ~~section 10 of this act, the prevailing retail labor rate and~~
7 ~~prevailing retail parts markup of a dealer must be established or~~
8 ~~modified by the dealer by submitting in writing to the~~
9 ~~manufacturer such rate and markup, as calculated by the dealer~~
10 ~~and based upon:~~

11 (a) ~~All consecutive qualifying repair orders that include 100~~
12 ~~sequential qualifying repair orders; or~~

13 (b) ~~All qualifying repair orders closed during any period of 90~~
14 ~~consecutive days,~~

15 ~~whichever produces the smallest number of qualifying repair~~
16 ~~orders.~~

17 ~~2. A dealer is not required to submit the same qualifying~~
18 ~~repair orders pursuant to subsection 1 in order to establish both~~
19 ~~the prevailing retail labor rate and prevailing retail parts markup.~~

20 ~~3. All qualifying repair orders submitted pursuant to~~
21 ~~subsection 1 must be dated not more than 180 days before the date~~
22 ~~on which the qualifying repair orders are submitted to the~~
23 ~~manufacturer.~~

24 ~~4. Based on the qualifying repair orders submitted pursuant~~
25 ~~to this section:~~

26 (a) ~~The prevailing retail labor rate is calculated by dividing the~~
27 ~~total amount charged for labor for qualifying repairs by the total~~
28 ~~number of hours charged for labor for qualifying repairs.~~

29 (b) ~~The prevailing retail parts markup is calculated by:~~

30 (1) ~~Dividing the total charges for parts for qualifying~~
31 ~~repairs by the total cost to the dealer to purchase the parts for such~~
32 ~~qualifying repairs;~~

33 (2) ~~Subtracting 1 from the amount determined pursuant to~~

34 subparagraph (1); and

35 (3) Multiplying the amount determined pursuant to
36 subparagraph (2) by 100 in order to produce a percentage.

37 5. In calculating the prevailing retail labor rate or prevailing
38 retail parts markup pursuant to this section, the dealer shall
39 exclude any labor or part that is not for a qualifying repair.

40 6. ~~Any discount that is not allocated for a qualifying repair
41 on a qualifying repair order between parts and labor must be
42 allocated on a pro rata basis. For purposes of this subsection, a
43 promotional reward program or cash-equivalent pay method
44 pursuant to a service contract or prepaid maintenance contract
45 shall not be a discount.~~

1 7. A dealer shall not submit to establish or modify its rates
2 pursuant to this section more frequently than once per twelve-
3 month period. The submission may be to establish or modify the
4 prevailing retail labor rate, or
5 prevailing retail parts markup, or both. pursuant to this section
6 more than
7 once per calendar year. If a manufacturer contests the dealer's
8 submission pursuant to Section 10 as incomplete or inaccurate, then a
9 dealer may correct the submission, and the twelve-month period shall
10 be measured from the date the dealer submits its corrected submission.

4
5 **Sec. 10. 1.** *Not later than 30 days after receiving the*
6 *qualifying repair orders from a dealer pursuant to section 9 of this*
7 *act, the manufacturer may contest ~~material accuracy of the~~ the*
8 *dealer's proposed*
9 *prevailing retail labor rate or prevailing retail parts markup as*
10 *inaccurate or unreasonable compared to other similarly situated*
11 *same line-make new motor vehicle dealers in this state by*
12 *providing the dealer with the manufacturer's calculation of the*
13 *prevailing retail labor rate or prevailing retail parts markup, as*
14 *applicable, based on the qualifying repair orders submitted to the*
15 *manufacturer by the dealer or other information available to the*
16 *manufacturer, including, without limitation, a copy*
17 *of all calculations made by the manufacturer and any other*
18 *evidence substantiating the manufacturer's calculation and*
19 *contest-rebuttal.*

20 2. *If a manufacturer contests the reasonability or material*
21 *accuracy of the*
22 *prevailing retail labor rate or prevailing retail parts markup*
23 *pursuant to subsection 1, the manufacturer shall not thereafter*
24 *add to, expand, supplement or otherwise modify any evidence of its*
25 *contest of the dealer's prevailing retail labor rate or prevailing*
26 *retail parts markup against the dealer that was available to the*

manufacturer at the time it contested the prevailing retail labor rate or prevailing retail parts markup rate, except if in response to new or revised information or argument from the dealer.

