

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1339

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1339
1/29/2019
31747

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Reimbursement for warranty.

Minutes:

Attachment 1, 2, 3, 4

Chairman Keiser: Opens the hearing on HB 1339.

Rep Mary Johnson~District 45: Attachment 1.

2:00

Tim Springer~Secretary-Thermo King of Fargo & Isuzu Diesel Midwest: Attachment 2.

10:25

Rep Adams: They only allow you to charge you so much & don't reimburse you for the work you do.

Tim Springer: That's correct. There is a significant amount we have to write off.

Rep D Ruby: Is this written similar to bills from previous sessions because it didn't apply to you.

Tim Springer: I'm not familiar with that from the past.

Rep D Ruby: How many types of products does this apply to?

Tim Springer: The automotive industry is covered under 57.107 currently but our part of the industry is not. I can't answer how they broad. I would be in support of making it less broad.

Rep Schauer: Who does the requiring of manufacturers to pay their fair share of warranty compensation of parts & labor?

Tim Springer: That typically in a one-sided dealer contract.

Rep Schauer: Is there teeth in here.

Tim Springer: Yes, I brought this by the corporate attorney. Show him the bill, he said they would have to follow state statute.

Mike Gerhart~Executive Vice President of the ND Motor Carriers Association: Attachment 3.

16:55

Rep P Anderson: Is there anything in a franchise where they won't follow anything.

Mike Gerhart: In my discussions with Mr Springer, Thermo King is willing to follow the guidelines that are provided if this passes.

Rep Laning: Have you seen a reduction on rigs because of the manufacturer's stamp on this?

Mike Gerhart: I'm not sure of the case. For long term success, this bill need to pass.

Chairman Keiser: Anyone else here to testify in support, opposition to HB 1339?

Levi Andrist~Representing Auto Alliance: We are neutral but would support the bill with the amendment. Attachment 4. 51.107 is ambiguous, therefore adding some of terms, clarifies the bill.

21:10

Rep Kasper: Why does it take legislation to make the manufacturers come to the table with their reimbursement schedule.

Levi Andrist: I don't represent.

Chairman Keiser: This is worded, when does it take effect? We can pass the legislation but can we make it affective on the current contract or is that for future contracts?

Levi Andrist: Court in ND have often come to the conclusion that new laws are not retroactive unless stated as such.

Don Larson~Represent General Motors: I would oppose it but with the amendment we would support it.

Chairman Keiser: Closes the hearing on HB 1339. What are the wishes of the committee?

Rep Laning: I move the amendments that Levi presented, 19.0704.01001.

Rep Schauer: Second.

Voice vote ~ motion carried.

Chairman Keiser: The amendments are on the bill.

Rep Kasper: Moves a Do Pass as Amended.

Rep Laning: Second.

Chairman Keiser: Further discussion?

Rep D Ruby: I supported in the past, but we've let that cat out of the bag. I support the motion.

Rep P Anderson: Who are we leaving out?

Chairman Keiser: The auto dealers.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass as Amended on HB 1339 with 10 yes, 2 no, 2 absent & Rep Schauer is the carrier.

January 29, 2019

DA 1/29/19
1 of 3

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1339

Page 1, line 8, replace "Dealer" with "Commercial equipment dealer"

Page 1, line 9, after the second underscored comma insert "parts for any"

Page 1, line 9, after "used" insert "commercial"

Page 1, line 9, remove "parts"

Page 1, line 10, after the first underscored comma insert "commercial"

Page 1, line 10, after after the first underscored comma insert "or"

Page 1, after line 11 insert "commercial"

Page 1, line 13, after "used" insert "commercial"

Page 1, line 14, after the first underscored comma insert "commercial"

Page 1, line 14, after "equipment" insert "or"

Page 1, line 15, after "or" insert "commercial"

Page 1, line 16, replace "Distributor" with "Commercial distributor"

Page 1, line 16, after "dealer" insert "parts for"

Page 1, line 17, after "new" insert "commercial"

Page 1, line 17, remove "parts"

Page 1, after line 17 insert "commercial"

Page 1, line 18, after the first underscored comma insert "or"

Page 1, line 19, after "or" insert "commercial"

Page 1, line 20, replace "Manufacturer" with "Commercial manufacturer"

Page 1, line 21, after "assembling" insert "parts for any"

Page 1, line 21, after "new" insert "commercial"

Page 1, line 21, remove "parts"

Page 1, line 22, after the first underscored comma insert "commercial"

Page 1, line 22, after the second underscored comma insert "or"

Page 1, line 23, after "or" insert "commercial"

Page 2, line 1, after "nonessential" insert "commercial"

Page 2, line 3, after "A" insert "commercial"

Page 2, after line 4 insert "commercial"

Page 2, after line 6 insert "commercial"

Page 2, line 7, after the first "the" insert "commercial equipment"

Page 2, line 8, after "the" insert "commercial equipment"

Page 2, line 9, after "A" insert "commercial"

Page 2, line 9, after "a" insert "commercial equipment"

Page 2, line 11, after "the" insert "commercial equipment"

Page 2, line 12, after "A" insert "commercial"

Page 2, line 12, after the first "a" insert "commercial equipment"

Page 2, line 12, after the third "a" insert "commercial equipment"

Page 2, line 13, after "The" insert "commercial"

Page 2, line 14, after the second "the" insert "commercial"

Page 2, line 15, after "The" insert "commercial"

Page 2, after line 15 insert "commercial equipment"

Page 2, line 17, after the first "the" insert "commercial"

Page 2, line 19, after "A" insert "commercial"

Page 2, line 19, replace "factory branch," with "commercial"

Page 2, line 19, after "or" insert "commercial"

Page 2, line 20, after "its" insert "commercial equipment"

Page 2, after line 21 insert "commercial equipment"

Page 2, after line 22 insert "commercial"

Page 2, line 23, remove ", factory branch, distributor, or distributor branch"

Page 2, line 24, after "the" insert "commercial equipment"

Page 2, line 25, after the first "the" insert "commercial equipment"

Page 2, line 25, after the second "the" insert "commercial equipment"

Page 2, line 26, after "the" insert "commercial"

Page 2, line 26, after "or" insert "commercial"

Page 3, line 1, after "the" insert "commercial equipment"

Page 3, line 5, after the first "the" insert "commercial equipment"

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Page 3, line 8, after the second "the" insert "commercial equipment"

Page 3, line 10, after "for" insert "commercial"

Page 3, line 10, after the first "or" insert "commercial"

Page 3, line 16, after "the" insert "commercial"

DA 1/29/19
3 of 3

Page 3, line 17, after "a" insert "commercial"

