

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0748.03 Jery Payne x2157

SENATE BILL 18-219

SENATE SPONSORSHIP

Tate,

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees

Business, Labor, & Technology

House Committees

Business Affairs and Labor

A BILL FOR AN ACT

101 **CONCERNING THE RATES A MOTOR VEHICLE DEALER CHARGES A**
102 **MOTOR VEHICLE MANUFACTURER FOR WORK PERFORMED BY**
103 **THE DEALER IN ACCORDANCE WITH A WARRANTY OBLIGATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires motor vehicle manufacturers to fulfill warranty obligations. A manufacturer must compensate each of its motor vehicle dealers in accordance with a set of standards designed to reflect the current market rate for labor and the profit margin on parts the dealer can expect to obtain. Dealers must submit certain repair orders to the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 3, 2018

HOUSE
Amended 2nd Reading
May 2, 2018

SENATE
3rd Reading Unamended
April 25, 2018

SENATE
Amended 2nd Reading
April 24, 2018

manufacturer as required by the bill to establish compensation rates.

The manufacturer may contest the rates charged by the dealer. If the manufacturer does not contest the rates within 15 days, the amounts take effect. If the manufacturer timely contests the rates and the manufacturer and dealer cannot agree on the amount charged, the dealer may obtain a determination by a court. The manufacturer has the burden of proving the rates are inaccurate. The dealer may request a modification of rates from a manufacturer only semiannually.

A manufacturer is:

- ! Prohibited from lowering the retail labor rate below the rate the manufacturer was paying before the bill takes effect;
- ! Prohibited from eliminating flat-rate times for labor or establishing unreasonable flat-rate times for labor;
- ! Required to establish reasonable flat-rate times for labor for new models;
- ! Required to calculate the retail parts markup percentage from the dealer's wholesale cost for the part;
- ! Prohibited from reducing the suggested retail or list price to provide the dealer lower compensation;
- ! Prohibited from establishing different part numbers for warranty repairs to pay the dealer lower compensation;
- ! Prohibited from attempting to recover the costs of paying the dealer from the dealer using other methods;
- ! Prohibited from taking action against the dealer for asserting the dealer's rights under the bill;
- ! Prohibited from forcing the dealer to change prices for nonwarranty repairs;
- ! Prohibited from requiring a dealer to use any method that is unduly burdensome or time-consuming to account for the retail prices set under the bill;
- ! Required to reduce the motor vehicle dealer's cost for a part by the same percentage that the manufacturer reduces the retail cost of a part.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-6-114 as
3 follows:

4 **12-6-114. Filing of written warranties.** Each licensed
5 manufacturer shall file with the director all written warranties and
6 changes in written warranties that the manufacturer makes on any motor

1 vehicle or parts thereof. Each licensed manufacturer shall file with the
2 director a copy of the delivery and preparation obligations of its dealers.
3 ~~and~~ These warranties and obligations constitute the dealer's only
4 responsibility for product liability as between the dealer and the
5 manufacturer. ~~Any mechanical, body, or parts defects arising from any~~
6 ~~express or implied warranties of the manufacturer constitute the~~
7 ~~manufacturer's product or warranty liability, and the manufacturer shall~~
8 ~~reasonably compensate any authorized dealer who performs work to~~
9 ~~rectify the manufacturer's product or warranty defects.~~

10 **SECTION 2.** In Colorado Revised Statutes, **add** 12-6-132.5 as
11 follows:

12 **12-6-132.5. Fulfillment and compensation for warranty and**
13 **recall obligations - definitions.** (1) AS USED IN THIS SECTION:

14 (a) "MANUFACTURER" INCLUDES A MANUFACTURER, A
15 DISTRIBUTOR, AND A MANUFACTURER REPRESENTATIVE.

16 (b) "NONWARRANTY REPAIR" MEANS A DIAGNOSIS, REPAIR, LABOR,
17 OR PART FOR WHICH PAYMENT WAS MADE BY A PERSON OTHER THAN A
18 MANUFACTURER AND THAT WAS NOT A WARRANTY OBLIGATION.
19 "NONWARRANTY REPAIR" ALSO MEANS CUSTOMER-PAY REPAIRS, LABOR,
20 OR PARTS.

21 (c) "PART" MEANS AN ACCESSORY, A PART, OR A COMPONENT USED
22 TO REPAIR _____ A MOTOR VEHICLE. "PART" INCLUDES ENGINE AND
23 TRANSMISSION PARTS AND ALL MOTOR VEHICLE ASSEMBLIES.

24 (d) "REPAIR" MEANS DIAGNOSING, WORK, AND LABOR PERFORMED
25 BY A MOTOR VEHICLE DEALER _____ FOR WHICH THE MOTOR VEHICLE
26 DEALER IS MAKING A CLAIM FOR COMPENSATION.

27 (e) "RETAIL LABOR RATE" MEANS THE RATE FOR LABOR

1 CALCULATED BY THE MOTOR VEHICLE DEALER IN ACCORDANCE WITH
2 SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS REQUIRED TO
3 PAY A MOTOR VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (2) OF
4 THIS SECTION.

5 (f) "RETAIL PARTS MARKUP PERCENTAGE" MEANS THE
6 PERCENTAGE MARKUP ON PARTS CALCULATED BY THE MOTOR VEHICLE
7 DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION THAT A
8 MANUFACTURER IS REQUIRED TO PAY A MOTOR VEHICLE DEALER IN
9 ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

10 (g) "WARRANTY OBLIGATION" MEANS DIAGNOSING AND REPAIRING
11 A MOTOR VEHICLE IN ACCORDANCE WITH ANY WARRANTY, RECALL, OR
12 CERTIFIED PREOWNED WARRANTY, ___ UNDER WHICH A MANUFACTURER
13 MAKES A REPAIR COMMITMENT ___ TO A CONSUMER OR MOTOR VEHICLE
14 DEALER.

15 (2) AT A MOTOR VEHICLE DEALER'S REQUEST, A MANUFACTURER
16 SHALL TIMELY COMPENSATE THE MOTOR VEHICLE DEALER AT THE RETAIL
17 LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE IN
18 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FOR ALL LABOR
19 PERFORMED AND PARTS USED BY THE MOTOR VEHICLE DEALER FOR
20 COVERED REPAIRS PERFORMED IN ACCORDANCE WITH THE WARRANTY
21 OBLIGATION, IF THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP
22 PERCENTAGE ARE REASONABLE CONSISTENT WITH THE REQUIREMENTS OF
23 THIS SECTION THAT CONCERN THE RETAIL LABOR RATE AND PARTS
24 MARKUP PERCENTAGE.

25 (3) (a) A MOTOR VEHICLE DEALER MAY ESTABLISH THE RETAIL
26 LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE BY
27 SUBMITTING TO THE MANUFACTURER EITHER OF THE FOLLOWING AS

1 DECIDED BY THE MOTOR VEHICLE DEALER:

2 (I) ONE HUNDRED SEQUENTIAL REPAIR ORDERS CONTAINING
3 NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR
4 THAT IS INCLUDED IN A REPAIR ORDER WITH A WARRANTY OBLIGATION
5 REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME
6 OF SUBMISSION; OR

7 (II) ALL REPAIR ORDERS FOR NONWARRANTY REPAIRS, WHICH MAY
8 INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER
9 WITH WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A
10 CONSUMER AND CLOSED BY THE TIME OF SUBMISSION FOR A PERIOD OF
11 NINETY CONSECUTIVE DAYS.

