

Pennsylvania Franchise Law - Board of Vehicles Act



Sec. 508: Regarding warranty obligations of an RV warrantor to an RV dealer

The Board of Vehicles Act protects a dealer from the warrantor with regard to warranty payment rates, time allowances, chargebacks, or other processes. The warrantor must mirror the requirements of the Act or the warrantor is in violation of Section 508 of the Act, 63 P.S. §818.508.

Definitions

Warrantor: a person, firm, corporation, or business entity, including a manufacturer or supplier that provides a written warranty to a consumer in connection with a new recreational vehicle or a part, accessory, or component of a new recreational vehicle.

The term does not include service contracts, mechanical or other insurance or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

Manufacturer: a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

Supplier: a person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories or components

Key Points

- 1. Specify in writing to each of its dealer obligations, if any, for preparation, delivery and warranty service on its products.** The RV warrantor/ manufacturer/ supplier is required to provide in writing what is required of an RV dealer, when performing these various forms of prep, delivery, and warranty repair activity. This generally would include various activities undertaken by different warrantors, such as manufacturers and suppliers defined above.
- 2. Compensate the dealer for warranty service required of the dealer by the warrantor.** The warrantor is required to pay the dealer for its warranty service and repairs activity required to be provided for that item or activity.
- 3. Provide to the dealer the schedule of compensation to be paid and the time allowances for the performance of work and service.** The warrantor is required to provide these two components in calculating how it is going to pay for the work or service. But there is no requirement that the schedule of compensation or time allowances be reasonable, just that these components for the work or service must be provided to the dealer.

However, if a dealer believes the warrantor is not providing reasonable compensation and/or time allowances to do the work or service adequately, the dealer could reach out to the RV make-specific dealer relations/ advisory board or committee to try to raise the lack of compensation being paid, or the amount of time allotted for the work or service to try to secure a dealer-wide increase.

Additionally, if a warrantor is not providing reasonable compensation and/or time allowances to do the work or service adequately, the dealer could threaten to file a "Protest" with the PA Manufacturer – Dealer Licensing Board, which could result in the Board issuing a decision for the warrantor to provide reasonable compensation and/or time allowances to do the work or service adequately. This Protest process is discussed in more detail below.

- 4. The schedule of compensation must include reasonable compensation for diagnostic work as well as warranty labor.** The warrantor is required to provide reasonable compensation for diagnostic work, as well as reasonable compensation for warranty labor rate in calculating how it is going to pay for the work or service. This reasonable amount for diagnostic work is good that this is included, as that is a major component of vehicle repairs with today's complicated vehicles. The reasonable compensation for warranty labor rate is further defined below to include more payment valuation criteria as found in Sec.(a).

- a. Time allowances and compensation.**

- Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the actual wage rates being paid by the dealer and the actual retail labor rate being charged by the dealers in the community in which the dealer is doing business.

The compensation of a dealer for warranty labor may not be less than the posted labor rates actually charged by the dealer for similar non-warranty labor as long as the rates are reasonable.

In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the actual wage rates being paid by the dealer and the actual retail labor rate being charged by the dealers in the community in which the dealer is doing business. Also, there is there is the additional component that the compensation of a dealer for warranty labor may not be less than the posted labor rates actually charged by the dealer for similar non-warranty labor as long as the rates are reasonable.

The warrantor is required to pay a labor rate that is reflective of two components:

- (1) The labor rate based on what is being charged in that community where the dealer is doing business (versus a statewide average, which would be much cheaper than a metro area dealer labor rate), and
- (2) warranty labor rate compensation of a dealer may not be less than the posted labor rates actually charged by the dealer for similar non-warranty labor, as long as the rates are reasonable. These two components give the dealer the ability to point to these two values and require warranty labor rate compensation based on these two items.

Also, it should be noted that while the RV warranty labor rate wording under the Act is less robust in this separate RV section versus the car dealer warranty labor rate wording in the Act, overall, this wording is pretty good. As it does require comparison of the local labor rate, and not less than what the dealer is charging, provided that what the dealer is charging is reasonable, not just what a warrantor's idea of what is reasonable from its own calculations.