Page 3, line 17, after "or" insert "commercial"

Page 3, line 19, replace "franchised" with "commercial equipment"

Page 3, line 20, after the first "the" insert "commercial equipment"

Page 3, line 22, after "the" insert "commercial"

Page 3, line 22, after the second "or" insert "commercial"

Page 3, line 25, after "Each" insert "commercial"

Page 3, line 26, after "the" insert "commercial equipment"

Page 3, line 27, after "any" insert "commercial equipment"

Page 3, line 28, after "obligating" insert "commercial equipment"

Page 3, line 30, after "A" insert "commercial"

Page 3, line 30, after the first "or" insert "commercial"

Page 4, line 4, after the first "the" insert "commercial equipment"

Page 4, line 4, after "or" insert "commercial"

Page 4, line 4, after the second "the" insert "commercial equipment"

Renumber accordingly

Date: Jan 29, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description:

19.0704.01001

Recommendation

- ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions ☐ Reconsider ☐ _____

Motion Made by Rep Laning Seconded By Rep Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment

voice vote - motion carried

Date: Jun 29, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1339

House _____ Industry, Business and Labor _____ Committee

☐ Subcommittee

Amendment LC# or
Description: _____

Recommendation

☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions

☐ Reconsider

☐ _____

Motion Made by Rep Kasper Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	Ab	
Rep Bosch		X	Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	Ab	

Total (Yes) 10 No 2

Absent 2

Floor
Assignment Rep Schauer

REPORT OF STANDING COMMITTEE

HB 1339: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1339 was placed
on the Sixth order on the calendar.

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2019 SENATE TRANSPORTATION

HB 1339

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1339
3/7/2019
33406

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to reimbursement for warranty.

Minutes:

1 Attachment

Representative Mary Johnson, District 45, Fargo: Please see **Attachment #1** for testimony. This bill basically replicates the bill passed in 2013 for the warranty on automobile dealers with the exception of the provision regarding nonessential subsystems. My constituent will be here next week and will be able to explain that better for you. I'd like to point out also that the gentleman behind me had their association attorneys look over it and so the automobile warranty portion of the code is not tarnished.

Levi Andrist, Alliance of Automobile Manufacturers: I just wanted to thank the prime sponsor before the committee for agreeing to add the words commercial equipment or the word commercial throughout the bill on the other side to clarify her intent. So that it's very clear and unambiguously clear that this does not relate to vehicles and light trucks which is already regulated a different part of the code.

Chairman Rust: It was eluded to that this bill was replicated from the other one, do you have a comment about that?

Mr. Andrist: That's my understanding.

Senator Clemens: Could somebody just clarify what determines a commercial vehicle?

Mr. Andrist: Commercial equipment as it's defined excludes noncommercial equipment. I know that is not helpful, but the purpose of that amendment and use of the word commercial is to make sure it doesn't address the car that you're driving here and from the capital every day and that it's specific to the types of issues that the prime sponsor is trying to get after. If you look at the definition in the bill, it's essentially anybody that's engaged in the business of assembling parts for any new commercial motor vehicle.

Senator Clemens: I'm not sure about this, but ok we have a commercial truck. Let's say anything over 26,000 gross vehicle weight, maybe; but those are getting into the realm of dually pickups and stuff. Can't a pickup be classified as commercial for commercial work?

Mr. Andrist: Excellent question. Yes, of course it could. But under the context of where this is in the code, it would not be regulated as to for reimbursement for warranty work.

Chairman Rust: If you would look at page 1 of the bill, section 1, subsection 1, definition a, or whatever it's called, you have a commercial equipment dealer means a person that engages in the business of: 1. Selling, at retail, parts or accessories 2. Repairing new or used commercial motor vehicles or attachment units. So it does not apply to the vehicle itself, it's parts or repairing them, right?

Mr. Andrist: That's my understanding.

Senator Clemens: Just parts?

Chairman Rust: Parts, accessories or repairing things like maybe a truck that could have a refrigeration unit on there. You could have a refrigeration unit on there and all of a sudden you have issues with getting it fixed.

Senator Clemens: So the statute that this is under is probably describing what a commercial vehicle would be then?

Mr. Andrist: Yes, and furthermore it defines in a different section essentially what an automobile dealer and an automobile manufacturer are. So this just draws a clear line between the everyday vehicles and the commercial vehicles.

Chairman Rust: Talked about learning about the importance of reading definitions at the beginning of bills and not skipping over them to just read the "meat of the bill."

Senator Bakke: I have two vehicles, one is my personal vehicle that I use to go back and forth to the grocery store. The other one is a van that I use for my daycare, and I need to have the van repair. Would that qualify under this?

Mr. Andrist: It is my understanding that it's not necessarily the use of the vehicle but the type of vehicle.

Senator Bakke: So it has to be so many pounds, it has to be all of that sort of stuff?

Mr. Andrist: I would defer to the Prime Sponsor and perhaps the Department of Transportation if they have thoughts on if they've got thoughts on those classifications.

Chairman Rust: Again what I think we are dealing with here is; we're dealing with commercial equipment dealers, commercial distributor and commercial manufacturer and what those terms are and what they do. We're probably not dealing with the vehicle itself.

Senator Bakke: Isn't it in the repair of that vehicle?

Representative Johnson: If you look at the definitions they each end with and used primarily for transporting commodities, merchandise or commercial cargo. Your van would not be included.

Senator Bakke: So I have a farm, and this would cover my truck if I use it to take grain to the elevator.

Representative Johnson: A pickup?

Senator Bakke: Yes.

Representative Johnson: No, you would be under automobile warranty.

Senator Bakke: But if I have like a semi, this would be covered?

Representative Johnson: The attachments and the warranty work done on essential and non-essential parts; essential parts being those that function for, let's take a semi-trailer. A refrigeration unit doesn't make that cargo van work. In fact, if it's not a reefer it's probably a dry van. But a non-essential part, meaning that it's not essential to carrying cargo, but a reefer unit it essential to carrying refrigerated cargo. So it's that reefer unit that is an implement of that trailer and that's what we're getting at here.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

HB 1339
3/21/2019
34094

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to reimbursement for warranty.

Minutes:

2 Attachments

Mike Gerhart, Executive Vice President, North Dakota Motor Carriers Association (NDMCA): Please see **Attachment #1** for testimony, Introduced Mr. Tim Springer.

Senator Bakke: Can you just give us a quick summary of the bill and what you think it will do?

Mr. Gerhart: Basically it just provides the groundwork for businesses to recover warranty work fees and I think after Mr. Springer provides his testimony it will be much more clear.