12 (b) A MANUFACTURER SHALL NOT DISQUALIFY A REPAIR ORDER
13 UNDER THIS SUBSECTION (3) BECAUSE THE REPAIR ORDER CONTAINS BOTH
14 WARRANTY AND NONWARRANTY REPAIRS, BUT ONLY NONWARRANTY
15 REPAIRS ARE USED IN THE CALCULATION OF THE RETAIL LABOR RATE AND
16 THE RETAIL PARTS MARKUP PERCENTAGE.

17 (c) A MOTOR VEHICLE DEALER MAY SUBMIT ONE SET OF REPAIR
18 ORDERS FOR THE PURPOSE OF CALCULATING BOTH ITS RETAIL LABOR RATE
19 AND THE RETAIL PARTS MARKUP PERCENTAGE OR MAY SUBMIT SEPARATE
20 SETS OF REPAIR ORDERS FOR PURPOSES OF CALCULATING ONLY ITS RETAIL
21 LABOR RATE OR FOR PURPOSES OF CALCULATING ONLY ITS RETAIL PARTS
22 MARKUP PERCENTAGE. IF THE RATES FROM THE CALCULATION ARE TEN
23 PERCENT HIGHER OR LOWER THAN THE CURRENT RATES, THE
24 MANUFACTURER MAY REQUEST ADDITIONAL REPAIR ORDERS FOR THE
25 NINETY DAYS BEFORE OR AFTER THE SUBMITTED REPAIR ORDERS FOR
26 PURPOSES OF ALTERATION.

27 (d) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR

1 ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR
2 ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE
3 RETAIL LABOR RATE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST
4 NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE
5 MANUFACTURER.

6 (e) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR
7 ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR
8 ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE
9 RETAIL PARTS MARKUP PERCENTAGE MUST CONTAIN ONLY REPAIR ORDERS
10 FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT
11 TO THE MANUFACTURER.

12 (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS
13 SECTION, TO CALCULATE THE RETAIL LABOR RATE, THE MOTOR VEHICLE
14 DEALER MUST DIVIDE THE MOTOR VEHICLE DEALER'S TOTAL
15 NONWARRANTY LABOR SALES GENERATED FROM THE NONWARRANTY
16 REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE
17 TOTAL NUMBER OF LABOR HOURS THAT GENERATED THOSE TOTAL LABOR
18 SALES.

19 (b) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION,
20 TO CALCULATE THE RETAIL PARTS MARKUP PERCENTAGE, THE MOTOR
21 VEHICLE DEALER MUST DIVIDE THE MOTOR VEHICLE DEALER'S TOTAL
22 PARTS SALES GENERATED FROM NONWARRANTY REPAIRS SUBMITTED
23 UNDER SUBSECTION (3) OF THIS SECTION BY THE AMOUNT OF THE MOTOR
24 VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS, SUBTRACTING ONE
25 FROM THIS AMOUNT, AND THEN MULTIPLYING THE AMOUNT BY ONE
26 HUNDRED.

27 (c) THE CALCULATION OF THE RETAIL LABOR RATE IN SUBSECTION

1 (4)(a) OF THIS SECTION AND OF THE RETAIL PARTS MARKUP PERCENTAGE
2 IN SUBSECTION (4)(b) OF THIS SECTION DO NOT INCLUDE PARTS USED OR
3 LABOR PERFORMED:

4 (I) FOR MANUFACTURER OR MOTOR VEHICLE DEALER SPECIAL
5 EVENTS, ONE-TIME SPECIALS, EXPRESS SERVICE, AND QUOTED-PRICE
6 PROMOTIONAL DISCOUNTS, BUT THIS EXCLUSION FROM THE CALCULATION
7 DOES NOT INCLUDE BROADLY APPLICABLE DISCOUNTS OFFERED BY THE
8 DEALER, SUCH AS PERCENTAGE-OFF COUPONS, THAT APPLY TO REPAIRS
9 AND PARTS;

10 (II) FOR PARTS SOLD AT WHOLESALE;

11 (III) FOR ROUTINE MAINTENANCE, INCLUDING REPLACEMENT
12 FLUIDS, FILTERS, BATTERIES, BULBS, NUTS, BOLTS, FASTENERS, TIRES, AND
13 BELTS;

14 (IV) THAT DO NOT HAVE INDIVIDUAL PART NUMBERS;

15 ==

16 (V) FOR THE REPAIRS OF A MOTOR VEHICLE OWNED BY THE MOTOR
17 VEHICLE DEALER, AN AFFILIATE OF THE MOTOR VEHICLE DEALER, OR AN
18 EMPLOYEE OF EITHER THE MOTOR VEHICLE DEALER OR THE AFFILIATE;

19 (VI) FOR MOTOR VEHICLE DEALER RECONDITIONING;

20 (VII) FOR WINDOW TINT, PROTECTIVE FILM, MASKING PRODUCTS,
21 OR WINDOW REPLACEMENT LABOR;

22 (VIII) FOR MANUFACTURER APPROVED AND REIMBURSED
23 GOODWILL == REPAIRS OR REPLACEMENTS;

24 (IX) FOR EMISSION INSPECTIONS REQUIRED BY LAW;

25 (X) FOR SAFETY INSPECTIONS REQUIRED BY LAW;

26 (XI) FOR WHICH A VOLUME DISCOUNT WAS NEGOTIATED WITH A
27 THIRD-PARTY PAYER, INCLUDING GOVERNMENT AGENCIES, INSURANCE

1 CARRIERS, AND FLEET OPERATORS, BUT NOT INCLUDING THIRD-PARTY
2 WARRANTY COMPANIES OR SERVICE CONTRACT COMPANIES.

3 (5) (a) NOTWITHSTANDING ANY MANUFACTURER REQUIREMENT,
4 POLICY, PROCEDURE, GUIDELINE, OR STANDARD, A MOTOR VEHICLE
5 DEALER MAY SUBMIT TO THE MANUFACTURER THE RETAIL LABOR RATE OR
6 RETAIL PARTS MARKUP PERCENTAGE AS EACH IS CALCULATED IN
7 ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

8 (b) A MOTOR VEHICLE DEALER MAY REQUEST IN WRITING, NOT
9 MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR
10 LABOR AT THE RETAIL LABOR RATE FOR WARRANTY OBLIGATIONS.

11 (c) A MOTOR VEHICLE DEALER MAY REQUEST IN WRITING, NOT
12 MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION FOR
13 PARTS AT THE RETAIL PARTS MARKUP PERCENTAGE FOR WARRANTY
14 OBLIGATIONS.

15 (d) (I) A MANUFACTURER MAY CONDUCT A PERIODIC REVIEW OF
16 A MOTOR VEHICLE DEALER'S SERVICE RECORDS TO VERIFY THE
17 CONTINUING ACCURACY OF THE RETAIL LABOR RATE OR RETAIL PARTS
18 MARKUP PERCENTAGE PROPOSED BY OR IN EFFECT FOR THE DEALER.

19 (II) A MANUFACTURER SHALL NOT CONDUCT A PERIODIC REVIEW
20 MORE THAN ONCE PER CALENDAR YEAR. THIS PERIODIC REVIEW IS NOT AN
21 AUDIT IN ACCORDANCE WITH SECTION 12-6-126.