If the warrantor refuses to pay the warranty labor rate based on the two values above:

The dealer could threaten to file a Protest with the PA Manufacturer – Dealer Licensing Board, which could result in the Board issuing a decision for the warrantor to pay these local community/ dealer posted labor rates. This Protest process is discussed in more detail on the following page.



c. Reimbursement. The warrantor shall reimburse the dealer for warranty parts at actual wholesale cost plus a minimum 30% handling charge and the cost, if any, of freight to return warranty parts to the warrantor.

The warrantor is also required to pay actual wholesale costs for parts, and 30% of any handling charge and cost to return a warranty part to the warrantor. Here, the warrantor should be checked to make sure the wholesale cost does not result in a reduced price cost for a defective item, etc. This sometimes happens where a warrantor suddenly has a major price reduction in the defective item, resulting in less payment to a dealer for the part based on this reduced wholesale cost pricing calculation.

If a warrantor artificially reduces the actual wholesale cost or improperly calculated the 30% rate, the dealer could threaten to file a Protest with the PA Manufacturer – Dealer Licensing Board, which could result in the Board issuing a decision for the warrantor to pay the proper whole cost amount, or payment of the 30% on the appropriate calculation. This Protest process is discussed in more detail below.

d. Audits. Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis. The right to perform a warranty audit is permitted, but must be on a reasonable basis. If the warrantor audit results from spite or unhappiness with the dealer warranty or other protected activities, this could be grounds to file a Protest with the PA Board.

Dealer claims for warranty compensation may not be denied except for cause, such as performance of non-warranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud or misrepresentation. The warrantor has the right to charge back for "material non-compliance with the warrantor's published policies and procedures." A warrantor can use (and on the new car dealer side has used) this catch all type of phrase in a very broad and general sense, to claim the dealer has not met the work flow standards, or paper recording keeping requirements to deny a warranty payment. This could be used to deny a warranty payment based on the dealer's failure to "dot Is," or "cross Ts." However, the wording is defined as material, so this may not include just missing the I dots or T crosses, but has to be a material non-compliance, which could result in a court finding that the dealer failed to satisfy their obligations significantly enough to where the warrantor is harmed in a substantial way. This type of missed I dots, and Ts crossed, should not amount to being a material non-compliance activity. Instead, the dealer should be successful in receiving warranty payment based on such non-material activity. If the dealer feels that warrantor is improperly denying the warranty payment based on this type of overreaching wording interpretation, this could be grounds to file a Protest with the PA Board.

e. Warranty claims. The dealer shall submit warranty claims within 45 days after completing work. The warranty claim must be submitted within 45 days. If staffing shortage or other activity occurs, make sure to keep track of the clock on finished jobs to ensure they are submitted timely.

f. Warrantor notification. If a dealer receives a written or verbal complaint from a consumer relative to a warranty repair, the dealer must notify the warrantor about the complaint in writing within 10 days of receiving the complaint if the dealer cannot satisfy the consumer's complaint. If after a warranty repair the customer is still not satisfied, there is a 10-day clock to notify the warrantor.

Note: if a customer comes back and the issue is not resolved, this 10-day clock is required to be triggered to notify the warrantor on problem issues not resolved.

g. Disapproval of warranty claims. The warrantor shall disapprove warranty claims in writing within 45 days after the date of submission by the dealer in the manner and form prescribed by the warrantor. If the warrantor denies within 45 days on the types of grounds listed in its guide book, or for the grounds discussed above, try to promptly remedy the denial by submitting additional documents required by the warrantor. If the dealer feels that warrantor is improperly denying the warranty payment, this could be grounds to file a Protest with the PA Board.