Chairman Rust: You stated this is not a new road for the legislature to go down, with regards to vehicles like cars and trucks that Title 51 has language that is very similar to this bill?

Mr. Gerhart: That's correct. North Dakota Century Code 51-07-29 specifically. Basically what this does is it just broadens the scope to include the commercial industry.

Chairman Rust: We're talking here about the add-ons like a refrigeration unit. What other types of things might we be talking about?

Mr. Gerhart: Things that are specific to the commercial motor vehicle industry. Trailers, trailer warranty work, in the case you are going to hear, refrigeration. It's that scope, specific to the commercial motor vehicle industry.

Senator Clemens: Is this widespread where a lot of shops are not being authorized warranty work? Why are manufacturers reluctant to enter into contracts with some of these repair places?

Mr. Gerhart: I don't have the answer to the second question. I think Mr. Springer probably can provide that since he's had the engagement with manufacturers as far as his business.

I would assume it comes down to profit. As far as the first question, I'm not positive. I can offer that the services that Mr. Springer and his company are very key to our industry, so when he faces challenges we support trying to find a resolution.

(6:43) Mr. Tim Springer, Secretary, Thermo King, Fargo & Isuzu Diesel Midwest:
Please see **Attachment #2** for testimony.

Chairman Rust: Before you continue, would explain "free parts," I'm assuming that's free parts to the person who gets the warranty, not free parts to the guy who's doing the work?

Mr. Springer: Well, both, free part to the people who are doing the work; such as the dealer or franchisee.

Chairman Rust: They get them free?

Mr. Springer: Yes, we get those parts free, they direct ship them to us, we can't use the ones in our inventory because they don't want to pay us the additional 20%. Typically, this can happen in a situation where there's a campaign, there's a product liability issue, or there's a safety recall, things like that. They will end up shipping us parts, we don't even make enough on the labor to even justify making some of those repairs.

Chairman Rust: So they ship to you the free parts, which kind of makes sense in a way that they would do that. However, you have those parts on hand and the only reason that you have them on hand is because they require you to have a certain amount of parts on hand.

Mr. Springer: That is correct, yes.

Chairman Rust: So now you have these parts, but they won't take yours because they don't want to pay that extra 20%, they'll send you free parts and so now what happens is after a period of time you have some free parts that you can't get rid of.

Mr. Springer: Right, and it costs us money. Obviously we have the infrastructure, we have the employees...

Senator Bakke: Then do they set the rate that they will pay you for replacing those parts?

Mr. Springer: They do, yes.

Senator Bakke: Is it fair?

Mr. Springer: It is not. I'll give you one really good example. So one of our manufacturers we represent entered into a contract with an engine manufacturer named Peugeot. Peugeot had major product issues, so they ended up switching the supplier to a Yanmar diesel engine and right now we are in the process of removing all of those Peugeot diesel engines on refrigeration units and they give us 8 hours of labor, they ship us the engines and the last four jobs have taken us 22 hours.

(13:48) Continued with testimony from **Attachment #2**.

(16:39) Chairman Rust: The down side of this bill is that you are going to require manufacturers to pay more of the warranty work. So I suppose that means their product price will go up?

Mr. Springer: That's not necessarily true. In other parts of the nation there are different sorts of contracts. Our labor market is also quite a bit different from other parts of the country. Other parts of the country are recovering a significant amount more on the hourly rate.

Chairman Rust: Does the hourly rate vary sometimes?

Mr. Springer: It does. If you go to California, you might pay \$180 per hour for labor whereas here it's \$118.

Chairman Rust: Do they do it by region, state or how do they determine that?

Mr. Springer: It's case by case.

Chairman Rust: Your success of dealing with them has been minimal?

Mr. Springer: Yeah, it's a national issue actually.

Chairman Rust: Do you know, do other states have similar laws?

Mr. Springer: There are, I couldn't speak on the exact details of those laws, I wish I could.

Chairman Rust: Do you see this bill as something that is not business friendly?

Mr. Springer: No, I don't see it as not business friendly. I've spoken with our manufacturers we represent and they're in favor of abiding by any and all state statutes on this. It's one of those things were if you look at the consumer price index over the past few years, the oil patch. It's a very competitive environment and we just need to get back to an even playing field. This bill does not give a franchisee and open book of, hey I'm just going to bill the manufacturer this amount for warranty work. So similar to what's already in 51-07-29, what you have to do, is you have to calculate your average labor rate. Obviously we have customers that we significantly reduce our rates to. So we can't just say hey our retail door rate is \$125 an hour and that's what we're going to bill the manufacturer, you have to use an average.

Chairman Rust: So actually if we didn't pass it we wouldn't be business friendly to you then would we?

Mr. Springer: There's a lot of people in the same boat in the state. It's not just us, it's our competitors, the trailer dealers.

Chairman Rust: Who sets the warranty time period?

Mr. Springer: The manufacturer.

Chairman Rust: And they also set what is covered in the warranty?

Mr. Springer: Correct

Chairman Rust: So then they sell this thing to somebody saying, "what we have here is just a great product. You want to buy our product over somebody else's, because our product is tested, proven and it'll work for you. And oh, by the way if you have a warranty problem you take it to Tim and he'll fix it."

Mr. Springer: Correct, and a lot of times if we have a very large customer; corporate will step in and say, "hey we'll give you this 7-year warranty for free." You know, we're the ones that lose and in lot cases the customer loses too because he pays these fees over and above what's covered by warranty.

(20:44) Senator Bakke: So someone comes in with a truck and they're under warranty, the manufacturer sends you the parts and they say it should take you eight hours. Do you charge them the standard fee for those eight hours or do they even tell you how much money you'll get for the eight hours?

Mr. Springer: So we renegotiate our labor rate every year with the manufacturer. They have what's caller SRT times (Standard Rate Timelines) so we can't bill over and above that. It's like flat rate time. It's significantly lower than what our labor rate is.

Chairman Rust: Can you get it done in less time than they tell you?

Mr. Springer: Sometimes we can, with our good seasoned guys that have been there for 30-years, absolutely.

Chairman Rust: And it depends on how often you have to do it.

Mr. Springer: Right.

Chairman Rust: The first time it might take you 22, the next one might take you 15 and the third one might take you 7. I think we all know the first time you do something you never get it done very quickly, but each time you do it, it does get done a little quicker.

(22:20) Senator Fors: What happens if the refrigeration breaks down where there isn't a dealership, do your repair people travel?

Mr. Springer: Yes, so our guy in fleet service dispatches his mobile service truck.

Senator Fors: So is that time incorporated into the hourly rate that they give you?