22 (6) (a) (I) IF THE SUBMITTED CALCULATION OF THE RETAIL LABOR
23 RATE OR RETAIL PARTS MARKUP PERCENTAGE IS MATERIALLY INACCURATE
24 OR IS SUBSTANTIALLY DIFFERENT THAN THE RATE OF OR PERCENTAGE OF
25 OTHER SIMILARLY SITUATED SAME LINE-MAKE DEALERS WITHIN THE
26 STATE, A MANUFACTURER MAY CONTEST THE MOTOR VEHICLE DEALER'S
27 SUBMITTED CALCULATIONS OF THE RETAIL LABOR RATE OR RETAIL PARTS

1 MARKUP PERCENTAGE BY DELIVERING A NOTICE TO THE MOTOR VEHICLE
2 DEALER WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE SUBMISSION IN
3 ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FROM THE MOTOR
4 VEHICLE DEALER. TO COMPLY WITH THIS SUBSECTION (6), THE NOTICE
5 MUST:

6 (A) INCLUDE AN EXPLANATION OF THE REASONS THAT THE
7 MANUFACTURER BELIEVES THE CALCULATION IS SUBJECT TO CONTEST;

8 (B) PROVIDE EVIDENCE SUBSTANTIATING THE MANUFACTURER'S
9 POSITION; AND

10 (C) PROPOSE AN ADJUSTMENT OF THE CONTESTED RETAIL LABOR
11 RATE OR RETAIL PARTS MARKUP PERCENTAGE.

12 (II) UPON THE DISCOVERY OF NEW RELEVANT INFORMATION BY
13 THE MANUFACTURER, THE MANUFACTURER MAY MODIFY THE GROUNDS
14 FOR CONTESTING THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP
15 PERCENTAGE AFTER DELIVERING THE NOTICE TO THE MOTOR VEHICLE
16 DEALER UNDER THIS SUBSECTION (6), BUT THE MODIFICATION DOES NOT
17 CHANGE THE TIMING REQUIREMENTS IN THIS SECTION.

18 (b) IF THE MANUFACTURER DOES NOT TIMELY CONTEST THE MOTOR
19 VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL
20 PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH THIS SUBSECTION (6),
21 THE UNCONTESTED RETAIL LABOR RATE OR RETAIL PARTS MARKUP
22 PERCENTAGE BECOMES EFFECTIVE FORTY-FIVE DAYS AFTER THE
23 MANUFACTURER HAS RECEIVED THE SUBMISSION FROM THE MOTOR
24 VEHICLE DEALER, AND THEREAFTER, THE MANUFACTURER SHALL USE THE
25 MOTOR VEHICLE DEALER'S INCREASED RETAIL LABOR RATE AND RETAIL
26 PARTS MARKUP PERCENTAGE IN CALCULATING COMPENSATION FOR
27 WARRANTY OBLIGATIONS UNTIL A SUBSEQUENT CALCULATION OF THE

1 MOTOR VEHICLE DEALER'S RETAIL LABOR RATE OR RETAIL PARTS MARKUP
2 PERCENTAGE IS ESTABLISHED IN ACCORDANCE WITH THIS SECTION.

3 (c) (I) IF THE MANUFACTURER TIMELY CONTESTS THE MOTOR
4 VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL
5 PARTS MARKUP PERCENTAGE AND THE MANUFACTURER AND MOTOR
6 VEHICLE DEALER ARE UNABLE TO RESOLVE THE DISAGREEMENT, THE
7 MOTOR VEHICLE DEALER MAY SEEK A DETERMINATION BY FILING A
8 COMPLAINT WITH A COURT OF COMPETENT JURISDICTION OR THE
9 EXECUTIVE DIRECTOR NO LATER THAN SIXTY DAYS AFTER THE NEW MOTOR
10 VEHICLE DEALER RECEIVES THE MANUFACTURER'S CHALLENGE TO THE
11 DETERMINED RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE.

12 (II) IN A COURT PROCEEDING, THE COURT SHALL DETERMINE, IN
13 ACCORDANCE WITH THIS SECTION, THE PROPER RETAIL LABOR RATE OR
14 RETAIL PARTS MARKUP PERCENTAGE.

15 (III) ANY RETAIL LABOR RATE OR RETAIL PARTS MARKUP
16 PERCENTAGE ESTABLISHED THROUGH THE _____ PROCEEDING APPLIES
17 RETROACTIVELY TO CALCULATE REIMBURSEMENT FOR ANY LABOR AND
18 PART BEGINNING THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE
19 SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

20 (IV) IF THE MANUFACTURER CONTESTS THE MOTOR VEHICLE
21 DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL PARTS
22 MARKUP PERCENTAGE, THE MANUFACTURER SHALL CONTINUE TO
23 REIMBURSE THE MOTOR VEHICLE DEALER FOR WARRANTY OBLIGATION
24 REPAIRS AT THE RETAIL LABOR RATE AND RETAIL PARTS MARKUP
25 PERCENTAGE AS BOTH EXISTED BEFORE THE MOTOR VEHICLE DEALER
26 SUBMITTED A REQUEST FOR AN INCREASE UNDER SUBSECTION (5) OF THIS
27 SECTION. WHEN THE MANUFACTURER AND MOTOR VEHICLE DEALER AGREE

1 ON THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP PERCENTAGE, THE
2 MANUFACTURER SHALL PAY ANY DIFFERENCE BETWEEN THE AMOUNT THE
3 MANUFACTURER COMPENSATED THE DEALER AND THE AMOUNT AGREED
4 TO BY THE MOTOR VEHICLE DEALER AND MANUFACTURER AS OF THIRTY
5 DAYS AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED
6 BY SUBSECTION (3) OF THIS SECTION.

7 (d) IN THE COURT PROCEEDING, THE COURT SHALL AWARD THE
8 PREVAILING PARTY REASONABLE ATTORNEY FEES AND COSTS. IF THE
9 MOTOR VEHICLE DEALER PREVAILS, THE COURT SHALL AWARD AS
10 DAMAGES THE FULL AMOUNT OF REIMBURSEMENT THAT SHOULD HAVE
11 BEEN PAID TO THE MOTOR VEHICLE DEALER. ==

12 (7) WHEN CALCULATING THE RETAIL LABOR RATE AND THE RETAIL
13 PARTS MARKUP PERCENTAGE, THE MANUFACTURER:

14 ==

15 (a) SHALL NOT == ESTABLISH AN UNREASONABLE FLAT-RATE TIME,
16 == NOR ESTABLISH UNREASONABLE FLAT-RATE LABOR TIMES FOR NEW
17 LINE-MAKES THAT ARE INCONSISTENT WITH THE EXISTING RATES;

18 (b) SHALL, IF THE MANUFACTURER FURNISHES A PART TO A MOTOR
19 VEHICLE DEALER AT NO COST FOR USE IN PERFORMING A REPAIR UNDER A
20 WARRANTY OBLIGATION, COMPENSATE THE MOTOR VEHICLE DEALER FOR
21 THE AUTHORIZED REPAIR PART BY PAYING THE DEALER AN AMOUNT EQUAL
22 TO THE RETAIL PARTS MARKUP PERCENTAGE MULTIPLIED BY THE COST THE
23 DEALER WOULD HAVE PAID FOR THE AUTHORIZED PART AS LISTED IN THE
24 MANUFACTURER'S PRICE SCHEDULE;

25 (c) SHALL NOT ESTABLISH A DIFFERENT PART NUMBER FOR REPAIRS
26 MADE IN ACCORDANCE WITH A WARRANTY OBLIGATION THAN THE PART
27 NUMBER ESTABLISHED FOR NONWARRANTY REPAIRS SOLELY TO PROVIDE

1 A LOWER COMPENSATION TO A MOTOR VEHICLE DEALER;

2 (d) SHALL NOT RECOVER OR ATTEMPT TO RECOVER, DIRECTLY OR
3 INDIRECTLY, IN WHOLE OR IN PART, ANY OF ITS COSTS FROM THE MOTOR
4 VEHICLE DEALER FOR COMPENSATING THE MOTOR VEHICLE DEALER UNDER
5 THIS SECTION;

6 (e) SHALL NOT, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART,
7 ASSESS PENALTIES OR SURCHARGES TO THE MOTOR VEHICLE DEALER, LIMIT
8 ALLOCATION OF MOTOR VEHICLES OR PARTS TO THE MOTOR VEHICLE
9 DEALER, OR TAKE ANY ADVERSE ACTION BASED ON THE MOTOR VEHICLE
10 DEALER'S EXERCISE OF THE DEALER'S RIGHTS UNDER THIS SECTION;

11 (f) SHALL NOT REQUIRE FROM A MOTOR VEHICLE ANY
12 INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO
13 OBTAIN, INCLUDING ANY PART-BY-PART OR
14 TRANSACTION-BY-TRANSACTION CALCULATIONS.