Claims not specifically disapproved in writing within 45 days shall be construed to be approved and must be paid within 60 days of submission. The warrantor has to disapprove within 45 days, or it is deemed approved, and the warrantor must pay the warranty claim within 60 days of the date the dealer filed the claim.

h. Violation. It is a violation of this chapter for a warrantor to:

- 1. Fail to perform any of its warranty obligations with respect to its warranted products.** A warrantor normally stands behind the product, but can claim customer abuse, etc. to try to avoid the claim. This sometimes leaves the dealer caught in the middle to try to resolve things, if there is a standoff between the warrantor and the customer.
- 2. Fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if the parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign.**
The warrantor is required to notify the customer and the dealer of factory campaigns to address the status of defective parts, including this list of activities and notices, etc. Failing to do so could be a violation of this Section of the Act. Additionally, the dealer has the right to return excess parts once a campaign is done.
- 3. Fail to compensate its dealers for authorized repairs effected by the dealer on merchandise damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor, factory branch, distributor or distributor branch.**
The warrantor is responsible for paying the dealer for any supplier activity expenses incurred by the dealer.

4. Fail to compensate its dealers in accordance with the schedule of compensation provided to the dealer under this section if repairs are performed in a timely and competent manner. The warrantor is responsible for paying the dealer under the schedule of compensation for any warranty repairs done timely and competently. This further outlines the requirement of the warrantor to pay the dealer as required above.

5. Intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance or design of the vehicle are made by the dealer as warrantor or co-warrantor. The warrantor cannot represent the dealer is the warrantor or co-warrantor on any of its products.

6. Require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle. The warrantor cannot require the dealer to be the warrantor regarding the manufacture of the RV.

i. Violations. It is a violation of this chapter for a dealer to:

1. Fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner. The dealer has an obligation to do PDIs in a timely and competent manner.

2. Fail to perform warranty service work authorized by the warrantor in a competent and reasonably timely manner on a transient customer's recreational vehicle of a line-make sold or serviced by that dealer. The dealer has an obligation to do transient customer repairs in a timely and competent manner.

3. Fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit and the number of repair attempts for the same repair conducted on a single vehicle. The dealer has an obligation to document repairs regarding this list of activities in a timely and competent manner.

4. Fail to notify the warrantor within 10 days of a second repair attempt which impairs the use, value or safety of the vehicle. The dealer has an obligation to notify the warrantor within 10 days of 2nd repair attempt that impair the use/ value or safety of the RV. Make sure a system is in place to track such RVs.

5. Fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair. The dealer has an obligation to document repairs regarding this list of activities in a timely and competent manner.

6. Make fraudulent warranty claims or misrepresent the terms of a warranty. The dealer has an obligation to not file improper warranty claims/ misrepresent warranty coverage.

PA Manufacturer - Dealer Board Protest Process Requires Mandatory Mediation

If a dealer believes they are being treated improperly versus the requirements of the Act, a dealer could file a formal Protest with the Board, which also requires mandatory Mediation before the Protest could proceed. This is just not a consumer type of complaint being filed with the Board (like a customer filing an Attorney General complaint), but it is a more formal legal type filing to get this Protest of the Act violation filing before the Board.

Once filed with the Board, the Act requires mandatory Mediation before the Protest can proceed. If Mediation was already held already through a warrantor internal appeal process, and not resolved to the dealer's satisfaction, then the Protest could move forward. If there has not been prior Mediation of the matter, then the Board will stay, or stop the Protest proceedings 120-day hearing clock, and require mandatory Mediation under the Act.

Most times mandatory Mediation does result in an agreement between the parties on the disputed rate/money/value owed, as both sides prefer to not incur further time, effort, or legal expenses, etc. However, if mandatory Mediation is unsuccessful, the Board Protest can be heard on the issue at hand within this 120-day time clock to keep the proceeding moving, and less expensive than a regular, drawn out court proceeding. Both sides would get to file their legal arguments, a Board hearing questioning both sides, like a court proceeding. the Board is made up of 17 members from public members to government (Board, PennDOT, AG) employees to various portions of the vehicle sales industry (new and used dealers, RV dealer, motorcycle dealer, manufactured home dealers, auction representative, etc.).

If this decision also does not meet with the dealer's satisfaction, the Board's decision can be appealed to the Commonwealth Court, which hears appeals on many governmental decisions. If this appeal result is not satisfactory, the dealer can then try to appeal the PA Supreme Court to have them decide the issue (which is not automatic, but discretionary on their end, if it is an issue that warrants their review as a new or different issue). But as noted, as most disputes are resolved in Mediation, as both sides don't see the value in incurring all these legal expenses on what normally is a dollar value issue.