Mr. Springer: Travel time is separate. That's getting to be a tougher deal too, because of the hours of service laws, a driver may not be able to bring it into a dealership.

(23:13) Senator Clemens: Roughly over the last 10-years what's been your increase in wages? I know you mentioned 7% for 2019.

Mr. Springer: I haven't pulled the numbers on an average.

Senator Clemens: Would it be fair to say you're in that 3-5% every year?

Mr. Springer: It's typically 5% or higher.

Senator Clemens: 5 or higher?

Mr. Springer: Yeah, we've seen with medical health insurance, we pay a significant amount for our employees for health insurance. You know everything's getting tougher, so we share quite a bit with our employees. It's usually more than 5%.

Senator Clemens: I worked in manufacturing for Case New Holland (CNH) for quite a few years and I worked in engineering with quality; but I dealt with dealers a lot. When they'd have issues like this they'd call and say, flat rate is six hours, we're not being able to get this done in less than eight, let's say. So I would bring this issue to the engineering group and they would say, ok let's set up a mock repair in our test center and see where we're at. And yes, the dealers a lot of times were right. So they'd say, ok we're a little short on this replacement, instead of six it should be eight. Usually the manufacturer CNH would readjust those rates. Because, like a lot of things the job to remove an engine 10 years ago could probably be done a lot quicker than one today with all the extra equipment that's added on to these engines. But you're saying with Thermo King the manufacturer's not listening to you dealers when you come to them, and you dealers aren't able to put much pressure on them? Is this like in North Dakota then you'd be talking as dealerships probably? Since North Dakota is the issue?

Mr. Springer: So as far as the SRTs, the flat rate times; Thermo King we have an annual review of those. We have a dealer advisory council which I'm a board member of the product development group. Issues such as that we work with the manufacturer, because a lot of times those time studies are done in a clean lab somewhere. They don't understand that, hey, this thing just come off of a road that had slush and snow. It's not quite real world. We do work with those issues as far as labor times, sometimes they are able to adjust those like they would at CNH.

(26:26) Chairman Rust: The more I look at this bill, it's fairly lengthy, fairly technical, how familiar are you with the bill?

Mr. Springer: Fairly familiar, I wouldn't say I have everything memorized.

Chairman Rust: So if I wanted you to go through section by section you probably could?

Mr. Springer: Probably, if I had a copy of it in front of me, absolutely.

(26:56) Senator Dwyer: Are your competitors like, Nelson International and WW Wallwork?

Mr. Springer: So we would compete with those guys for technicians, but not from a product stand point; we actually partner with those guys.

Senator Dwyer: So you provide product to them?

Mr. Springer: We do.

Chairman Rust: Who would be your competition?

(27:17) Mr. Springer: Carrier Transcold. But the other truck dealers, Wallwork, Nelson International, Peterbilt, those guys; we provide them auxiliary power units for tractors and they also sell trailers. We consider them partners, but competitors in the technician market.

Senator Dwyer: I notice in the House that everywhere that as it was introduced it just said “dealer” and then they added “commercial” throughout the bill.

Mr. Springer: That was added so it wasn’t such a broad range. So it wasn’t washing machines. It was a little broad, the scope of it. So that’s why the “commercial” was added.

Senator Dwyer: Everywhere you see “commercial in this bill; and there’s probably 50 of them, it was all added in the House. And that’s just to narrow the scope.

Mr. Springer: Correct, yep.

Senator Dwyer: Does it mirror 51-07-29?

Mr. Springer: It does.

Senator Dwyer: So it contains some of the same...

Mr. Springer: If you were to lay them side by side, they’re almost identical.

Senator Dwyer: Why wouldn’t the manufacturers, why would we have to pass a bill in order for the manufacturers to be fair? If that’s the right word.

(29:08) Mr. Springer: Well, a lot of these manufacturers are publicly held corporations. They’re all about the bottom line. Obviously we are too, but after 15 years of trying to negotiate this, it just doesn’t ever go anywhere. It typically gets shot down from their board of directors.

Senator Dwyer: So they’re saying, if there’s a law we’ll comply with it but if not we’re not going to.

Mr. Springer: Exactly. They have to comply with the laws that are on the books such as succession planning in family owned dealerships as franchisees. There’s a lot of different things that they have to abide by that are state statutes.

Senator Bakke: My question was; how does this bill fix the problem for you? But if you're going to go through the bill with us I think that will answer my question.

(30:12) Chairman Rust: If you could do that, I hate to put you on the spot. If I need to get Levi Andrist here I'll get him here too. But, if you could do some of this we would appreciate it. Obviously the first part deals with some definitions. There's a definition of commercial equipment dealer, there's a definition of commercial distributor, a definition of commercial manufacturer and a definition of parts. Then where do we go from there?

Mr. Springer: So that gets us to subsection 2? So, "commercial manufacturer shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor, in warranty work compensation. In addition, a commercial manufacturer shall provide adequate time allowances for diagnosis and performance of warranty work and service for the work performed." So this statement is essentially just like it is. Now this is a big one. "The hourly labor rate paid by a commercial manufacturer to the commercial equipment dealer for warranty services may not be less than the average rate charged by the commercial equipment dealer for like service to non-warranty customers for non-warranty service." So this is where we get into our average and this is how the automotive dealers calculate it as well.

Chairman Rust: Is that anything complicated or not too complicated?

Mr. Springer: No, not at all, easy. So we just take our previous year's...

Chairman Rust: Average rate charged.

Mr. Springer: "Commercial manufacturer may not reimburse a commercial equipment dealer for parts used in the performance of warranty repair at a lower rate than the average retail rate customarily charged by the commercial equipment dealer for these parts as provided under subsection 5."

Chairman Rust: Ok, and that would be like I said to begin with. They ship you free parts, but you have parts sitting there, maybe 15, 20% higher and what this does is says that they have to pay you the same amount as the parts you have sitting there?

Mr. Springer: Right, and the automotive industry is allowed for that. Typically, our warranty parts markup is 20% and that's an acceptable rate.

(32:48) Senator Patten: Just to clarify, that 20% markup versus the free parts, that's your overhead component. So the free parts that they're sending don't allow you to cover your overhead.

Mr. Springer: If you calculate overhead it's almost 22%. "A commercial manufacturer shall pay a commercial equipment dealer on a claim made by a commercial equipment dealer under this section within thirty days, that's pretty standard. The commercial manufacturer either shall approve or disapprove a claim within thirty days after the claim is submitted to the commercial manufacturer. That's also pretty standard. The commercial manufacturer may prescribe the manner in which and the forms on which the commercial equipment

dealer must present the claim.” So we use their system, obviously. “A claim not specifically disapproved in writing within thirty days after the commercial manufacturer receives the claim must be construed to be approved and the manufacturer shall pay the claim within thirty days.”