15 (8) NOTHING IN THIS SECTION PROHIBITS A MANUFACTURER FROM
16 INCREASING THE PRICE OF A MOTOR VEHICLE OR MOTOR VEHICLE PART IN
17 THE NORMAL COURSE OF BUSINESS.

18 (9) THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING
19 THAT ARE INVOLVED IN THE MANUFACTURING OF OR SELLING OF
20 RECREATIONAL VEHICLES:

21 (a) A MOTOR VEHICLE DEALER;

22 (b) A MANUFACTURER OR COMPONENT MANUFACTURER;

23 (c) A DISTRIBUTOR; OR

24 (d) A MANUFACTURER REPRESENTATIVE.

25 **SECTION 3.** In Colorado Revised Statutes, **add** 12-6-132.6 as
26 follows:

27 **12-6-132.6. Fulfillment of warranty and recall obligations -**

1 **recreational vehicles - definitions. (1) Definitions.** AS USED IN THIS
2 SECTION:

3 (a) "DEALER" MEANS A PERSON LICENSED OR REQUIRED TO BE
4 LICENSED AS A MOTOR VEHICLE DEALER THAT SELLS RECREATIONAL
5 VEHICLES.

6 (b) "RECREATIONAL VEHICLE" MEANS THE CATEGORY OF VEHICLE
7 PRIMARILY DESIGNED AS TEMPORARY LIVING QUARTERS FOR
8 RECREATIONAL, CAMPING, OR TRAVEL USE, WHICH EITHER HAS ITS OWN
9 MOTIVE POWER OR IS MOUNTED ON OR DRAWN BY ANOTHER VEHICLE.

10 (c) "WARRANTOR" MEANS A PERSON THAT GIVES A WARRANTY IN
11 CONNECTION WITH A NEW RECREATIONAL VEHICLE OR PARTS,
12 ACCESSORIES, OR COMPONENTS OF A RECREATIONAL VEHICLE. THE TERM
13 DOES NOT INCLUDE A PERSON WHO OFFERS OR PERFORMS SERVICE
14 CONTRACTS, INSURANCE, OR EXTENDED WARRANTIES SOLD FOR SEPARATE
15 CONSIDERATION BY A PERSON WHO IS NOT:

16 (I) THE MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER
17 REPRESENTATIVE; OR

18 (II) CONTROLLED BY A MANUFACTURER, DISTRIBUTOR, OR
19 MANUFACTURER REPRESENTATIVE.

20 **(2) Warranty obligations of recreational vehicle warrantors.**

21 EACH WARRANTOR SHALL:

22 (a) COMPENSATE THE DEALER FOR WARRANTY SERVICE,
23 INCLUDING DIAGNOSTIC WORK;

24 (b) PROVIDE THE DEALER A SCHEDULE OF COMPENSATION TO BE
25 PAID THAT MUST BE IN A FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;

26 (c) PROVIDE THE DEALER A SCHEDULE OF THE TIME ALLOWANCES
27 FOR WARRANTY SERVICE THAT MUST PROVIDE ADEQUATE AND

1 REASONABLE TIME TO COMPLETE SERVICE WORK AND THAT MUST BE IN A
2 FLAT-RATE MANUAL OR OTHER WRITTEN GUIDE;

3 (d) REIMBURSE THE DEALER FOR WARRANTY SERVICE AND
4 WARRANTY PARTS IN ACCORDANCE WITH THE SCHEDULE OF
5 COMPENSATION THAT IS REQUIRED IN SUBSECTION (2)(b) OF THIS SECTION;

6 (e) IF THE SCHEDULE OF COMPENSATION REQUIRED IN SUBSECTION
7 (2)(b) OF THIS SECTION DOES NOT INCLUDE A PARTICULAR REPAIR,
8 REIMBURSE THE DEALER FOR WARRANTY SERVICE FOR THE ACTUAL TIME
9 EXPENDED IF REASONABLE, AND THE MANUFACTURER BEARS THE BURDEN
10 TO PROVE THAT THE ACTUAL TIME EXPENDED WAS UNREASONABLE;

11 (f) REIMBURSE THE DEALER FOR WARRANTY SERVICE AT NOT LESS
12 THAN THE LOWEST RETAIL LABOR RATE ACTUALLY CHARGED BY THE
13 DEALER FOR COMPARABLE NONWARRANTY LABOR IF THE RATE IS
14 REASONABLE; AND

15 (g) REIMBURSE THE DEALER FOR WARRANTY PARTS AT
16 WHOLESALE PRICE PLUS:

17 (I) A MINIMUM THIRTY PERCENT HANDLING CHARGE; AND

18 (II) ANY COST OF FREIGHT TO RETURN WARRANTY PARTS TO THE
19 WARRANTOR.

20 (3) THE WARRANTOR SHALL NOT DENY A DEALER'S CLAIMS FOR
21 WARRANTY COMPENSATION WITHOUT CAUSE, WHICH MAY INCLUDE
22 PERFORMANCE OF NONWARRANTY REPAIRS, MATERIAL NONCOMPLIANCE
23 WITH THE WARRANTOR'S PUBLISHED POLICIES AND PROCEDURES, LACK OF
24 MATERIAL DOCUMENTATION, FRAUD, OR MISREPRESENTATION.

25 (4) A WARRANTOR SHALL NOT:

26 (a) FAIL TO COMPENSATE A DEALER FOR WARRANTY REPAIRS MADE
27 TO A RECREATION VEHICLE OR COMPONENT OF A RECREATIONAL VEHICLE

1 MADE BY THE DEALER OF MERCHANDISE:

2 (I) DAMAGED DURING DELIVERY TO THE DEALER OR DURING
3 MANUFACTURING; OR

4 (II) DEFECTIVELY BUILT OR DESIGNED;

5 (b) SEND REPLACEMENT PARTS TO A DEALER AT NO CHARGE
6 WITHOUT PAYING THE PARTS MARKUP REQUIRED BY SUBSECTION (2)(g) OF
7 THIS SECTION TIMES THE DEALER COST OF THE PART;

8 (c) FAIL TO FULFILL PARTS ORDERS WHEN PARTS ARE AVAILABLE;

9 (d) RETALIATE AGAINST A DEALER FOR EXERCISING THE DEALER'S
10 RIGHTS UNDER THIS SECTION; OR

11 (e) ATTEMPT TO COERCE A DEALER TO NOT EXERCISE ITS RIGHTS
12 UNDER THIS SECTION.

13 (5) THE DEALER MAY SUBMIT WARRANTY CLAIMS INVOLVING ANY
14 COMPONENT USED IN THE MANUFACTURING OF A RECREATIONAL VEHICLE
15 TO THE MANUFACTURER THAT:

16 (a) COMPLETES THE MANUFACTURING OF THE RECREATIONAL
17 VEHICLE; AND

18 (b) ISSUES THE MANUFACTURER'S CERTIFICATE OF ORIGIN.

