

Amendment No. 517

Senate Amendment to Senate Bill No. 303	(BDR 43-673)
Proposed by: Senate Committee on Growth and Infrastructure	
Amendment Box: Replaces Amendment No. 304.	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>
Receded <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

HAC



Date: 4/22/2023

S.B. No. 303—Revises provisions relating to motor vehicles. (BDR 43-673)



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:

Existing law provides that it is an unfair act or practice for any manufacturer of motor vehicles, trailers or semitrailers to 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 repair. (NRS 482.36385) **Section 22** of this bill removes this provision. **Sections 2-16** of this bill set forth new requirements for calculating the compensation that a manufacturer must pay a dealer for such purposes.

Section 8 of this bill provides that it is an unfair act or practice for a manufacturer to: (1) fail to compensate a dealer fairly for labor ~~and~~ **and** parts ~~and other expenses incurred by the dealer~~ for warranty work or a recall service or repair; or (2) violate any of the provisions of **sections 9-15** of this bill. **Section 8** further provides that it shall be deemed that a dealer has been fairly compensated by a manufacturer for warranty work if the manufacturer compensates the dealer for: (1) labor ~~relating to~~ **for** warranty work ~~in an amount that is equal to the~~ **at the dealer’s** prevailing retail labor rate ~~; multiplied by the applicable time allowances prescribed in the guide used by the dealer for labor furnished for repairs other than warranty work;~~ and (2) parts ~~relating to~~ **used in** warranty work in an amount that is equal to the dealer’s cost for the parts, pursuant to **section 12** of this bill, multiplied by the prevailing retail parts markup.

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

22 orders of the dealer. **Section 9** further requires the dealer to submit certain qualifying repair
23 orders to the manufacturer.

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

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

47 **Section 12** provides that if a manufacturer furnishes or causes to be furnished parts to a
48 dealer at no cost ~~for a reduced cost~~ for purposes of performing warranty work or a recall
49 service or repair, the manufacturer ~~is required to~~ **may** compensate the dealer ~~for the~~ **for a**
50 **reasonable handling fee instead of the dealer's prevailing retail parts markup. Section 12**
51 **further provides that if a manufacturer furnishes parts to a dealer at a reduced cost for**
52 **purposes of performing warranty work or a recall service or repair, the manufacturer is**
53 **required to compensate the dealer for the** dealer's costs for the parts ~~if any~~ plus an
54 amount that is equal to the dealer's prevailing retail parts markup multiplied by the ~~fair~~
55 ~~market wholesale value~~ **cost** of the parts ~~Section 12 further sets forth the calculation for the~~
56 ~~fair market wholesale value of the parts~~ **in the current or previously established price**
57 **schedule of the manufacturer, whichever is greater.**

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

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

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

70 **Section 16** of this bill authorizes a dealer to file a protest with the Director of the
71 Department if the manufacturer does not compensate a dealer for warranty work or a recall
72 service or repair that is based on the dealer's prevailing retail labor rate and prevailing retail
73 parts markup. **Sections 18-21** make conforming changes to apply existing provisions of law
74 relating to conducting discovery and holding hearings held by the Director relating to certain
75 other actions between a dealer and a manufacturer to the protests provided for in **section 16**.

76 **Sections 2-7** of this bill, respectively, define the terms "parts," "qualifying repair,"
77 "qualifying repair order," "repair order," "warranty agreement" and "warranty work."

78 **Section 17** of this bill makes a conforming change to indicate the proper placement of
79 **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 thereto the
2 provisions set forth as sections 2 to 16, inclusive, of this act.

3 **Sec. 2.** “Parts” means the original ~~for replacement~~ parts, accessories,
4 ~~components or systems of a vehicle ~~including, without limitation, the engine,~~~~
5 ~~transmission, an electric vehicle battery and other parts assemblies.] listed in the~~
6 manufacturer’s parts catalog.