(33:59) Chairman Rust: Is there a problem with getting paid within 30 days?

Mr. Springer: No, with today’s automated systems absolutely not.

Chairman Rust: So it’s not one of those cases where you do the work and 6 months later you paid or something.

Mr. Springer: Right. They’re not going to pay in 15, they’re probably going to pay in 29.5. “A commercial manufacturer, commercial distributor, or commercial distributor branch shall compensate fully its commercial equipment dealers licensed in this state for warranty parts, work, and service specified in this section. Failure to fully compensate includes a reduction in the amount due to the commercial equipment dealer or imposing a separate charge, surcharge, or other imposition by which the commercial manufacturer seeks to recover the costs of complying with this section from the commercial equipment dealer. The retail rate customarily charged by the commercial equipment dealer for parts is established by the commercial equipment dealer submitting to the commercial manufacturer or commercial distributor one hundred sequential non-warranty customer-paid service repair orders that contain warranty-like parts or ninety consecutive days of non-warranty customer-paid service repair orders that contain warranty-like parts, whichever is less.”

Chairman Rust: What does that mean?

(35:23) Mr. Springer: So you can’t recover more than what you would on a non-warranty repair for parts. In our case it’s just 20% across the board. So we’re not going to go back and look at the previous 100 invoices. This is kind of taken out of the automotive side that’s already there in the Century Code. “The retail rate customarily charged by the commercial equipment dealer for labor must be established using the same process as provided under subsection 5 and declaring the average labor rate.” For us, we just do it once a year. “The average labor rate must be determined by dividing the amount of the dealer’s total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.” So that’s how we establish that average. “In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the following work may not be included in the calculation:

- a. Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional discounts for retail customer repairs;
- b. Parts sold at wholesale; and
- c. Nuts, bolts, fasteners, and similar items that do not have an individual part number.” Shop supplies is what those are. “The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer’s approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may rebut the

presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other commercial equipment dealers.” So basically if you're way out of line...

Chairman Rust: So what this does is helps protect the manufacturer. So if you're out of line they have some sort of recourse.

(37:55) Senator Dwyer: So I've been going through the current state statute as you've been going and they have been identical word for word up until this point; and that's for motor vehicles. In the current law it includes tires and this doesn't I see and there must be a reason for that. The current law for vehicles also includes vehicle reconditioning and this doesn't. So what's the reason for those two not being included in this bill? I'm not saying they should be, I'm just wondering.

Mr. Springer: I don't know, honestly. Reconditioning, that's a pretty broad scope there, but tires, I suppose there's so many variations you can do. You can do recaps, used; I'm not entirely sure. Ok, So, obviously that section gives them an out. So, sub-section 9, “Each commercial manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not obligate any commercial equipment dealer to engage in unduly burdensome or time-consuming documentation of rates or parts.” Obviously, that's easy for us in our system to do. “including obligating commercial equipment dealers to engage in transaction by - transaction or part-by-part calculations.” So that's where we get the running average over a certain amount of days or invoices. “A commercial dealer or commercial manufacturer may demand the average parts markup or average labor rate be calculated using the process provided under subsections 5 and 6; however, the demand for the average parts markup may not be made within twelve months of the last parts markup declaration and the demand for the average labor rate may not be made within twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by the commercial equipment dealer or commercial manufacturer, the commercial equipment dealer shall determine the repair orders to be included in the calculation under subsections 5 and 6.” So it's just transparency.

(40:35) Senator Clemens: Your business has Thermo King and Isuzu Diesel?

Mr. Springer: Correct.

Senator Clemens: Are you having problems with both of those companies?

Mr. Springer: Not with Isuzu. We have three businesses that we have. So we've got Thermo King, Isuzu Diesel Midwest and Power Equipment. So we're a warehouse distributor for Doosan Industrial Engines. So we sell to the manufacturers that use the engines. Also we are a distributor for Mitsubishi and Isuzu engines. Isuzu's great, they pay us our (inaudible) rate.

(41:28) Senator Clemens: So Thermo King seems to be the problem. Like Wallwork and Butler and so forth are they having the same issue?

Mr. Springer: No they don't, because they're working on a motor vehicle so they don't have that.

Senator Clemens: Won't they do Thermo King repairs?

Mr. Springer: No, only authorized dealers are allowed.

Senator Clemens: You're the only one in Fargo?

Mr. Springer: The only one in Fargo. There's a branch in Grand Forks and a branch in Mandan and we have two other offices in Canada.

So they probably can do work on them, but you're the only that can do the warranty work.

That can do that warranty work, yeah. So Wallwork has a trailer shop, they can work on them, but they can't file a warranty claim. Which is pretty standard. Even though I'm a Doosan engine distributor I can't go do warranty work on a Bobcat, even though it's a Doosan piece of equipment.

(42:33) Senator Dwyer: So when you say like WW Wallwork is working on motor vehicles, what are you working on?

Mr. Springer: We're working on a trailer or an attachment to a trailer. Or an attachment to a vehicle. So technically it's not a motor vehicle we're working on. I've had that defined by a couple of different attorneys too.

Senator Dwyer: But throughout the bill we're talking about motor vehicles as well as all these other items.

Mr. Springer: So, what's currently in there protects the motor vehicle franchisees.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1339
3/28/2019
Job # 34319

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

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

Minutes:

No Attachments

Chairman Rust: Called the committee to order on HB 1339.

Chairman Rust: This is warranty that is attached to things on the trailer. It is not warranty on the vehicle, but things that are attached to it. An example would be refrigeration units.

We took testimony on this bill from **Levi Andrist** who was clear that it does not relate to cars and trucks. It is commercial equipment. It excludes non-commercial.

Mike Gerhart, said it is about fairness in a contract with manufacturers. He said this bill mirrors title 51-07.29 for vehicles. When he was going through the bill, **Senator Dwyer** was reading along in 51-07.29 and he said it was identical.

Kim Springer went through the bill in detail. There was no one to testify in opposition and there was no agency testimony.

As I look at the bill, it was amended in the House.

Senator Patten: I found it interesting that there was no opposition testimony. They are making use of the laws they have right now, but it would change. Are they accepting of it?

Senator Bakke: Maybe they have just been waiting for us to do it.

Chairman Rust: We have no amendments on our side.

Senator Bakke: How did they amend it?