19 (6) NOTWITHSTANDING THE TERMS OF ANY MANUFACTURER AND
20 DEALER AGREEMENT:

21 (a) A WARRANTOR SHALL INDEMNIFY AND DEFEND A DEALER
22 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR
23 DAMAGES, INCLUDING DEFENSE COSTS AND ATTORNEY FEES, TO THE
24 EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED BY THE
25 NEGLIGENCE OR WILLFUL MISCONDUCT OF THE WARRANTOR OR ANY
26 COMPONENT WARRANTOR WHOSE PRODUCT IS INCORPORATED IN THE
27 WARRANTOR'S PRODUCT. THE WARRANTOR SHALL NOT DENY THE DEALER

1 INDEMNIFICATION OR DEFENSE FOR FAILING TO DISCOVER, DISCLOSE, OR
2 REMEDY A DEFECT IN THE DESIGN OR MANUFACTURING OF A
3 RECREATIONAL VEHICLE. TO BE INDEMNIFIED OR DEFENDED, THE DEALER
4 MUST PROVIDE TO THE WARRANTOR A COPY OF ANY CLAIM IN WHICH
5 ALLEGATIONS ARE MADE THAT FALL UNDER THIS SUBSECTION (6)(a)
6 WITHIN TEN DAYS AFTER RECEIVING THE CLAIM OR SUIT.

7 (b) A DEALER SHALL INDEMNIFY AND DEFEND ITS WARRANTOR
8 AGAINST ANY CLAIM FOR OR LAWSUIT FOR LOSSES, LIABILITY, OR
9 DAMAGES TO THE EXTENT THE LOSS, LIABILITY, OR DAMAGE ARE CAUSED
10 BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE DEALER
11 INDEPENDENT OF ANY MANUFACTURING OR DESIGN DEFECT. TO BE
12 INDEMNIFIED OR DEFENDED, THE WARRANTOR MUST PROVIDE TO THE
13 DEALER A COPY OF ANY CLAIM IN WHICH ALLEGATIONS ARE MADE THAT
14 FALL UNDER THIS SUBSECTION (6)(b) WITHIN TEN DAYS AFTER RECEIVING
15 THE CLAIM OR SUIT.

16 (7) **Dispute resolution for recreational dealers and**
17 **manufacturers.** (a) A DEALER OR WARRANTOR INJURED BY ANOTHER
18 PARTY'S VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN STATE
19 COURT TO RECOVER ACTUAL DAMAGES. THE COURT SHALL AWARD
20 ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN THE ACTION.
21 VENUE FOR A CIVIL ACTION AUTHORIZED BY THIS SECTION MUST
22 EXCLUSIVELY BE IN THE COUNTY WHERE THE DEALER IS LOCATED. IN AN
23 ACTION INVOLVING MORE THAN ONE DEALER, VENUE MAY BE IN ANY
24 COUNTY WHERE A DEALER WHO IS PARTY TO THE ACTION IS LOCATED.

25 (b) (I) TO BRING AN ACTION UNDER THIS SUBSECTION (7):

26 (A) A PERSON MUST SERVE A WRITTEN DEMAND FOR MEDIATION
27 UPON THE ALLEGED VIOLATOR;

1 (B) THE DEMAND FOR MEDIATION MUST BE SERVED UPON THE
2 ALLEGED VIOLATOR BY CERTIFIED MAIL AT THE ADDRESS STATED WITHIN
3 THE SALES, SERVICE, AND PARTS AGREEMENT BETWEEN THE PARTIES
4 UNLESS SUBSECTION (7)(b)(I)(C) APPLIES TO THE ACTION;

5 (C) IF A CIVIL ACTION IS BETWEEN TWO DEALERS, THE DEMAND
6 MUST BE MAILED TO THE ADDRESS ON THE DEALER'S LICENSE FILED WITH
7 THE DIRECTOR.

8 (D) THE DEMAND FOR MEDIATION MUST CONTAIN A BRIEF
9 STATEMENT OF THE DISPUTE AND THE RELIEF SOUGHT BY THE PARTY
10 FILING THE DEMAND.

11 (II) WITHIN TWENTY DAYS AFTER THE DEMAND FOR MEDIATION IS
12 SERVED, THE PARTIES SHALL MUTUALLY SELECT AN INDEPENDENT
13 CERTIFIED MEDIATOR AND MEET WITH THE MEDIATOR FOR THE PURPOSE OF
14 ATTEMPTING TO RESOLVE THE DISPUTE. THE MEETING PLACE MUST BE IN
15 THIS STATE IN A LOCATION SELECTED BY THE MEDIATOR. THE MEDIATOR
16 MAY EXTEND THE DATE OF THE MEETING FOR GOOD CAUSE SHOWN BY
17 EITHER PARTY OR UPON STIPULATION OF BOTH PARTIES.

18 (III) THE SERVICE OF A DEMAND FOR MEDIATION UNDER THIS
19 SUBSECTION (7) STAYS THE TIME FOR THE FILING OF AN ACTION UNDER
20 THIS SUBSECTION (7) UNTIL REPRESENTATIVES OF BOTH PARTIES HAVE MET
21 WITH A MUTUALLY SELECTED MEDIATOR TO ATTEMPT TO RESOLVE THE
22 DISPUTE. IF AN ACTION IS FILED BEFORE THAT MEETING, THE COURT SHALL
23 ENTER AN ORDER SUSPENDING THE PROCEEDINGS UNTIL THE MEETING HAS
24 OCCURRED AND MAY, UPON WRITTEN STIPULATION OF ALL PARTIES TO THE
25 PROCEEDING THAT THEY WISH TO CONTINUE TO MEDIATE UNDER THIS
26 SUBSECTION (7), ENTER AN ORDER SUSPENDING THE PROCEEDING OR
27 ACTION FOR AS LONG A PERIOD AS THE COURT CONSIDERS APPROPRIATE.

1 A SUSPENSION ORDER ISSUED UNDER THIS SUBSECTION (7)(b)(III) MAY BE
2 REVOKED BY THE COURT.

3 (IV) IN MEDIATION, THE PARTIES TO THE MEDIATION BEAR THEIR
4 OWN COSTS FOR ATTORNEY FEES AND DIVIDE EQUALLY THE COST OF THE
5 MEDIATOR.

6 (c) IN ADDITION TO THE REMEDIES PROVIDED IN THIS SUBSECTION
7 (7) AND NOTWITHSTANDING THE EXISTENCE OF ANY ADDITIONAL REMEDY
8 AT LAW, A DEALER OR MANUFACTURER MAY APPLY TO A STATE COURT FOR
9 THE GRANT, UPON A HEARING AND FOR CAUSE SHOWN, OF A TEMPORARY
10 OR PERMANENT INJUNCTION RESTRAINING A PERSON FROM VIOLATING OR
11 CONTINUING TO VIOLATE THIS SECTION. THE MOVING PARTY NEED NOT
12 POST A BOND FOR THE INJUNCTION TO BE ISSUED. MEDIATION IS NOT
13 REQUIRED PRIOR TO SEEKING INJUNCTIVE RELIEF. A SINGLE ACT IN
14 VIOLATION OF THIS SECTION IS SUFFICIENT TO AUTHORIZE THE ISSUANCE
15 OF AN INJUNCTION.

16 **SECTION 4.** In Colorado Revised Statutes, **add 12-6-538.5** as
17 follows:

18 **12-6-538.5. Fulfillment and compensation for warranty and**
19 **recall obligations - definitions.** (1) AS USED IN THIS SECTION:

20 (a) "MANUFACTURER" MEANS A POWERSPORTS VEHICLE
21 MANUFACTURER, A POWERSPORTS VEHICLE DISTRIBUTOR, AND A
22 POWERSPORTS VEHICLE MANUFACTURER REPRESENTATIVE.