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

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

13 2. The replacement of or work on tires ~~and~~ wheels ~~for elements related~~
14 ~~to tires or wheels,] including, without limitation, vehicle alignment and tire or~~
15 wheel rotation;

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

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

22 5. A repair of a vehicle that is owned by the dealer or an employee of the
23 dealer;

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

25 7. A repair ~~of any condition caused by a collision, road hazard, the force of~~
26 ~~the elements, vandalism, theft or the negligence or deliberate act of the owner, an~~
27 ~~operator or a third party.] performed in a body shop;~~

28 8. Any safety or vehicle emission inspection that is otherwise required by
29 law;

30 9. The reconditioning of a vehicle;

31 10. Any repair ~~for replacement~~ using a part sold at wholesale;

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

33 ~~12.]~~ 12.] A goodwill repair or replacement that is approved and reimbursed by
34 the manufacturer; or

35 ~~13.]~~ 12.] A repair that is performed on a line or make of vehicles for which
36 the dealer is not franchised by the manufacturer.

37 **Sec. 4.** “Qualifying repair order” means a repair order that encompasses,
38 in whole or in part, one or more qualifying repair.

39 **Sec. 5.** “Repair order” means an invoice for one or more repairs to a
40 vehicle that is paid by a retail customer and closed as of the time of submission
41 where the invoice includes:

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

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

46 **Sec. 6.** “Warranty agreement” means a manufacturer’s new motor vehicle
47 warranty ~~or certified pre-owned warranty~~ ~~for any other obligation of a~~
48 manufacturer to repair or replace a defect in a vehicle or part, including, without

1 ~~limitation, a repair pursuant to a technical service bulletin, customer service~~
2 ~~campaign or safety recall in accordance with federal law or regulation.]~~

3 **Sec. 7. “Warranty work” means** ~~transportation, delivery, preparatory work~~
4 ~~and labor, including, without limitation, diagnostic labor, performed by or~~
5 ~~arranged to be] work performed by a dealer [in order to fulfill the obligations of a~~
6 ~~warranty or recall that is required, requested or approved by a manufacturer~~
7 ~~pursuant to] pursuant to a warranty agreement ~~], including, without limitation,~~
8 ~~reasonable and necessary diagnostic time and safety recall service or repairs in~~
9 ~~accordance with federal laws and regulations.~~~~

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

11 (a) ~~Fail to compensate a dealer fairly for labor~~ ~~and parts~~ ~~and other~~
12 ~~expenses incurred by the dealer] for warranty work or any recall service or repair~~
13 ~~performed by a dealer; or~~

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

15 **2. For purposes of subsection 1, it shall be deemed that a dealer has been**
16 **fairly compensated by a manufacturer for warranty work if the manufacturer**
17 **compensates the dealer for:**

18 (a) ~~Labor [relating to] for warranty work [in an amount that is equal to] at~~
19 ~~the dealer’s prevailing retail labor rate [multiplied by the applicable time~~
20 ~~allowances prescribed in the guide used by the dealer for labor furnished for~~
21 ~~repairs other than warranty work.] as established pursuant to sections 9 and 10 of~~
22 ~~this act.~~

23 (b) ~~Parts [relating to] used in warranty work in an amount that is equal to~~
24 ~~the dealer’s cost for the parts pursuant to section 12 of this act, multiplied by the~~
25 ~~prevailing retail parts markup] as determined pursuant to sections 9 and 10 of~~
26 ~~this act.~~

27 **Sec. 9. 1. Except as otherwise provided in this section and section 10 of**
28 **this act, the prevailing retail labor rate and prevailing retail parts markup of a**
29 **dealer must be established or modified** ~~by]~~ **, at the request of the dealer,**
30 **by submitting in writing to the manufacturer such rate and markup, as calculated by**
31 **the dealer and:**

32 (a) ~~All consecutive qualifying repair orders that include 100 sequential~~
33 ~~qualifying repair orders; or~~

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

36 ~~whichever produces the smallest number of qualifying repair orders.~~

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

40 ~~3.] All qualifying repair orders submitted pursuant to subsection 1 must be~~
41 ~~dated not more than 180 days before the date on which the qualifying repair~~
42 ~~orders are submitted to the manufacturer.~~

43 ~~[4.] 3. Based on the qualifying repair orders submitted pursuant to this~~
44 ~~section:~~