Chairman Rust: I would tell you to look it up. It is basically words that are being inserted, for example, the word "commercial". I think they want to make sure it is not going to effect the

non-commercial which means cars and trucks. This word was added throughout the whole bill.

Senator Clemens: This bill only relates to the warranty work. It is not for regular repair.

Chairman Rust: Correct. It is a reimbursement for warranty.

Senator Bakke: I Move a **Do Pass**.

Senator Patten: I **Second** the Motion.

Senator Fors: You say we are trying to legislate fairness with this?

Chairman Rust: That is what we were told.

Senator Fors: So if you beat one kid, you have to beat the rest of them?

Chairman Rust: With a large company, they have no recourse. They have to take what they tell them and they keep adding on conditions. Their only option is to not work with that company or to take the loss.

Senator Dwyer: I hate mandating stuff, but we need to be fair to the dealers. The manufacturer is going to increase the cost of their product to cover this stuff. I am not saying I am against the bill; I am just saying they will find a way to cover which will be more to the consumer either way.

Senator Patten: In reality, the Thermo King has to increase their cost somewhere else to cover the loss they are dealing with. That overhead is being dealt with somewhere and they are trying to cover it. If it isn't coming from this one, it is coming from another component of their operation.

Senator Bakke: When you have a warranty, it is the manufacturer saying that if their product becomes defective, they will stand behind it and fix it. Now they are going to put the cost of that on the person that is fixing it, rather than stepping up and paying for the mistake they made on their product. I think this is more for the guy who is lower on the totem pole, to make sure he is not getting wacked because of inadequate work on the higher level.

Senator Patten: The other thing is, it is the North Dakota companies are taking the hit by the out of state companies.

Senator Fors: Why don't they just give it up? If these little companies are getting hit so bad, why don't they give it up? That company that is down in Detroit will have to come in and spend a lot more money and soon they will ask a smaller company to come in and help them do it.

Senator Patten: That is probably because it is a major source of their revenue. That is what Thermo King does. They sell and service them. They do that in North Dakota. If they stopped, that company has to find another dealer or they move to Minneapolis and the warranty work

gets done in Minneapolis. I know this because I have warranty work that I need done on my Ford. There is so Ford dealer in Watford so you have to take it to Williston or Bismarck. When that warranty needs to be taken care of, you have to go where the certified servicer is.

Chairman Rust: Did he not tell us that there are three Thermo King services in North Dakota; Fargo, Grand Forks, and Bismarck?

A Roll Call Vote Was Taken:

Passed 6-0-0

Carrier: Senator Dwyer

Date: 3-28-19
Roll Call Vote # 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO: 1339

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Bakke Seconded By Patten

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	<input checked="" type="checkbox"/>		Senator Bakke	<input checked="" type="checkbox"/>	
Senator Clemens - Vice Chairman	<input checked="" type="checkbox"/>				
Senator Dwyer	<input checked="" type="checkbox"/>				
Senator Fors	<input checked="" type="checkbox"/>				
Senator Patten	<input checked="" type="checkbox"/>				

Total (Yes) 10 No 0

Absent 0

Floor Assignment Dwyer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1339, as engrossed: Transportation Committee (Sen. Rust, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1339 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1339

TESTIMONY IN SUPPORT OF HB 1339,
INDUSTRY, BUSINESS AND LABOR COMMITTEE
JANUARY 29, 2019
BY: REP. MARY C. JOHNSON

My name is Mary Johnson, Representative in District 45, Fargo.

HB 1339 seeks to add a section to the code regarding warranty. Simply, it serves to protect citizens in negotiations of franchise contracts. When the number of manufacturers of items are few, those manufacturers have an unfair advantage and make demands of franchisees rather than negotiate fair terms and conditions.

This bill is limited to essential and non-essential vehicle, truck and semitrailers components. Essential are components without which the vehicle, truck or semitrailer could not function and non-essential components are those that are not needed for the vehicle's, truck's or semitrailer's main function of transporting cargo.

The enactment of HB 1339 will balance the bargaining strength of ND citizen small business owners and Franchisors.

**TESTIMONY
HOUSE BILL 1339
INDUSTRY BUSINESS AND LABOR COMMITTEE
JANUARY 29, 2019**

Mr. Chairman and members of the House Industry Business and Labor committee my name is Tim Springer, Secretary of Thermo King of Fargo & Isuzu Diesel Midwest. I am providing this written testimony in support of House Bill 1339.

As a franchise dealer for Thermo King since 1969, and third generation family business, our company has constantly evolved around many market changing conditions. Our company provides sales and service for temperature-controlled trucks and trailers with 24 employees in our Fargo location. One of the latest challenges we have been faced with is the enormous diesel technician shortage, longer factory warranties, and an industry dealing with extreme driver shortages.

When equipment needs to be repaired on a refrigerated trailer, it is a very time critical process to not only save the product being temperature controlled, but to reduce the dwell time for the company or driver in the shop.

Hiring qualified technicians in the industry has gotten very competitive over the past 10 years. In recent years we have increased the hourly wage substantially to keep our employees with our company, and to attract new hires coming out of technical institutions. For example, in 2019 we increase wages by over 7%.

According to the American Transportation Research Institute the trucking industry will require an estimated 67,000 new technicians to replace retiring workers, and 75,000 new diesel engine specialists by 2022.

The reason for this discussion today is that we are limited by the manufacturers we represent to a maximum of a 3% increase in the warranty compensation labor rate. Each year the gap widens between retail door rate and warranty rate. We are also not able to recover costs such as diagnostics, and testing to verify if a repair was successful under the warranty period. Currently we invoice 27% of our labor directly to the manufacturer through warranty or centralized billing that is capped at a 3% annual increase.

As an example, in 2018 we incurred lost revenue of \$19,440 due to labor, and decreased diagnostic time from the manufacturer. Although this number seems small, it will be compounded even further as the industry reacts to technician shortages. Another item that we do not track is "free parts" for warranty repairs. In some cases, the manufacturer will ship parts to be replaced on equipment that the dealer doesn't make the typical 20% markup. Our dealerships are required to keep certain parts in our inventory to support the product.

HB 1339

Attachment 2
Jan 29, 2019
Page 2

After analyzing the existing Century Code 51-07-29 the Motor Vehicle dealers are able to recover their costs at a much greater rate than a Non-Motor Vehicle dealer when performing warranty work. In our industry it can have negative consequences on the consumer if a dealer isn't reimbursed at an acceptable level. Some dealers charge the customer for items such as a "download fee", and a "run and check" fee. These and other miscellaneous charges can sometimes add up to be hundreds of dollars charged to the consumer under the "Warranty Period".