23 (b) "NONWARRANTY REPAIR" MEANS A DIAGNOSIS, REPAIR, LABOR,
24 OR PART FOR WHICH PAYMENT WAS MADE BY A PERSON OTHER THAN A
25 MANUFACTURER AND THAT WAS NOT A WARRANTY OBLIGATION.
26 "NONWARRANTY REPAIR" ALSO MEANS CUSTOMER-PAY REPAIRS, LABOR,
27 OR PARTS.

1 (c) "PART" MEANS AN ACCESSORY, A PART, OR A COMPONENT USED
2 TO REPAIR A POWERSPORTS VEHICLE. "PART" INCLUDES ENGINE AND
3 TRANSMISSION PARTS AND ALL POWERSPORTS VEHICLE ASSEMBLIES.

4 (d) "REPAIR" MEANS DIAGNOSING, WORK, AND LABOR PERFORMED
5 BY A POWERSPORTS VEHICLE DEALER FOR WHICH THE POWERSPORTS
6 VEHICLE DEALER IS MAKING A CLAIM FOR COMPENSATION.

7 (e) "RETAIL LABOR RATE" MEANS THE RATE FOR LABOR
8 CALCULATED BY THE POWERSPORTS VEHICLE DEALER IN ACCORDANCE
9 WITH SUBSECTION (4) OF THIS SECTION THAT A MANUFACTURER IS
10 REQUIRED TO PAY A POWERSPORTS VEHICLE DEALER IN ACCORDANCE WITH
11 SUBSECTION (2) OF THIS SECTION.

12 (f) "RETAIL PARTS MARKUP PERCENTAGE" MEANS THE
13 PERCENTAGE MARKUP ON PARTS CALCULATED BY THE POWERSPORTS
14 VEHICLE DEALER IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION
15 THAT A MANUFACTURER IS REQUIRED TO PAY A POWERSPORTS VEHICLE
16 DEALER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

17 (g) "WARRANTY OBLIGATION" MEANS DIAGNOSING AND REPAIRING
18 A POWERSPORTS VEHICLE IN ACCORDANCE WITH ANY WARRANTY, RECALL,
19 OR CERTIFIED PREOWNED WARRANTY, UNDER WHICH A MANUFACTURER
20 MAKES A REPAIR COMMITMENT TO A CONSUMER OR POWERSPORTS
21 VEHICLE DEALER.

22 (2) AT A POWERSPORTS VEHICLE DEALER'S REQUEST, A
23 MANUFACTURER SHALL TIMELY COMPENSATE THE POWERSPORTS VEHICLE
24 DEALER AT THE RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP
25 PERCENTAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION FOR
26 ALL LABOR PERFORMED AND PARTS USED BY THE POWERSPORTS VEHICLE
27 DEALER FOR COVERED REPAIRS PERFORMED IN ACCORDANCE WITH THE

1 WARRANTY OBLIGATION, IF THE RETAIL LABOR RATE AND RETAIL PARTS
2 MARKUP PERCENTAGE ARE REASONABLE AND CONSISTENT WITH THE
3 REQUIREMENTS OF THIS SECTION THAT CONCERN THE RETAIL LABOR RATE
4 AND PARTS MARKUP PERCENTAGE.

5 (3) (a) A POWERSPORTS VEHICLE DEALER MAY ESTABLISH THE
6 RETAIL LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE BY
7 SUBMITTING TO THE MANUFACTURER EITHER OF THE FOLLOWING AS
8 DECIDED BY THE POWERSPORTS VEHICLE DEALER:

9 (I) ONE HUNDRED SEQUENTIAL REPAIR ORDERS CONTAINING
10 NONWARRANTY REPAIRS, WHICH MAY INCLUDE A NONWARRANTY REPAIR
11 THAT IS INCLUDED IN A REPAIR ORDER WITH A WARRANTY OBLIGATION
12 REPAIR, THAT HAVE BEEN PAID BY A CONSUMER AND CLOSED BY THE TIME
13 OF SUBMISSION; OR

14 (II) ALL REPAIR ORDERS FOR NONWARRANTY REPAIRS, WHICH MAY
15 INCLUDE A NONWARRANTY REPAIR THAT IS INCLUDED IN A REPAIR ORDER
16 WITH WARRANTY OBLIGATION REPAIR, THAT HAVE BEEN PAID BY A
17 CONSUMER AND CLOSED BY THE TIME OF SUBMISSION FOR A PERIOD OF
18 NINETY CONSECUTIVE DAYS.

19 (b) A MANUFACTURER SHALL NOT DISQUALIFY A REPAIR ORDER
20 UNDER THIS SUBSECTION (3) BECAUSE THE REPAIR ORDER CONTAINS BOTH
21 WARRANTY AND NONWARRANTY REPAIRS, BUT ONLY NONWARRANTY
22 REPAIRS ARE USED IN THE CALCULATION OF THE RETAIL LABOR RATE AND
23 THE RETAIL PARTS MARKUP PERCENTAGE.

24 (c) A POWERSPORTS VEHICLE DEALER MAY SUBMIT ONE SET OF
25 REPAIR ORDERS FOR THE PURPOSE OF CALCULATING BOTH ITS RETAIL
26 LABOR RATE AND THE RETAIL PARTS MARKUP PERCENTAGE OR MAY
27 SUBMIT SEPARATE SETS OF REPAIR ORDERS FOR PURPOSES OF

1 CALCULATING ONLY ITS RETAIL LABOR RATE OR FOR PURPOSES OF
2 CALCULATING ONLY ITS RETAIL PARTS MARKUP PERCENTAGE. IF THE
3 RATES FROM THE CALCULATION ARE TEN PERCENT HIGHER OR LOWER
4 THAN THE CURRENT RATES, THE MANUFACTURER MAY REQUEST
5 ADDITIONAL REPAIR ORDERS FOR THE NINETY DAYS BEFORE OR AFTER THE
6 SUBMITTED REPAIR ORDERS FOR PURPOSES OF ALTERATION.

7 (d) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR
8 ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR
9 ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE
10 RETAIL LABOR RATE MUST CONTAIN ONLY REPAIR ORDERS FROM THE LAST
11 NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT TO THE
12 MANUFACTURER.

13 (e) EXCEPT WITH REGARD TO A REQUEST FOR ADDITIONAL REPAIR
14 ORDERS AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION, THE REPAIR
15 ORDERS SUBMITTED UNDER THIS SUBSECTION (3) TO DETERMINE THE
16 RETAIL PARTS MARKUP PERCENTAGE MUST CONTAIN ONLY REPAIR ORDERS
17 FROM THE LAST NINETY DAYS BEFORE THE DATE THE SUBMISSION IS SENT
18 TO THE MANUFACTURER.

19 (4) (a) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS
20 SECTION, TO CALCULATE THE RETAIL LABOR RATE, THE POWERSPORTS
21 VEHICLE DEALER MUST DIVIDE THE POWERSPORTS VEHICLE DEALER'S
22 TOTAL NONWARRANTY LABOR SALES GENERATED FROM THE
23 NONWARRANTY REPAIRS SUBMITTED UNDER SUBSECTION (3) OF THIS
24 SECTION BY THE TOTAL NUMBER OF LABOR HOURS THAT GENERATED
25 THOSE TOTAL LABOR SALES.

26 (b) EXCEPT AS PROVIDED IN SUBSECTION (4)(c) OF THIS SECTION,
27 TO CALCULATE THE RETAIL PARTS MARKUP PERCENTAGE, THE

1 POWERSPORTS VEHICLE DEALER MUST DIVIDE THE POWERSPORTS VEHICLE
2 DEALER'S TOTAL PARTS SALES GENERATED FROM NONWARRANTY REPAIRS
3 SUBMITTED UNDER SUBSECTION (3) OF THIS SECTION BY THE AMOUNT OF
4 THE POWERSPORTS VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS,
5 SUBTRACTING ONE FROM THIS AMOUNT, AND THEN MULTIPLYING THE
6 AMOUNT BY ONE HUNDRED.