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

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

49 (1) ~~Dividing the total charges for parts for qualifying repairs by the total~~
50 ~~cost to the dealer to purchase the parts for such qualifying repairs;~~

51 (2) ~~Subtracting 1 from the amount determined pursuant to subparagraph~~
52 ~~(1); and~~

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

3 ~~(5) 4. In calculating the prevailing retail labor rate or prevailing retail~~
4 ~~parts markup pursuant to this section, the dealer shall exclude any labor or part~~
5 ~~that is not for a qualifying repair.~~

6 ~~16. Any discount that is not allocated for a qualifying repair on a qualifying~~
7 ~~repair order between parts and labor must be allocated on a pro rata basis. For~~
8 ~~purposes of this subsection, a promotional reward program or cash equivalent~~
9 ~~pay method pursuant to a service contract or prepaid maintenance contract shall~~
10 ~~not be a discount.~~

11 ~~7. A)~~

12 5. Except as provided in subsection 4 of section 10 of this act, a dealer shall
13 not submit a request to establish or modify the prevailing retail labor rate, ~~for~~
14 prevailing retail parts markup, or both, pursuant to this section more than once
15 ~~per calendar year,~~ in a 12-month period.

16 Sec. 10. 1. Not later than 30 days after receiving the qualifying repair
17 orders from a dealer pursuant to section 9 of this act, the manufacturer may
18 contest the ~~[material accuracy of the]~~ dealer's submitted prevailing retail labor
19 rate or prevailing retail parts markup as materially inaccurate or unreasonable
20 as compared to the rates of other similarly situated new motor vehicle dealers of
21 the same line and make of vehicles by providing the dealer with the
22 manufacturer's calculation of the prevailing retail labor rate ~~for~~ prevailing
23 retail parts markup ~~for~~ or additional information, as applicable, based on the
24 qualifying repair orders submitted to the manufacturer by the dealer, including,
25 without limitation, a copy of all calculations made by the manufacturer and any
26 other evidence substantiating the manufacturer's calculation and contest.

27 2. If a manufacturer contests the material accuracy or reasonableness of
28 the prevailing retail labor rate or prevailing retail parts markup pursuant to
29 subsection 1, the manufacturer shall not thereafter add to, expand, supplement or
30 otherwise modify any evidence of its contest of the dealer's prevailing retail labor
31 rate or prevailing retail parts markup against the dealer. Evidence provided by a
32 manufacturer in response to a dealer's updated submission of new or revised
33 information shall not be deemed an expansion, supplement or modification of
34 evidence pursuant to this section.

35 3. If a dealer agrees with the ~~[material accuracy of the]~~ manufacturer's
36 calculation of the prevailing retail labor rate or prevailing retail parts markup, as
37 applicable, it shall be deemed ~~for~~

38 ~~(a) That~~ that the prevailing retail labor rate or prevailing retail parts
39 markup are those of the dealer, effective on the 31st day after the date on which
40 the dealer ~~[submitted the original prevailing retail labor rate or prevailing retail~~
41 ~~parts markup, as applicable, to the manufacturer; and~~

42 ~~(b) For purposes of subsection 7 of section 9 of this act, that the dealer has~~
43 ~~not modified the prevailing retail labor rate or prevailing retail parts markup.]~~
44 agrees to the manufacturer's calculation.

45 4. If a ~~dealer agrees with the manufacturer's contest of~~ manufacturer
46 contests the material accuracy of the prevailing retail labor rate or prevailing
47 retail parts markup pursuant to subsection 1 based on a dealer's submission of
48 inaccurate or nonqualifying repair orders, the dealer may correct any inaccuracy
49 with an updated submission of ~~[replace the inaccurate or nonqualifying repair~~
50 orders with] accurate or qualifying repair orders and update the prevailing retail
51 labor rate or prevailing retail parts markup calculation based on the replacement
52 repair orders, as applicable. Any updated submission made by a dealer pursuant
53 to this subsection shall ~~[be deemed to have been submitted on the date of the~~

~~original submission and shall~~ not be considered as a modification submitted pursuant to subsection ~~[7] 5~~ of section 9 of this act. The date an updated submission is made pursuant to this subsection shall replace the date of the dealer's original submission for purposes of subsection 5 of section 9 of this act.