Our industry began by offering 1-year warranties, to now offering standard 4-7-year warranties depending on equipment. That means the percentage of manufacturer's warranty work we perform increases every year. For many independent families owned business in the State of North Dakota, it places a strain our businesses to stay competitive in hiring technicians with other adjacent markets such as the automotive or truck repair.

In closing passing HB 1339 will protect both consumers and dealerships by requiring the manufacturers to pay their fair share of warranty compensation of parts and labor. This will expand current Century Code 51-07 to not only protect the "Motor Vehicle" industry, but a broader range of products.

I ask that you give HB 1339 favorable consideration and a DO PASS recommendation. Mr. Chairman, this concludes my written testimony.

Sincerely

Tim Springer
Thermo King of Fargo

**TESTIMONY
HOUSE BILL 1339
INDUSTRY BUSINESS AND LABOR COMMITTEE
JANUARY 29, 2019**

Mr. Chairman and members of the House Industry Business and Labor committee my name is Mike Gerhart, Executive Vice President of the North Dakota Motor Carriers Association (NDMCA). I am here this afternoon to testify in support of House Bill 1339.

This legislation is important because it provides the opportunity to achieve a fair contract between a locally owned business and a manufacturer. Mr. Springer and his company have attempted on several occasions to negotiate with Thermo King and resolve this issue. Unfortunately, it has not been resolved which is why we are here today. Thank you for allowing us to share this information and have this discussion.

I ask that you give HB 1339 favorable consideration and a DO PASS recommendation. Mr. Chairman, this concludes my testimony.

Attachment 4
Jan 29, 2019

19.0704.01000

Sixty-sixth
Legislative Assembly
of North Dakota

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 parts, or
11 vehicular implements, commercial equipment or ; accessories, or attachment
12 units,
13 designed and used primarily for transporting commodities, merchandise, or
14 commercial cargo; or

15 (2) Repairing new or used commercial motor vehicle, truck, or semitrailer parts,
16 or vehicular

- 17 implements, commercial equipment or ; accessories, or attachment units,
18 designed and
19 used primarily for transporting commodities, merchandise, or commercial cargo.

20 b. "Commercial Distributor" means any person that offers for sale, sells, or distributes
21 to a dealer parts for

- 22 any new commercial motor vehicle, truck, or semitrailer parts, or vehicular
23 implements,
24 commercial equipment or ; accessories, or attachment units, designed and used
25 primarily for
26 transporting commodities, merchandise, or commercial cargo.

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HB 1339

Attachment 4
Jan 29, 2019

- 20 c. "Commercial Manufacturer" means any person engaged in the business of
21 manufacturing or
22 assembling parts for any new commercial motor vehicle, truck, or semitrailer-
23 parts, or vehicular
implements, commercial equipment or, accessories, or attachment units, designed
and used
primarily for transporting commodities, merchandise, or commercial cargo.

Sixty-sixth
Legislative Assembly

- 1 d. "Parts" includes essential and nonessential commercial motor vehicle, truck, or
semitrailer
- 2 components.
- 3 2. A commercial manufacturer shall include reasonable compensation for diagnostic work,
as well as
- 4 repair service, parts, and labor, in warranty work compensation. In addition, a
- 5 commercial manufacturer shall provide adequate time allowances for diagnosis and
performance
- 6 of warranty work and service for the work performed. The hourly labor rate paid by a
- 7 commercial manufacturer to the commercial equipment dealer for warranty services
may not be less than the average rate
- 8 charged by the commercial equipment dealer for like service to nonwarranty customers
for nonwarranty
- 9 service. A commercial manufacturer may not reimburse a commercial equipment dealer
for parts used in the performance
- 10 of warranty repair at a lower rate than the average retail rate customarily charged by
- 11 the commercial equipment dealer for these parts as provided under subsection 5.
- 12 3. A commercial manufacturer shall pay a commercial equipment dealer on a claim made by
a commercial equipment dealer under this section
- 13 within thirty days of the approval of the claim. The commercial manufacturer either shall
approve or
- 14 disapprove a claim within thirty days after the claim is submitted to the commercial
manufacturer.
- 15 The commercial manufacturer may prescribe the manner in which and the forms on
which the
- 16 commercial equipment dealer must present the claim. A claim not specifically
disapproved in writing within
- 17 thirty days after the commercial manufacturer receives the claim must be construed to
be
- 18 approved and the commercial manufacturer shall pay the claim within thirty days.
- 19 4. A commercial manufacturer, factory branch, commercial distributor, or commercial
distributor branch shall compensate fully
- 20 its commercial equipment dealers licensed in this state for warranty parts, work, and
service specified in this
- 21 section. Failure to fully compensate includes a reduction in the amount due to the
- 22 commercial equipment dealer or imposing a separate charge, surcharge, or other
imposition by which the commercial
- 23 manufacturer, factory branch, distributor, or distributor branch seeks to recover the

HB 1339

Attachment 4
Jan 29, 2019

24 costs of complying with this section from the [commercial equipment](#) dealer.
25 5. The retail rate customarily charged by the [commercial equipment](#) dealer for parts is
26 established by the [commercial equipment](#) dealer
27 submitting to the [commercial](#) manufacturer or [commercial](#) distributor one hundred
28 sequential nonwarranty
29 customer-paid service repair orders that contain warranty-like parts or ninety
30 consecutive days of nonwarranty customer-paid service repair orders that contain
31 warranty-like parts, whichever is less, covering repairs made no more than
one hundred eighty days before the submission and declaring the average percentage
markup.

HB 1339

Attachment 4
Jun 29, 2019

Sixty-sixth
Legislative Assembly

6. The retail rate customarily charged by the commercial equipment dealer for labor must be established using

the same process as provided under subsection 5 and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the commercial equipment dealer, the commercial equipment dealer may use the same repair orders to complete each calculation as provided under subsection 5.

7. In calculating the retail rate customarily charged by the commercial equipment dealer for parts and labor, the

following work may not be included in the calculation:

a. Repairs for commercial manufacturer or commercial distributor special events, specials, or promotional

discounts for retail customer repairs;

b. Parts sold at wholesale; and

c. Nuts, bolts, fasteners, and similar items that do not have an individual part number.

8. The average of the parts markup rates and labor rate is presumed to be fair and reasonable and must become effective thirty days following the commercial manufacturer's

approval. Not later than thirty days after submission, a commercial manufacturer or commercial distributor may

rebut the presumption by reasonably substantiating that a rate is unreasonable in light of the practices of all other franchised commercial equipment dealers in an economically similar area of the

state offering the commercial equipment dealer's declaration of the same part, or vehicular implement,

equipment, accessory, or attachment unit. If the average parts markup rate or average labor rate, or both are rebutted, the commercial manufacturer or commercial distributor shall propose an

adjustment of the average percentage markup based on that rebuttal not later than thirty days after submission.

