

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 398

102ND GENERAL ASSEMBLY

1413S.04C

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 407.812 and 407.828, RSMo, and to enact in lieu thereof two new sections relating to the motor vehicle franchise practices act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.812 and 407.828, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 407.812 and 407.828, to read as follows:

407.812. 1. Any franchisor obtaining or renewing its
2 license after August 28, 2010, shall be bound by the
3 provisions of the MVFP act and shall comply with it, and no
4 franchise agreement made, entered, modified, or renewed
5 after August 28, 2010, shall avoid the requirements of the
6 MVFP act, or violate its provisions, and no franchise
7 agreement shall be performed after the date the franchisor's
8 license is issued or renewed in such a manner that the
9 franchisor avoids or otherwise does not conform or comply
10 with the requirements of the MVFP act. Notwithstanding the
11 effective date of any franchise agreement, all franchisor
12 licenses and renewals thereof are issued subject to all
13 provisions of the MVFP act and chapter 301 and any
14 regulations in effect upon the date of issuance, as well as
15 all future provisions of the MVFP act and chapter 301 and
16 any regulations which may become effective during the term
17 of the license.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 2. The provisions of the MVFP act shall apply to each
19 franchise that a franchisor, manufacturer, importer, or
20 distributor has with a franchisee and all agreements between
21 a franchisee and a common entity or any person that is
22 controlled by a franchisor.

23 3. No dealer or manufacturer licensed in this state
24 under sections 301.550 to 301.573 shall allow any subsidiary
25 or related entity to engage in the business of selling motor
26 vehicles, as defined in section 301.010, to retail consumers
27 in this state, except as otherwise permitted by law. Any
28 dealer or manufacturer licensed in this state shall have
29 standing to enforce the provisions of this subsection.

30 4. No entity controlling, controlled by, or sharing a
31 common parent entity or sibling entity with a licensed
32 dealer or manufacturer shall engage in the business of
33 selling motor vehicles to retail consumers in this state,
34 except as permitted by sections 301.550 to 301.575 and the
35 MVFP act. Any dealer or manufacturer licensed in this state
36 shall have standing to enforce the provisions of this
37 subsection.

38 5. No dealer or manufacturer not licensed in this
39 state under sections 301.550 to 301.575 shall engage in the
40 business of selling motor vehicles to retail consumers in
41 this state, except as permitted by sections 301.550 to
42 301.575 and the MVFP act. Any dealer or manufacturer in
43 this state shall have standing to enforce the provisions of
44 this subsection, provided that a franchise relationship
45 exists between the parties.

46 6. A manufacturer, importer, or distributor may engage
47 in the business of selling motor vehicles to retail
48 consumers in this state from a dealership if the
49 manufacturer, importer, or distributor owned the dealership

50 **and held a license for the dealership on or before January**
51 **1, 2023, provided that the ownership or controlling interest**
52 **of such dealership is not transferred, sold, or conveyed to**
53 **another person or entity required to be licensed under this**
54 **chapter.**

407.828. 1. Notwithstanding any provision in a
2 franchise to the contrary, each franchisor shall specify in
3 writing to each of its franchisees in this state the
4 franchisee's obligations for preparation, delivery, and
5 warranty service on its products. The franchisor shall
6 fairly and reasonably compensate the franchisee for
7 preparation, delivery, and warranty service required of the
8 franchisee by the franchisor. The franchisor shall provide
9 the franchisee with the schedule of compensation to be paid
10 to the franchisee for parts, labor, and service, and the
11 time allowance for the performance of the labor and service
12 for the franchisee's obligations for preparation, delivery,
13 and warranty service.