5. If a manufacturer does not contest the material accuracy or reasonableness of the prevailing retail labor rate or prevailing retail parts markup pursuant to subsection 1 within 30 days, the prevailing retail labor rate or prevailing retail parts markup of the dealer becomes effective on the date that is ~~[31] 61~~ days after the dealer submitted the prevailing retail labor rate or prevailing retail parts markup to the manufacturer.

Sec. 11. 1. A dealer may file a protest with the Director of the Department pursuant to NRS 482.36361 if the dealer does not agree with the manufacturer's calculations of the prevailing retail 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 subsection 1:

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

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

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

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

(a) The prevailing retail labor rate or prevailing retail parts markup of the dealer shall become retroactively effective to the date that is ~~[30] 60~~ days following the date on which the manufacturer received the prevailing retail labor rate or prevailing retail parts markup of the dealer pursuant to section 9 or 10 of this act, as applicable.

(b) The Director shall order the manufacturer to pay to the dealer ~~[r]~~

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

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

Sec. 12. 1. If a manufacturer furnishes or causes to be furnished parts to a dealer at no cost ~~for a reduced cost~~ for purposes of performing warranty work or a recall service or repair, the manufacturer ~~[shall]~~ may compensate the dealer for ~~[the dealer's costs for the parts, if any, plus an amount that is equal to the dealer's prevailing retail parts markup multiplied by the fair market wholesale value of the parts.]~~ a reasonable handling fee instead of the dealer's prevailing retail parts markup.

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

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

~~1 (b) The cost of the parts, as shown in a current or previously established
2 price schedule of the manufacturer or other party furnishing the parts; or~~

~~3 (c) The cost of substantially identical parts, as shown in a current or
4 previously established price schedule of the manufacturer or other party
5 furnishing the parts.~~ 6 If a manufacturer furnishes or causes to be furnished parts
7 to a dealer at a reduced cost for purposes of performing warranty work or a recall
8 service or repair, the manufacturer shall compensate the dealer for the dealer's
9 costs for the parts plus an amount that is equal to the dealer's prevailing retail
10 parts markup multiplied by the cost of the parts in the current or previously
11 established price schedule of the manufacturer, whichever is greater.

~~12 Sec. 13. A manufacturer shall not~~ 13

~~14 1. Establish or implement a special part or component number for parts
15 used in warranty work if doing so will result in lower compensation to the dealer
16 than is required pursuant to sections 9 to 15, inclusive, of this act; or~~

~~17 2. Require,~~ 18 require, influence or attempt to influence a dealer to implement
19 or change the price for which the dealer sells parts or provides labor for any
20 retail repair, including, without limitation, by:

~~21 (a) 1. Substituting any sample of qualifying repair orders for the one
22 submitted by the dealer to the manufacturer pursuant to section 9 or 10 of this act
23 to determine the prevailing retail labor rate or prevailing retail parts markup of
24 the dealer;~~

~~25 (b) Using qualifying repair orders, financial statements or other
26 information from another dealer for purposes of calculating the prevailing retail
27 labor rate or prevailing retail parts markup of the dealer; or~~

~~28 (c) or~~

29 2. Imposing an unduly burdensome or time-consuming method on a dealer
30 for purposes of compensating the dealer for warranty work, including, without
31 limitation, requiring the dealer to provide part-to-part or transaction-by-
32 transaction calculations.

~~33 Sec. 14. A manufacturer shall not take or threaten to take adverse action
34 against a dealer [who requests] on the sole basis that the dealer has requested
35 compensation for warranty work or a recall service or repair at the prevailing
36 retail labor rate and prevailing retail parts markup of the dealer, including,
37 without limitation, by:~~

~~38 1. [Creating or implementing an obstacle or process that conflicts with the
39 provisions of sections 9 to 15, inclusive, of this act;~~

~~40 2. Acting in bad faith;~~

~~41 3. Hindering, delaying or rejecting the proper and timely payment of
42 compensation pursuant to sections 9 to 15, inclusive, of this act;~~