7 (c) THE CALCULATION OF THE RETAIL LABOR RATE IN SUBSECTION
8 (4)(a) OF THIS SECTION AND OF THE RETAIL PARTS MARKUP PERCENTAGE
9 IN SUBSECTION (4)(b) OF THIS SECTION DO NOT INCLUDE PARTS USED OR
10 LABOR PERFORMED:

11 (I) FOR MANUFACTURER OR POWERSPORTS VEHICLE DEALER
12 SPECIAL EVENTS, ONE-TIME SPECIALS, EXPRESS SERVICE, AND
13 QUOTED-PRICE PROMOTIONAL DISCOUNTS, BUT THIS EXCLUSION FROM THE
14 CALCULATION DOES NOT INCLUDE BROADLY APPLICABLE DISCOUNTS
15 OFFERED BY THE DEALER, SUCH AS PERCENTAGE-OFF COUPONS, THAT
16 APPLY TO REPAIRS AND PARTS;

17 (II) FOR PARTS SOLD AT WHOLESALE;

18 (III) FOR ROUTINE MAINTENANCE, INCLUDING REPLACEMENT
19 FLUIDS, FILTERS, BATTERIES, BULBS, NUTS, BOLTS, FASTENERS, TIRES, AND
20 BELTS;

21 (IV) THAT DO NOT HAVE INDIVIDUAL PART NUMBERS;

22 (V) FOR THE REPAIRS OF A POWERSPORTS VEHICLE OWNED BY THE
23 POWERSPORTS VEHICLE DEALER, AN AFFILIATE OF THE POWERSPORTS
24 VEHICLE DEALER, OR AN EMPLOYEE OF EITHER THE POWERSPORTS VEHICLE
25 DEALER OR THE AFFILIATE;

26 (VI) FOR POWERSPORTS VEHICLE DEALER RECONDITIONING;

27 (VII) FOR WINDOW TINT, PROTECTIVE FILM, MASKING PRODUCTS,

1 OR WINDOW REPLACEMENT LABOR;

2 (VIII) FOR MANUFACTURER-APPROVED AND -REIMBURSED

3 GOODWILL REPAIRS OR REPLACEMENTS;

4 (IX) FOR EMISSION INSPECTIONS REQUIRED BY LAW;

5 (X) FOR SAFETY INSPECTIONS REQUIRED BY LAW;

6 (XI) FOR WHICH A VOLUME DISCOUNT WAS NEGOTIATED WITH A

7 THIRD-PARTY PAYER, INCLUDING GOVERNMENT AGENCIES, INSURANCE

8 CARRIERS, AND FLEET OPERATORS, BUT NOT INCLUDING THIRD-PARTY

9 WARRANTY COMPANIES OR SERVICE CONTRACT COMPANIES.

10 (5) (a) NOTWITHSTANDING ANY MANUFACTURER REQUIREMENT,

11 POLICY, PROCEDURE, GUIDELINE, OR STANDARD, A POWERSPORTS VEHICLE

12 DEALER MAY SUBMIT TO THE MANUFACTURER THE RETAIL LABOR RATE OR

13 RETAIL PARTS MARKUP PERCENTAGE AS EACH IS CALCULATED IN

14 ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

15 (b) A POWERSPORTS VEHICLE DEALER MAY REQUEST IN WRITING,

16 NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION

17 FOR LABOR AT THE RETAIL LABOR RATE FOR WARRANTY OBLIGATIONS.

18 (c) A POWERSPORTS VEHICLE DEALER MAY REQUEST IN WRITING,

19 NOT MORE OFTEN THAN ONCE ANNUALLY, AN INCREASE IN COMPENSATION

20 FOR PARTS AT THE RETAIL PARTS MARKUP PERCENTAGE FOR WARRANTY

21 OBLIGATIONS.

22 (d) (I) A MANUFACTURER MAY CONDUCT A PERIODIC REVIEW OF

23 A POWERSPORTS VEHICLE DEALER'S SERVICE RECORDS TO VERIFY THE

24 CONTINUING ACCURACY OF THE RETAIL LABOR RATE OR RETAIL PARTS

25 MARKUP PERCENTAGE PROPOSED BY OR IN EFFECT FOR THE DEALER.

26 (II) A MANUFACTURER SHALL NOT CONDUCT A PERIODIC REVIEW

27 MORE THAN ONCE PER CALENDAR YEAR. THIS PERIODIC REVIEW IS NOT AN

1 AUDIT IN ACCORDANCE WITH SECTION 12-6-126.

2 (6) (a) (I) IF THE SUBMITTED CALCULATION OF THE RETAIL LABOR
3 RATE OR RETAIL PARTS MARKUP PERCENTAGE IS MATERIALLY INACCURATE
4 OR IS SUBSTANTIALLY DIFFERENT THAN THE RATE OF OR PERCENTAGE OF
5 OTHER SIMILARLY SITUATED SAME LINE-MAKE DEALERS WITHIN THE
6 STATE, A MANUFACTURER MAY CONTEST THE POWERSPORTS VEHICLE
7 DEALER'S SUBMITTED CALCULATIONS OF THE RETAIL LABOR RATE OR
8 RETAIL PARTS MARKUP PERCENTAGE BY DELIVERING A NOTICE TO THE
9 POWERSPORTS VEHICLE DEALER WITHIN FORTY-FIVE DAYS AFTER
10 RECEIVING THE SUBMISSION IN ACCORDANCE WITH SUBSECTION (3) OF THIS
11 SECTION FROM THE POWERSPORTS VEHICLE DEALER. TO COMPLY WITH
12 THIS SUBSECTION (6), THE NOTICE MUST:

13 (A) INCLUDE AN EXPLANATION OF THE REASONS THAT THE
14 MANUFACTURER BELIEVES THE CALCULATION IS SUBJECT TO CONTEST;

15 (B) PROVIDE EVIDENCE SUBSTANTIATING THE MANUFACTURER'S
16 POSITION; AND

17 (C) PROPOSE AN ADJUSTMENT OF THE CONTESTED RETAIL LABOR
18 RATE OR RETAIL PARTS MARKUP PERCENTAGE.

19 (II) UPON THE DISCOVERY OF NEW RELEVANT INFORMATION BY
20 THE MANUFACTURER, THE MANUFACTURER MAY MODIFY THE GROUNDS
21 FOR CONTESTING THE RETAIL LABOR RATE OR RETAIL PARTS MARKUP
22 PERCENTAGE AFTER DELIVERING THE NOTICE TO THE POWERSPORTS
23 VEHICLE DEALER UNDER THIS SUBSECTION (6), BUT THE MODIFICATION
24 DOES NOT CHANGE THE TIMING REQUIREMENTS IN THIS SECTION.

25 (b) IF THE MANUFACTURER DOES NOT TIMELY CONTEST THE
26 POWERSPORTS VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR
27 RATE OR RETAIL PARTS MARKUP PERCENTAGE IN ACCORDANCE WITH THIS

1 SUBSECTION (6), THE UNCONTESTED RETAIL LABOR RATE OR RETAIL PARTS
2 MARKUP PERCENTAGE BECOMES EFFECTIVE FORTY-FIVE DAYS AFTER THE
3 MANUFACTURER HAS RECEIVED THE SUBMISSION FROM THE POWERSPORTS
4 VEHICLE DEALER, AND THEREAFTER, THE MANUFACTURER SHALL USE THE
5 POWERSPORTS VEHICLE DEALER'S INCREASED RETAIL LABOR RATE AND
6 RETAIL PARTS MARKUP PERCENTAGE IN CALCULATING COMPENSATION FOR
7 WARRANTY OBLIGATIONS UNTIL A SUBSEQUENT CALCULATION OF THE
8 POWERSPORTS VEHICLE DEALER'S RETAIL LABOR RATE OR RETAIL PARTS
9 MARKUP PERCENTAGE IS ESTABLISHED IN ACCORDANCE WITH THIS
10 SECTION.