14 2. The schedule of compensation shall include
15 reasonable compensation for diagnostic work, as well as
16 repair service and labor for the franchisee to meet its
17 obligations for preparation, delivery, and warranty
18 service. The schedule shall also include reasonable and
19 adequate time allowances for the diagnosis and performance
20 of preparation, delivery, and warranty service to be
21 performed in a careful and professional manner. In the
22 determination of what constitutes reasonable compensation
23 for labor and service pursuant to this section, the
24 principal factor to be given consideration shall be the
25 prevailing wage rates being charged for similar labor and
26 service by [franchisees in the market in which the
27 franchisee is doing business, and in no event shall the

28 compensation of a franchisee for labor and service be less
29 than the rates charged by] the franchisee for similar labor
30 and service to retail customers for nonwarranty labor and
31 service[, provided that such rates are reasonable]. The
32 primary factor in determining [a fair and] reasonable
33 compensation for parts under this section shall be the
34 [prevailing amount charged for similar parts by other same
35 line-make franchisees in the market in which the franchisee
36 is doing business and the fair and reasonable compensation
37 for parts shall not be less than the] amount charged by the
38 franchisee for similar parts to retail customers for
39 nonwarranty parts[, provided that such rates are
40 reasonable. If another same line-make franchisee is not
41 available within the market, then the prevailing amount
42 charged for similar parts by other franchisees in the market
43 shall be used as the primary factor].

44 3. A franchisor shall perform all warranty
45 obligations, including recall notices; include in written
46 notices of franchisor recalls to new motor vehicle owners
47 and franchisees the expected date by which necessary parts
48 and equipment will be available to franchisees for the
49 correction of the defects; and [reasonably] compensate any
50 of the franchisees in this state for repairs required by the
51 recall. [Reasonable] Compensation for parts[,] and labor[,
52 and service] **for recall repairs** shall be determined under
53 subsection 2 of this section.

54 4. No franchisor shall require a franchisee to submit
55 a claim authorized under this section sooner than thirty
56 days after the franchisee completes the preparation,
57 delivery, or warranty service authorizing the claim for
58 preparation, delivery, or warranty service. All claims made
59 by a franchisee under this section shall be paid within

60 thirty days after their approval. All claims shall be
61 either approved or disapproved by the franchisor within
62 thirty days after their receipt on a proper form generally
63 used by the franchisor and containing the usually required
64 information therein. Any claims not specifically
65 disapproved in writing within thirty days after the receipt
66 of the form shall be considered to be approved and payment
67 shall be made within fifteen days thereafter. A franchisee
68 shall not be required to maintain defective parts for more
69 than thirty days after submission of a claim.

70 5. A franchisor shall compensate the franchisee for
71 franchisor-sponsored sales or service promotion events,
72 including but not limited to, rebates, programs, or
73 activities in accordance with established written guidelines
74 for such events, programs, or activities, which guidelines
75 shall be provided to each franchisee.

76 6. No franchisor shall require a franchisee to submit
77 a claim authorized under subsection 5 of this section sooner
78 than thirty days after the franchisee becomes eligible to
79 submit the claim. All claims made by a franchisee pursuant
80 to subsection 5 of this section for promotion events,
81 including but not limited to rebates, programs, or
82 activities shall be paid within ten days after their
83 approval. All claims shall be either approved or
84 disapproved by the franchisor within thirty days after their
85 receipt on a proper form generally used by the franchisor
86 and containing the usually required information therein.
87 Any claim not specifically disapproved in writing within
88 thirty days after the receipt of this form shall be
89 considered to be approved and payment shall be made within
90 **[ten] fifteen** days.

91 7. In calculating the retail rate customarily charged
92 by the franchisee for parts, service, and labor, the
93 following work shall not be included in the calculation:

94 (1) Repairs for franchisor, manufacturer, or
95 distributor special events, specials, or promotional
96 discounts for retail customer repairs;

97 (2) Parts sold at wholesale;

98 (3) Engine assemblies and transmission assemblies;

99 (4) Routine maintenance not covered under any retail
100 customer warranty, such as fluids, filters, and belts not
101 provided in the course of repairs;

102 (5) Nuts, bolts, fasteners, and similar items that do
103 not have an individual part number;

104 (6) Tires; and

105 (7) Vehicle reconditioning.