22 3. If a dealer agrees with ~~the material accuracy of the~~ manufacturer's calculation of the prevailing retail labor rate or
23 prevailing retail parts markup, as applicable, it shall be deemed:
24

25 (a) ~~That the prevailing retail labor rate or prevailing retail~~
26 ~~parts markup are those of the dealer, effective on the 31st day~~
27 ~~after the date on which the dealer submitted the original~~
28 ~~prevailing retail labor rate or prevailing retail parts markup,~~
agrees to the manufacturer's calculation of the
prevailing retail labor rate or prevailing retail
parts markup, as

29 applicable, to the manufacturer; and

30 ~~(b) For purposes of subsection 7 of section 9 of this act, that~~
31 ~~the dealer has not modified the prevailing retail labor rate or~~
32 ~~prevailing retail parts markup.~~

33 4. ~~If a dealer agrees with the manufacturer's contest of the~~
34 ~~material accuracy of the prevailing retail labor rate or prevailing~~
35 ~~retail parts markup pursuant to subsection 1 based on a dealer's~~
36 ~~submission of inaccurate or nonqualifying repair orders, the~~
37 ~~dealer may replace the inaccurate or nonqualifying repair orders~~
38 ~~with accurate or qualifying repair orders and update the~~
39 ~~prevailing retail labor rate or prevailing retail parts markup~~
40 ~~calculation based on the replacement repair orders, as applicable.~~
41 ~~Any submission made by a dealer pursuant to this subsection shall~~
42 ~~be deemed to have been submitted on the date of the original~~
43 ~~submission and shall not be considered as a modification~~
44 ~~submitted pursuant to subsection 7 of section 9 of this act.~~

45 5. If a manufacturer does not contest the reasonableness
46 or material accuracy

of the prevailing retail labor rate or prevailing retail parts markup

1 pursuant to subsection 1 within 30 days, the prevailing retail labor
2 rate or prevailing retail parts markup of the dealer shall
3 be deemed approved, and becomes

4 effective on the date that is ~~31~~ 61 days after the dealer submitted
5 the

6 prevailing retail labor rate or prevailing retail parts markup to the
7 manufacturer.

8 **Sec. 11. 1. A dealer may file a protest with the Director of**
9 **the Department pursuant to NRS 482.36361 if the dealer does not**
10 **agree with the manufacturer's calculations of the prevailing retail**
11 **labor rate or prevailing retail parts markup submitted to the dealer**
pursuant to section 10 of this act.

2. If the Director receives a protest from a dealer pursuant to

12 subsection 1:

13 (a) The Director shall hold a hearing to decide whether the
14 prevailing retail labor rate or prevailing retail parts markup is
15 the rate or markup, as applicable, determined by the dealer or the
16 manufacturer; and

17 (b) Except as otherwise provided in this section, the provisions
18 of NRS 482.36361 to 482.36368, inclusive, apply.

19 3. In any hearing on a protest filed pursuant to this section,
20 the manufacturer shall have the burden to show that the
21 prevailing retail labor rate or prevailing retail parts markup of the
22 dealer, as calculated by the manufacturer, is accurate or
23 reasonable and that
24 the dealer's calculation is inaccurate or unreasonable.

25 4. If the Director finds that the manufacturer did not have a
26 substantial basis for contesting the prevailing retail labor rate or
27 prevailing retail parts markup of the dealer, as applicable:

28 (a) The prevailing retail labor rate or prevailing retail parts
29 markup of the dealer shall become retroactively effective to the
30 date that is ~~30~~ 60 days following the date on which the
31 manufacturer

32 received the prevailing retail labor rate or prevailing retail parts
33 markup of the dealer pursuant to section 9 or 10 of this act, as
34 applicable.

35 (b) The Director shall order the manufacturer to pay to the
36 dealer:

37 (1) An amount that is ~~three times~~ the difference between
38 the amount that the dealer has received from the manufacturer for
39 warranty work and the amount that the dealer should have
40 received from the manufacturer for warranty work if the
41 manufacturer had compensated the dealer using the prevailing
42 retail labor rate or prevailing retail parts markup of the dealer.