11 (c) (I) IF THE MANUFACTURER TIMELY CONTESTS THE
12 POWERSPORTS VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR
13 RATE OR RETAIL PARTS MARKUP PERCENTAGE AND THE MANUFACTURER
14 AND POWERSPORTS VEHICLE DEALER ARE UNABLE TO RESOLVE THE
15 DISAGREEMENT, THE POWERSPORTS VEHICLE DEALER MAY SEEK A
16 DETERMINATION BY FILING A COMPLAINT WITH A COURT OF COMPETENT
17 JURISDICTION OR THE EXECUTIVE DIRECTOR NO LATER THAN SIXTY DAYS
18 AFTER THE NEW POWERSPORTS VEHICLE DEALER RECEIVES THE
19 MANUFACTURER'S CHALLENGE TO THE DETERMINED RETAIL LABOR RATE
20 OR RETAIL PARTS MARKUP PERCENTAGE.

21 (II) IN A COURT PROCEEDING, THE COURT SHALL DETERMINE, IN
22 ACCORDANCE WITH THIS SECTION, THE PROPER RETAIL LABOR RATE OR
23 RETAIL PARTS MARKUP PERCENTAGE.

24 (III) ANY RETAIL LABOR RATE OR RETAIL PARTS MARKUP
25 PERCENTAGE ESTABLISHED THROUGH THE PROCEEDING APPLIES
26 RETROACTIVELY TO CALCULATE REIMBURSEMENT FOR ANY LABOR AND
27 PART BEGINNING THIRTY DAYS AFTER THE MANUFACTURER RECEIVED THE

1 SUBMISSION REQUIRED BY SUBSECTION (3) OF THIS SECTION.

2 (IV) IF THE MANUFACTURER CONTESTS THE POWERSPORTS
3 VEHICLE DEALER'S CALCULATION OF THE RETAIL LABOR RATE OR RETAIL
4 PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL CONTINUE TO
5 REIMBURSE THE POWERSPORTS VEHICLE DEALER FOR WARRANTY
6 OBLIGATION REPAIRS AT THE RETAIL LABOR RATE AND RETAIL PARTS
7 MARKUP PERCENTAGE AS BOTH EXISTED BEFORE THE POWERSPORTS
8 VEHICLE DEALER SUBMITTED A REQUEST FOR AN INCREASE UNDER
9 SUBSECTION (5) OF THIS SECTION. WHEN THE MANUFACTURER AND
10 POWERSPORTS VEHICLE DEALER AGREE ON THE RETAIL LABOR RATE OR
11 RETAIL PARTS MARKUP PERCENTAGE, THE MANUFACTURER SHALL PAY
12 ANY DIFFERENCE BETWEEN THE AMOUNT THE MANUFACTURER
13 COMPENSATED THE DEALER AND THE AMOUNT AGREED TO BY THE
14 POWERSPORTS VEHICLE DEALER AND MANUFACTURER AS OF THIRTY DAYS
15 AFTER THE MANUFACTURER RECEIVED THE SUBMISSION REQUIRED BY
16 SUBSECTION (3) OF THIS SECTION.

17 (d) IN THE COURT PROCEEDING, THE COURT SHALL AWARD THE
18 PREVAILING PARTY REASONABLE ATTORNEY FEES AND COSTS. IF THE
19 POWERSPORTS VEHICLE DEALER PREVAILS, THE COURT SHALL AWARD AS
20 DAMAGES THE FULL AMOUNT OF REIMBURSEMENT THAT SHOULD HAVE
21 BEEN PAID TO THE POWERSPORTS VEHICLE DEALER.

22 (7) WHEN CALCULATING THE RETAIL LABOR RATE AND THE RETAIL
23 PARTS MARKUP PERCENTAGE, THE MANUFACTURER:

24 (a) SHALL NOT ESTABLISH AN UNREASONABLE FLAT-RATE TIME,
25 NOR ESTABLISH UNREASONABLE FLAT-RATE LABOR TIMES FOR NEW
26 LINE-MAKES THAT ARE INCONSISTENT WITH THE EXISTING RATES;

27 (b) SHALL, IF THE MANUFACTURER FURNISHES A PART TO A

1 POWERSPORTS VEHICLE DEALER AT NO COST FOR USE IN PERFORMING A
2 REPAIR UNDER A WARRANTY OBLIGATION, COMPENSATE THE
3 POWERSPORTS VEHICLE DEALER FOR THE AUTHORIZED REPAIR PART BY
4 PAYING THE DEALER AN AMOUNT EQUAL TO THE RETAIL PARTS MARKUP
5 PERCENTAGE MULTIPLIED BY THE COST THE DEALER WOULD HAVE PAID
6 FOR THE AUTHORIZED PART AS LISTED IN THE MANUFACTURER'S PRICE
7 SCHEDULE;

8 (c) SHALL NOT ESTABLISH A DIFFERENT PART NUMBER FOR REPAIRS
9 MADE IN ACCORDANCE WITH A WARRANTY OBLIGATION THAN THE PART
10 NUMBER ESTABLISHED FOR NONWARRANTY REPAIRS SOLELY TO PROVIDE
11 A LOWER COMPENSATION TO A POWERSPORTS VEHICLE DEALER;

12 (d) SHALL NOT RECOVER OR ATTEMPT TO RECOVER, DIRECTLY OR
13 INDIRECTLY, IN WHOLE OR IN PART, ANY OF ITS COSTS FROM THE
14 POWERSPORTS VEHICLE DEALER FOR COMPENSATING THE POWERSPORTS
15 VEHICLE DEALER UNDER THIS SECTION;

16 (e) SHALL NOT, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART,
17 ASSESS PENALTIES OR SURCHARGES TO THE POWERSPORTS VEHICLE
18 DEALER, LIMIT ALLOCATION OF POWERSPORTS VEHICLES OR PARTS TO THE
19 POWERSPORTS VEHICLE DEALER, OR TAKE ANY ADVERSE ACTION BASED ON
20 THE POWERSPORTS VEHICLE DEALER'S EXERCISE OF THE DEALER'S RIGHTS
21 UNDER THIS SECTION;

22 (f) SHALL NOT REQUIRE FROM A POWERSPORTS VEHICLE ANY
23 INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO
24 OBTAIN, INCLUDING ANY PART-BY-PART OR
25 TRANSACTION-BY-TRANSACTION CALCULATIONS.

26 (8) NOTHING IN THIS SECTION PROHIBITS A MANUFACTURER FROM
27 INCREASING THE PRICE OF A POWERSPORTS VEHICLE OR POWERSPORTS

1 VEHICLE PART IN THE NORMAL COURSE OF BUSINESS.

2 **SECTION 5. Act subject to petition - effective date.** This act
3 takes effect October 1, 2018; except that, if a referendum petition is filed
4 pursuant to section 1 (3) of article V of the state constitution against this
5 act or an item, section, or part of this act within the ninety-day period
6 after final adjournment of the general assembly, then the act, item,
7 section, or part will not take effect unless approved by the people at the
8 general election to be held in November 2018 and, in such case, will take
9 effect on the date of the official declaration of the vote thereon by the
10 governor.