9. Each commercial manufacturer, in establishing a schedule of compensation for warranty work,

shall rely on the commercial equipment dealer's written schedule of hourly labor rates and parts and may not

HB 1339

Attachment 4
Jan 29, 2019

- 27 obligate any [commercial equipment](#) dealer to engage in unduly burdensome or time-
consuming
- 28 documentation of rates or parts, including obligating [commercial equipment](#) dealers to
engage in transaction
- 29 by-transaction or part-by-part calculations.
- 30 10. A [commercial](#) dealer or [commercial](#) manufacturer may demand the average parts markup
or average labor rate
- 31 be calculated using the process provided under subsections 5 and 6; however, the

HB 1339

Amendment 4
Jan 29, 2019

Sixty-sixth
Legislative Assembly

- 1 demand for the average parts markup may not be made within twelve months of the
 - 2 last parts markup declaration and the demand for the average labor rate may not be
 - 3 made within twelve months of the last labor rate declaration. If a parts markup or labor
 - 4 rate is demanded by the [commercial equipment](#) dealer or [commercial](#) manufacturer, the
 - 5 [commercial equipment](#) dealer shall determine the repair
- orders to be included in the calculation under subsections 5 and 6.

TESTIMONY IN SUPPORT OF HB 1339
TRANSPORTATION COMMITTEE
SENATOR RUST, CHAIRMAN
MARCH 7, 2019
BY: REP. MARY C. JOHNSON

My name is Mary Johnson, Representative in District 45, Fargo.

HB 1339 seeks to add a section to the code regarding warranty. Simply, it serves to protect citizens in negotiations of franchise contracts. When the number of manufacturers of items are few, those manufacturers have an unfair advantage and make demands of franchisee retailers rather than negotiate fair terms and conditions. A take it or leave it contract is called a contract of adhesion and violates the basic tenet of contract law that parties to a contract have equal or near equal bargaining position.

The enactment of HB 1339 will balance the bargaining strength of ND citizen small business owners and Franchisors.

A question asked often is "where does this stop? Won't we be protecting small business from vacuum cleaner manufacturers or hair dryer manufacturers?" No, we won't because the retailers of those items have bargaining power. Imagine Conair, a hair dryer manufacturer trying to strong-arm Walmart. Walmart has shelves full of hair dryers of many manufacturers.

When small business owners are subject to contracts of adhesion, the state steps in to protect those business owners, like with the automobile manufacturers.

**TESTIMONY
HOUSE BILL 1339
SENATE TRANSPORTATION COMMITTEE
MARCH 21, 2019**

Mr. Chairman and members of the Senate Transportation committee my name is Mike Gerhart, Executive Vice President of the North Dakota Motor Carriers Association (NDMCA). I am here this morning to testify in support of House Bill 1339.

This legislation is important to the trucking industry. It is about achieving a fair contract between locally owned businesses who serve our industry and the manufacturers who provide the framework for these businesses to follow. This bill addresses this challenge and is consistent with protections currently provided to the motor vehicle industry under Title 51 of the North Dakota Century Code.

I ask that you give HB 1339 favorable consideration and a DO PASS recommendation. Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.

**TESTIMONY
HOUSE BILL 1339
SENATE TRANSPORTATION COMMITTEE
March 15, 2019**

Mr. Chairman and members of the Senate Transportation committee my name is Tim Springer, Secretary of Thermo King of Fargo & Isuzu Diesel Midwest. I am providing this written testimony in support of House Bill 1339.

As a franchise dealer for Thermo King since 1969, and third generation family business, our company has constantly evolved around many market changing conditions. Our company provides sales and service for temperature-controlled trucks and trailers with 24 employees in our Fargo location. One of the latest challenges we have been faced with is the enormous diesel technician shortage, longer factory warranties, and an industry dealing with extreme driver shortages.

When equipment needs to be repaired on a refrigerated trailer, it is a very time critical process to not only save the product being temperature controlled, but to reduce the dwell time for the company or driver in the shop.

Hiring qualified technicians in the industry has gotten very competitive over the past 10 years. In recent years we have increased the hourly wage substantially to keep our employees with our company, and to attract new hires coming out of technical institutions. For example, in 2019 we increase wages by over 7%.

According to the American Transportation Research Institute the trucking industry will require an estimated 67,000 new technicians to replace retiring workers, and 75,000 new diesel engine specialists by 2022.

The reason for this discussion today is that we are limited by the manufacturers we represent to a maximum of a 3% increase in the warranty compensation labor rate. Each year the gap widens between retail door rate and warranty rate. We are also not able to recover costs such as diagnostics, and testing to verify if a repair was successful under the warranty period. Currently we invoice 27% of our labor directly to the manufacturer through warranty or centralized billing that is capped at a 3% annual increase.

As an example, in 2018 we incurred lost revenue of \$19,440 due to labor, and decreased diagnostic time from the manufacturer. Although this number seems small, it will be compounded even further as the industry reacts to technician shortages. Another item that we do not track is "free parts" for warranty repairs. In some cases, the manufacturer will ship parts to be replaced on equipment that the dealer doesn't make the typical 20% markup. Our dealerships are required to keep certain parts in our inventory to support the product.

After analyzing the existing Century Code 51-07-29 the Motor Vehicle dealers are able to recover their costs at a much greater rate than a Non-Motor Vehicle dealer when performing warranty work. In our industry it can have negative consequences on the consumer if a dealer isn't reimbursed at an acceptable level. Some dealers charge the customer for items such as a "download fee", and a "run and check" fee. These and other miscellaneous charges can sometimes add up to be hundreds of dollars charged to the consumer under the "Warranty Period".

Our industry began by offering 1-year warranties, to now offering standard 4-7-year warranties depending on equipment. That means the percentage of manufacturer's warranty work we perform increases every year. For many independent family owned business in the State of North Dakota, it places a strain our businesses to stay competitive in hiring technicians with other adjacent markets such as the automotive or truck repair.

In closing passing HB 1339 will protect both consumers and dealerships by requiring the manufacturers to pay their fair share of warranty compensation of parts and labor. This will expand current Century Code 51-07 to not only protect the "Motor Vehicle" industry, but a broader range of products.

I ask that you give HB 1339 favorable consideration and a DO PASS recommendation. Mr. Chairman, this concludes my written testimony.

Sincerely

Tim Springer
Thermo King of Fargo