43 (2) ~~The dealer's attorney's fees and costs. As used in this~~
44 ~~subparagraph, "costs" has the meaning ascribed to it in~~
45 ~~NRS 482.36366.~~

46 ~~Sec. 12. 1. If a manufacturer furnishes or causes to be~~
47 ~~furnished parts to a dealer at no cost or a reduced cost for~~

48 ~~purposes of performing warranty work or a recall service or~~
49 ~~repair, the manufacturer shall compensate the dealer for the~~
50 ~~dealer's costs for the parts, if any, plus an amount that is equal to~~
51 ~~the dealer's prevailing retail parts markup multiplied by the fair~~
52 ~~market wholesale value of the parts.~~

53 ~~2. For purposes of subsection 1, the fair market wholesale~~
54 ~~value of the parts is the maximum of:~~

55 ~~(a) The amount that the dealer paid for the parts or any~~
56 ~~substantially identical parts that are already owned by the dealer;~~

~~10 (b) The cost of the parts, as shown in a current or previously
11 established price schedule of the manufacturer or other party
12 furnishing the parts; or~~

~~13 (c) The cost of substantially identical parts, as shown in a
14 current or previously established price schedule of the
15 manufacturer or other party furnishing the parts.~~

1 (1) If a manufacturer furnishes or causes to be furnished
parts to a dealer at no cost for purposes of performing
warranty work or a recall service or repair, then the
manufacturer may pay the dealer a reasonable handling fee instead
of the prevailing retail parts markup;

2 (2) If a manufacturer furnishes or causes to be furnished parts to a
dealer at a reduced cost for purposes of performing warranty work
or a recall service or repair, then the manufacturer shall
compensate the dealer for the
3 dealer's costs for the parts plus an amount that is equal to
4 the dealer's prevailing retail parts markup multiplied by the cost of
the parts as shown in the current or previously established price
schedule of the manufacturer, whichever is greater.

5

Sec. 13. A manufacturer shall not:

6 ~~1. Establish or implement a special part or component~~
7 ~~number for parts used in warranty work if doing so will result in~~
8 ~~lower compensation to the dealer than is required pursuant to~~
~~sections 9 to 15, inclusive, of this act; or~~

9 ~~2. Require, influence or attempt to influence a dealer to~~
10 ~~implement or change the price for which the dealer sells parts or~~
11 ~~provides labor for any retail repair, including, without limitation,~~
12 ~~by:~~

13 ~~(a) Substituting Substitute any sample of qualifying repair~~
~~orders for the~~
14 ~~one submitted by the dealer to the manufacturer pursuant to~~
15 ~~section 9 or 10 of this act to determine the prevailing retail labor~~
16 ~~rate or prevailing retail parts markup of the dealer, if it would be~~
~~unreasonable to do so;~~

17 ~~(b) Using qualifying repair orders, financial statements or~~
18 ~~other information from another dealer for purposes of calculating~~
19 ~~the prevailing retail labor rate or prevailing retail parts markup of~~
20 ~~the dealer; or~~

21 ~~(c) Imposing Impose an unduly burdensome or time-~~
~~consuming~~
22 ~~method on a dealer for purposes of compensating the dealer for~~

23 warranty work, including, without limitation, requiring the dealer
24 to provide part-to-part or transaction-by-transaction calculations.

25 Sec. 14. A manufacturer shall not:

26 1. take or threaten to take adverse action against a dealer
solely because it ~~who~~ requests compensation for
27 warranty work or a recall service or repair at the prevailing retail
28 labor rate and prevailing retail parts markup of the dealer,
29 including, without limitation, by:

30 ~~1. Creating or implementing an obstacle or process that~~
31 ~~conflicts with the provisions of sections 9 to 15, inclusive, of this~~
32 ~~act;~~

33 ~~2. Acting in bad faith;~~

1 ~~3. Hindering, delaying or rejecting the proper and timely~~
2 ~~payment of compensation pursuant to sections 9 to 15, inclusive,~~
3 ~~of this act;~~