~~43 4. Establishing, implementing, enforcing or applying any policy, standard,
44 rule, program or incentive relating to compensation of a dealer for warranty
45 work in a way that is not [uniform or] fair or applicable to [among] all of the
46 manufacturer's dealers in this State; and~~

~~47 5. Conducting or threatening to conduct any warranty, nonwarranty or
48 other service related audit; or~~

~~49 6. 2. Implementing or continuing to implement a policy, procedure or
50 program for any of its dealers which does not comply with sections 9 to 15,
51 inclusive, of this act.~~

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

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

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

5 2. *If the Director receives a protest from a dealer pursuant to subsection 1:*

6 (a) *The Director shall decide whether the manufacturer compensated the*
7 *dealer for warranty work in an amount that is based on the prevailing retail labor*
8 *rate or prevailing retail parts markup submitted to the dealer pursuant to section*
9 *9 or 10 of this act; and*

10 (b) *Except as otherwise provided in this section, the provisions of NRS*
11 *482.36361 to 482.36368, inclusive, apply.*

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

16 4. *If the Director finds that the manufacturer did not compensate the dealer*
17 *for warranty work based on the prevailing retail labor rate or prevailing retail*
18 *parts markup of the dealer ~~+~~ as established pursuant to sections 9 and 10 of this*
19 *act, the Director shall order the manufacturer to pay to the dealer ~~+~~*

20 ~~*—(a) An amount that is three times—*~~ *the difference between the amount that the*
21 *dealer has received from the manufacturer for warranty work and the amount*
22 *that the dealer should have received from the manufacturer for warranty work if*
23 *the manufacturer had compensated the dealer using the prevailing retail labor*
24 *rate or prevailing retail parts markup of the dealer.*

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

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

28 482.36311 As used in NRS 482.36311 to 482.36425, inclusive, *and sections*
29 *2 to 16, inclusive, of this act*, unless the context otherwise requires, the words and
30 terms defined in NRS 482.36318 to 482.36348, inclusive, *and sections 2 to 7,*
31 *inclusive, of this act* have the meanings ascribed to them in those sections.

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

33 482.363575 The Director shall adopt regulations for the conduct of discovery
34 preliminary to each hearing required pursuant to NRS 482.36352, 482.36354 or
35 482.36357 ~~+~~ *or section 11 or 16 of this act*. The practice so established must
36 conform insofar as practicable to the practice established for use in the district
37 courts pursuant to N.R.C.P. 26 to 37, inclusive.

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

39 482.36361 1. If the Director receives a written protest from a dealer
40 pursuant to NRS 482.36352, 482.36354 or 482.36357 ~~+~~ *or section 11 or 16 of this*
41 *act*, the Director shall give notice as follows:

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

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

48 2. A manufacturer or distributor who receives a notice pursuant to this section
49 shall not proceed with the action which has given rise to the protest until the
50 Director notifies the manufacturer or distributor that the Director has made a
51 decision authorizing the manufacturer or distributor to proceed with that action.

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

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

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

4 482.36366 1. Each witness, other than an officer or employee of the State or
5 of a political subdivision of the State or an expert witness, who appears by order of
6 the Director in a hearing pursuant to NRS 482.36311 to 482.36425, inclusive, *or*
7 *section 11 or 16 of this act*, is entitled to receive for attending the hearing the same
8 fees allowed by law to witnesses in civil cases. Except as otherwise provided in
9 subsection 2, the amount must be paid by the party at whose request the witness is
10 ordered to appear.

11 2. The Director may assess other costs against the parties as the Director
12 deems appropriate. After any hearing on a protest filed pursuant to NRS 482.36352,
13 482.36354 or 482.36357 ~~§~~ *or section 11 or 16 of this act*, if the Director
14 determines that the manufacturer or distributor has failed to establish that there is
15 good cause to terminate, refuse to continue, modify or replace a franchise, or to
16 establish an additional dealership or relocate an existing dealership, the Director
17 shall award to the dealer attorney's fees and costs.

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

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

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

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

24 482.36368 1. The decision of the Director concerning a protest filed
25 pursuant to NRS 482.36352, 482.36354 or 482.36357 ~~§~~ *or section 11 or 16 of this*
26 *act*, is a final decision in a contested case for the purpose of judicial review.