106 8. If a franchisor, manufacturer, importer, or
107 distributor furnishes a part or component to a franchisee,
108 at no cost, to use in performing repairs under a recall,
109 campaign service action, or warranty repair, the franchisor
110 shall compensate the franchisee for the part or component in
111 the same manner as warranty parts compensation under this
112 section by compensating the franchisee at the average markup
113 on the cost for the part or component as listed in the price
114 schedule of the franchisor, manufacturer, importer, or
115 distributor, less the cost for the part or component. **This**
116 **subsection shall not apply to entire engine assemblies,**
117 **propulsion engine assemblies, including electric vehicle**
118 **batteries, or entire transmission assemblies.**

119 9. A franchisor shall not require a franchisee to
120 establish the retail rate customarily charged by the
121 franchisee for parts, service, or labor by an unduly
122 burdensome or time-consuming method or by requiring

123 information that is unduly burdensome or time consuming to
124 provide, including, but not limited to, part-by-part or
125 transaction-by-transaction calculations. A franchisee shall
126 not request a franchisor to approve a different labor rate
127 or parts rate more than twice in one calendar year.

128 10. If a franchisee submits any claim under this
129 section to a franchisor that is incomplete, inaccurate, or
130 lacking any information usually required by the franchisor,
131 then the franchisor shall promptly notify the franchisee,
132 and the time limit to submit the claim shall be extended for
133 a reasonable length of time, not less than five business
134 days following notice by the franchisor to the franchisee,
135 for the franchisee to provide the complete, accurate, or
136 lacking information to the franchisor.

137 11. (1) A franchisor may only audit warranty, sales,
138 or incentive claims and charge-back to the franchisee
139 unsubstantiated claims for a period of twelve months
140 following payment, subject to all of the provisions of this
141 section. Furthermore, if the franchisor has good cause to
142 believe that a franchisee has submitted fraudulent claims,
143 then the franchisor may only audit suspected fraudulent
144 warranty, sales, or incentive claims and charge-back to the
145 franchisee fraudulent claims for a period of two years
146 following payment, subject to all provisions of this section.

147 (2) A franchisor shall not require documentation for
148 warranty, sales, or incentive claims more than twelve months
149 after the claim was paid.

150 (3) Prior to requiring any charge-back, reimbursement,
151 or credit against a future transaction arising out of an
152 audit, the franchisor shall submit written notice to the
153 franchisee along with a copy of its audit and the detailed

154 reason for each intended charge-back, reimbursement, or
155 credit.

156 **12.** A franchisee may file a complaint with the
157 administrative hearing commission **pursuant to section**
158 **407.822** within **[thirty]** **sixty** days after receipt of any
159 **[such]** written notice **[challenging such action]** **by a**
160 **franchisor of any adverse decision on any claim for**
161 **reimbursement submitted pursuant to this section, including,**
162 **but not limited to, specific claims for reimbursement in**
163 **individual warranty repair transactions, and requests for an**
164 **increase in labor or parts rate.** If a complaint is filed
165 within the **[thirty]** **sixty** days, then the **[charge-back,**
166 **reimbursement, or credit]** **denial or reduction of**
167 **reimbursement, denial of a request for an increase in labor**
168 **or parts rate, charge-back, or other determination by a**
169 **franchisor which is adverse to a franchisee** shall be stayed
170 pending a hearing and determination of the matter under
171 section 407.822. **The franchisor shall file an answer to the**
172 **complaint within thirty days after service of the**
173 **complaint.** If, following a hearing which shall be held
174 **within sixty days following service of the franchisor's**
175 **answer,** the administrative hearing commission determines
176 that **[any portion of the charge-back, reimbursement, or**
177 **credit is improper, then that portion of the charge-back,**
178 **reimbursement, or credit shall be void and not allowed]** **a**
179 **franchisor has violated any requirements of this section,**
180 **then the denial or reduction of reimbursement, denial of a**
181 **request for an increase in labor or parts rate, or charge-**
182 **back shall be void and the franchisor shall, within fifteen**
183 **days of the commission's order, fairly compensate the**
184 **franchisee as required by the provisions of this section.**

185 Section 407.835 shall apply to proceedings pursuant to this
186 section.

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