4 ~~4. Establishing, implementing, enforcing or applying~~
~~Establish, implement, enforce, or apply any~~
5 ~~policy, standard, rule, program or incentive relating to~~
6 ~~compensation of a dealer for warranty work in a way that is not~~
7 ~~uniform or fair or functionally available to among all of~~
8 ~~the manufacturer's dealers in this~~
9 ~~State;~~

10 ~~5. Conducting or threatening to conduct any warranty,~~
~~nonwarranty or other service related audit; or~~

11 ~~6. Implementing or continuing Implement or~~
~~continue to implement a policy,~~
12 ~~procedure or program for any of its dealers which does not comply~~
13 ~~with sections 9 to 15, inclusive, of this act.~~

14 Sec. 15. 1. Except as otherwise provided in subsection 2, a
15 manufacturer shall not recover or attempt to recover any portion
16 of its costs for compensating a dealer for warranty work or a recall
17 service or repair.

18 2. This section does not prohibit a manufacturer from
19 increasing the price of any vehicle in the normal course of
20 business.

21 Sec. 16. 1. A dealer may file a protest with the Director of
22 the Department pursuant to NRS 482.36361 if the manufacturer
23 does not compensate the dealer for warranty work or a recall
24 service or repair in an amount that is based on the prevailing
25 retail labor rate or prevailing retail parts markup.

26 2. If the Director receives a protest from a dealer pursuant to
27 subsection 1:

28 (a) The Director shall decide whether the manufacturer
29 compensated the dealer for warranty work in an amount that is
30 based on the prevailing retail labor rate or prevailing retail parts

31 *markup submitted to the dealer pursuant to section 9 or 10 of this*
32 *act; and*

33 *(b) Except as otherwise provided in this section, the provisions*
34 *of NRS 482.36361 to 482.36368, inclusive, apply.*

35 *3. In any hearing on a protest filed pursuant to this section,*
36 *the manufacturer shall have the burden to show that the*
37 *manufacturer compensated the dealer for warranty work based on*
38 *the prevailing retail labor rate or prevailing retail parts markup of*
39 *the dealer.*

40 *4. If the Director finds that the manufacturer did not*
41 *compensate the dealer for warranty work based on the prevailing*
42 *retail labor rate or prevailing retail parts markup of the dealer, and*
that the dealer had established such rate pursuant to sections 9 and
10 of this act, the

43 *Director shall order the manufacturer to pay to the dealer:*

44 *(a) An amount that ~~is three times~~ the difference between the*
45 *amount that the dealer has received from the manufacturer for*

1 *warranty work and the amount that the dealer should have*
2 *received from the manufacturer for warranty work if the*
3 *manufacturer had compensated the dealer using the prevailing*
4 *retail labor rate or prevailing retail parts markup of the dealer.*

5 ~~*(b) The dealer's attorney's fees and costs. As used in this*~~
6 ~~*paragraph, "costs" has the meaning ascribed to it in*~~
7 ~~*NRS 482.36366.*~~

8 **Sec. 17.** NRS 482.36311 is hereby amended to read as
9 follows:

10 482.36311 As used in NRS 482.36311 to 482.36425, inclusive,
11 *and sections 2 to 16, inclusive, of this act*, unless the context
12 otherwise requires, the words and terms defined in NRS 482.36318
13 to 482.36348, inclusive, *and sections 2 to 7, inclusive, of this act*
14 have the meanings ascribed to them in those sections.

15 **Sec. 18.** NRS 482.363575 is hereby amended to read as
16 follows:

17 482.363575 The Director shall adopt regulations for the
18 conduct of discovery preliminary to each hearing required pursuant
19 to NRS 482.36352, 482.36354 or 482.36357 ~~†~~ *or section 11 or 16*
20 *of this act*. The practice so established must conform insofar as
21 practicable to the practice established for use in the district courts
22 pursuant to N.R.C.P. 26 to 37, inclusive.