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

29 3. When the written decision of the Director is delivered to the parties, copies
30 of the decision, including the findings of fact as well as the determination of the
31 issues, must be delivered to all persons who have requested notice of such
32 decisions.

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

34 482.36385 It is an unfair act or practice for any manufacturer, distributor or
35 factory branch, directly or through any representative, to:

36 1. Compete with a dealer. A manufacturer or distributor shall not be deemed
37 to be competing when operating a previously existing dealership temporarily for a
38 reasonable period, or in a bona fide retail operation which is for sale to any
39 qualified person at a fair and reasonable price, or in a bona fide relationship in
40 which a person has made a significant investment subject to loss in the dealership
41 and can reasonably expect to acquire full ownership of the dealership on reasonable
42 terms and conditions.

43 2. Discriminate unfairly among its dealers, or fail without good cause to
44 comply with franchise agreements, with respect to warranty reimbursement or
45 authority granted to its dealers to make warranty adjustments with retail customers.

46 3. Fail to compensate a dealer fairly for the work and services which the
47 dealer is required to perform in connection with the delivery and preparation
48 obligations under any franchise. ~~[, or fail to compensate a dealer fairly for labor,~~
49 ~~parts and other expenses incurred by the dealer under the manufacturer's warranty~~
50 ~~agreements or any recall service or repairs.]~~ The manufacturer shall set forth in
51 writing the respective obligations of a dealer and the manufacturer in the
52 preparation of a vehicle for delivery, and as between them a dealer's liability for a
53 defective product is limited to the obligation so set forth. Fair compensation

1 includes diagnosis and reasonable administrative and clerical costs. ~~[(The dealer's~~
2 ~~compensation for parts and labor to satisfy a warranty or a recall service or repair~~
3 ~~must not be less than the amount of money charged to its various retail customers~~
4 ~~for parts and labor that are not covered by a warranty. If parts are supplied by the~~
5 ~~manufacturer, including exchanged parts and assembled components, the dealer is~~
6 ~~entitled with respect to each part to an amount not less than the dealer's normal~~
7 ~~retail markup for the part.)] This subsection does not apply to compensation for any
8 part, system, fixture, appliance, furnishing, accessory or feature of a motor home or
9 recreational vehicle that is designed, used and maintained primarily for
10 nonvehicular, residential purposes.~~

11 4. Fail to:

12 (a) Pay all claims made by dealers for compensation for delivery and
13 preparation work ~~[(,)]~~ **and** transportation claims ~~[(, special campaigns and work to~~
14 ~~satisfy warranties and recall service or repairs)]~~ within 30 days after approval, or fail
15 to approve or disapprove such claims within 30 days after receipt;

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

18 (c) Accept an amended claim for labor and parts if the amended claim is
19 submitted not later than 60 days after the date on which the manufacturer or
20 distributor notifies the dealer that the claim has been disapproved and the
21 disapproval was based on the dealer's failure to comply with a specific requirement
22 for processing the claim, including, without limitation, a clerical error or other
23 administrative technicality that does not relate to the legitimacy of the claim.

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

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

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

31 7. Perform an audit to confirm a claim for compensation pursuant to NRS
32 482.363574, warranty repair, sales incentive or rebate more than 9 months after the
33 date on which the claim was made. An audit of a dealer's records pursuant to this
34 subsection may be conducted by the manufacturer or distributor on a reasonable
35 basis, and a dealer's claim for warranty or sales incentive compensation or
36 compensation pursuant to NRS 482.363574 must not be denied except for good
37 cause, including, without limitation, performance of nonwarranty repairs, lack of
38 material documentation, fraud or misrepresentation. A dealer's failure to comply
39 with the specific requirements of the manufacturer or distributor for processing the
40 claim does not constitute grounds for the denial of the claim or the reduction of the
41 amount of compensation to the dealer if reasonable documentation or other
42 evidence has been presented to substantiate the claim. The manufacturer or
43 distributor shall not deny a claim or reduce the amount of compensation to the
44 dealer for warranty repairs to resolve a condition discovered by the dealer during
45 the course of a separate repair.

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

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

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

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

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