23 **Sec. 19.** NRS 482.36361 is hereby amended to read as
24 follows:

25 482.36361 1. If the Director receives a written protest from a
26 dealer pursuant to NRS 482.36352, 482.36354 or 482.36357 ~~†~~ *or*
27 *section 11 or 16 of this act*, the Director shall give notice as
28 follows:

29 (a) To the manufacturer or distributor, that the protest has been
30 filed and that the manufacturer or distributor may not take the
31 intended action which has given rise to the protest until the Director
32 has made his or her findings and issued an order permitting the
33 manufacturer or distributor to do so; and

34 (b) To any other dealer who has requested such a notice or who
35 may be adversely affected by the intended action, that the protest
36 has been filed.

37 2. A manufacturer or distributor who receives a notice pursuant
38 to this section shall not proceed with the action which has given rise
39 to the protest until the Director notifies the manufacturer or
40 distributor that the Director has made a decision authorizing the
41 manufacturer or distributor to proceed with that action.

42 3. Upon completion of discovery by the parties, the Director
43 shall schedule a hearing upon the protest, to be held within 60 days
44 thereafter.

1 4. If two or more protests are filed concerning a particular
2 intended action, the Director may consolidate the hearings on the
3 protests.

4 **Sec. 20.** NRS 482.36366 is hereby amended to read as
5 follows:

6 482.36366 1. Each witness, other than an officer or employee
7 of the State or of a political subdivision of the State or an expert
8 witness, who appears by order of the Director in a hearing pursuant
9 to NRS 482.36311 to 482.36425, inclusive, *or section 11 or 16 of*
10 *this act*, is entitled to receive for attending the hearing the same fees
11 allowed by law to witnesses in civil cases. Except as otherwise
12 provided in subsection 2, the amount must be paid by the party at
13 whose request the witness is ordered to appear.

14 2. The Director may assess other costs against the parties as the
15 Director deems appropriate. After any hearing on a protest filed
16 pursuant to NRS 482.36352, 482.36354 or 482.36357 ~~†~~ *or section*
17 *11 or 16 of this act*, if the Director determines that the manufacturer
18 or distributor has failed to establish that there is good cause to
19 terminate, refuse to continue, modify or replace a franchise, or to
20 establish an additional dealership or relocate an existing dealership,
21 the Director shall award to the dealer attorney's fees and costs.

22 3. For the purposes of this section, "costs" includes:

23 (a) Except as otherwise provided in paragraph (b), any
24 applicable cost set forth in NRS 18.005; and

25 (b) The actual amount of any fees paid by a dealer to an expert
26 witness in connection with the hearing.

27 **Sec. 21.** NRS 482.36368 is hereby amended to read as
28 follows:

29 482.36368 1. The decision of the Director concerning a
30 protest filed pursuant to NRS 482.36352, 482.36354 or 482.36357
31 ~~†~~ *or section 11 or 16 of this act*, is a final decision in a contested
32 case for the purpose of judicial review.

33 2. The decision is not subject to rehearing or reconsideration
34 by the Director after it is received by the parties.

35 3. When the written decision of the Director is delivered to the
36 parties, copies of the decision, including the findings of fact as well
37 as the determination of the issues, must be delivered to all persons
38 who have requested notice of such decisions.

39 **Sec. 22.** NRS 482.36385 is hereby amended to read as
40 follows:

41 482.36385 It is an unfair act or practice for any manufacturer,
42 distributor or factory branch, directly or through any representative,
43 to:

44 1. Compete with a dealer. A manufacturer or distributor shall
45 not be deemed to be competing when operating a previously

1 existing dealership temporarily for a reasonable period, or in a bona
2 fide retail operation which is for sale to any qualified person at a fair
3 and reasonable price, or in a bona fide relationship in which a
4 person has made a significant investment subject to loss in the
5 dealership and can reasonably expect to acquire full ownership of
6 the dealership on reasonable terms and conditions.

7 2. Discriminate unfairly among its dealers, or fail without good
8 cause to comply with franchise agreements, with respect to warranty
9 reimbursement or authority granted to its dealers to make warranty
10 adjustments with retail customers.

11 3. Fail to compensate a dealer fairly for the work and services
12 which the dealer is required to perform in connection with the
13 delivery and preparation obligations under any franchise . ~~†, or fail~~
14 ~~to compensate a dealer fairly for labor, parts and other expenses~~
15 ~~incurred by the dealer under the manufacturer's warranty~~
16 ~~agreements or any recall service or repairs.†~~ The manufacturer shall
17 set forth in writing the respective obligations of a dealer and the
18 manufacturer in the preparation of a vehicle for delivery, and as
19 between them a dealer's liability for a defective product is limited to
20 the obligation so set forth. Fair compensation includes diagnosis and
21 reasonable administrative and clerical costs. ~~†The dealer's~~
22 ~~compensation for parts and labor to satisfy a warranty or a recall~~
23 ~~service or repair must not be less than the amount of money charged~~
24 ~~to its various retail customers for parts and labor that are not~~
25 ~~covered by a warranty. If parts are supplied by the manufacturer,~~
26 ~~including exchanged parts and assembled components, the dealer is~~
27 ~~entitled with respect to each part to an amount not less than the~~
28 ~~dealer's normal retail markup for the part.†~~ This subsection does not
29 apply to compensation for any part, system, fixture, appliance,
30 furnishing, accessory or feature of a motor home or recreational
31 vehicle that is designed, used and maintained primarily for
32 nonvehicular, residential purposes.

33 4. Fail to:

34 (a) Pay all claims made by dealers for compensation for delivery
35 and preparation work ~~†~~ *and* transportation claims ~~†, special~~
36 ~~campaigns and work to satisfy warranties and recall service or~~
37 ~~repairs†~~ within 30 days after approval, or fail to approve or
38 disapprove such claims within 30 days after receipt;

39 (b) Disapprove any claim without notice to the dealer in writing
40 of the grounds for disapproval; or

41 (c) Accept an amended claim for labor and parts if the amended
42 claim is submitted not later than 60 days after the date on which the
43 manufacturer or distributor notifies the dealer that the claim has
44 been disapproved and the disapproval was based on the dealer's
45 failure to comply with a specific requirement for processing the

1 claim, including, without limitation, a clerical error or other
2 administrative technicality that does not relate to the legitimacy of
3 the claim.

4 ↪ Failure to approve or disapprove or to pay within the specified
5 time limits in an individual case does not constitute a violation of
6 this section if the failure is because of reasons beyond the control of
7 the manufacturer, distributor or factory branch.

8 5. Sell a new vehicle to a person who is not licensed as a new
9 vehicle dealer under the provisions of this chapter.

10 6. Use false, deceptive or misleading advertising or engage in
11 deceptive acts in connection with the manufacturer's or distributor's
12 business.

13 7. Perform an audit to confirm a claim for compensation
14 pursuant to NRS 482.363574, warranty repair, sales incentive or
15 rebate more than 9 months after the date on which the claim was
16 made. An audit of a dealer's records pursuant to this subsection may
17 be conducted by the manufacturer or distributor on a reasonable
18 basis, and a dealer's claim for warranty or sales incentive
19 compensation or compensation pursuant to NRS 482.363574 must
20 not be denied except for good cause, including, without limitation,
21 performance of nonwarranty repairs, lack of material
22 documentation, fraud or misrepresentation. A dealer's failure to
23 comply with the specific requirements of the manufacturer or
24 distributor for processing the claim does not constitute grounds for
25 the denial of the claim or the reduction of the amount of
26 compensation to the dealer if reasonable documentation or other
27 evidence has been presented to substantiate the claim. The
28 manufacturer or distributor shall not deny a claim or reduce the
29 amount of compensation to the dealer for warranty repairs to resolve
30 a condition discovered by the dealer during the course of a separate
31 repair.

32 8. Prohibit or prevent a dealer from appealing the results of an
33 audit to confirm a warranty repair, sales incentive, claim for
34 compensation made pursuant to NRS 482.363574 or rebate, or to
35 require that such an appeal be conducted at a location other than the
36 dealer's place of business.

37 **Sec. 23.** 1. This section becomes effective upon passage and
38 approval.

39 2. Sections 1 to 22, inclusive, of this act become effective:

40 (a) Upon passage and approval for the purpose of adopting any
41 regulations and performing any other administrative tasks that are
42 necessary to carry out the provisions of this act; and

43 (b) On January 1, 2024, for all other purposes.

