

SENATE BILL NO. 502

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

1631S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 407.828, RSMo, and to enact in lieu thereof one new section relating to motor vehicle franchise practices.

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

Section A. Section 407.828, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.828, to read as follows:

407.828. 1. Notwithstanding any provision in a franchise to the contrary, each franchisor shall specify in writing to each of its franchisees in this state the franchisee's obligations for [preparation, delivery, and] warranty service on its products. The franchisor shall [fairly and reasonably compensate the franchisee for preparation, delivery, and warranty service required of the franchisee by the franchisor. The franchisor shall provide the franchisee with the schedule of compensation to be paid to the franchisee for parts, labor, and service, and the time allowance for the performance of the labor and service for the franchisee's obligations for preparation, delivery, and warranty service] **compensate the franchisee for warranty service parts and labor required of the franchisee by the franchisor pursuant to the provisions of this section.**

2. [The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor for the franchisee to meet its obligations for preparation, delivery, and warranty service. The schedule shall also include reasonable and

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

21 adequate time allowances for the diagnosis and performance
22 of preparation, delivery, and warranty service to be
23 performed in a careful and professional manner. In the
24 determination of what constitutes reasonable compensation
25 for labor and service pursuant to this section, the
26 principal factor to be given consideration shall be the
27 prevailing wage rates being charged for similar labor and
28 service by the franchisee for similar labor and service to
29 retail customers for nonwarranty labor and service.]

30 **Compensation for parts used in warranty service shall be in**
31 **an amount that is reasonable. Except as otherwise provided**
32 **in subsection 8 of this section,** the primary factor in
33 determining reasonable compensation for parts under this
34 [section] **subsection** shall be the amount charged by the
35 franchisee for similar parts to retail customers for **similar**
36 nonwarranty **repair** parts. **A franchisor may request such**
37 **documentation as is reasonable from the franchisee to**
38 **substantiate the amount charged by the franchisee for parts**
39 **used in nonwarranty repairs, but a franchisor shall not**
40 **request documentation of a type or amount which is unduly or**
41 **unnecessarily burdensome to the franchisee.**

42 3. **Compensation for labor used in warranty service**
43 **shall be in an amount that is reasonable. At the election**
44 **of the dealer, reasonable compensation for labor under this**
45 **subsection may be determined as described in a labor**
46 **compensation schedule prescribed by the franchisor, in lieu**
47 **of under this subsection. Compensation for warranty labor**
48 **shall equal the dealer's labor rate for nonwarranty repairs**
49 **multiplied by the time provided in whichever generally**
50 **accepted industry labor time guide is used by the dealer for**
51 **nonwarranty customer-paid service repair orders. If no time**
52 **guide exists for a warranty repair, compensation for**

53 warranty labor shall equal the dealer's nonwarranty labor
54 rate being charged at the time the repair is completed
55 multiplied by the time actually spent to complete the repair
56 order, and shall not be less than the time charged to retail
57 customers for the same or similar work performed.
58 Compensation for warranty labor shall include all diagnostic
59 time for repairs performed under this section, including but
60 not limited to all time spent communicating with the
61 manufacturer's technical assistants or external manufacturer
62 source in order to provide a warranty repair, and shall not
63 be less than the time charged to retail customers for the
64 same or similar work performed.

65 4. A franchisor shall perform all warranty
66 obligations, including recall notices; include in written
67 notices of franchisor recalls to new motor vehicle owners
68 and franchisees the expected date by which necessary parts
69 and equipment will be available to franchisees for the
70 correction of the defects; and compensate any of the
71 franchisees in this state for repairs required by the
72 recall. Compensation for parts and labor for recall repairs
73 shall be determined under [subsection 2] the provisions of
74 this section.

75 [4.] 5. No franchisor shall require a franchisee to
76 submit a claim authorized under this section sooner than
77 thirty days after the franchisee completes the [preparation,
78 delivery, or] warranty service [authorizing the claim for
79 preparation, delivery, or warranty service]. All claims
80 made by a franchisee under this section shall be paid within
81 thirty days after their approval. All claims shall be
82 either approved or disapproved by the franchisor within
83 thirty days after their receipt on a proper form generally
84 used by the franchisor and containing the usually required

85 information therein. Any claims not specifically
86 disapproved in writing within thirty days after the receipt
87 of the form shall be considered [to be] approved and payment
88 shall be made **by the franchisor** within fifteen days
89 thereafter. A franchisee shall not be required to maintain
90 defective parts for more than thirty days after submission
91 of a claim.

92 [5.] 6. A franchisor shall compensate the franchisee
93 for franchisor-sponsored sales or service promotion events,
94 including but not limited to, rebates, programs, or
95 activities in accordance with established written guidelines
96 for such events, programs, or activities, which guidelines
97 shall be provided to each franchisee.

98 [6.] No franchisor shall require a franchisee to submit
99 a claim authorized under **this** subsection [5 of this section]
100 sooner than thirty days after the franchisee becomes
101 eligible to submit the claim. All claims made by a
102 franchisee pursuant to **this** subsection [5 of this section]
103 for promotion events, including but not limited to rebates,
104 programs, or activities shall be paid within ten days after
105 their approval. All claims shall be either approved or
106 disapproved by the franchisor within thirty days after their
107 receipt on a proper form generally used by the franchisor
108 and containing the usually required information therein.
109 Any claim not specifically disapproved in writing within
110 thirty days after the receipt of this form shall be
111 [considered to be] **deemed** approved and payment shall be made
112 within fifteen days.

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

- 116 (1) Repairs for franchisor, manufacturer, or
117 distributor special events, specials, or promotional
118 discounts for retail customer repairs;
- 119 (2) Parts sold at wholesale;
- 120 (3) Engine assemblies and transmission assemblies;
- 121 (4) Routine maintenance not covered under any retail
122 customer warranty, such as fluids, filters, and belts not
123 provided in the course of repairs;
- 124 (5) Nuts, bolts, fasteners, and similar items that do
125 not have an individual part number;
- 126 (6) Tires; and
- 127 (7) Vehicle reconditioning.

128 8. If a franchisor, manufacturer, importer, or
129 distributor furnishes a part or component to a franchisee,
130 at no cost, to use in performing repairs under a recall,
131 campaign service action, or warranty repair, the franchisor
132 shall compensate the franchisee for the part or component in
133 [the same manner as warranty parts compensation under this
134 section by compensating the franchisee at the average markup
135 on the cost for the part or component as listed in the price
136 schedule of the franchisor, manufacturer, importer, or
137 distributor, less the cost for the part or component] **an**
138 **amount that is reasonable. The primary factor in**
139 **determining reasonable compensation for parts under this**
140 **subsection shall be the amount charged by the franchisee to**
141 **retail customers for similar nonwarranty repair parts.** This
142 subsection shall not apply to entire engine assemblies,
143 propulsion engine assemblies, including electric vehicle
144 batteries, or entire transmission assemblies.

145 9. A franchisor shall not require a franchisee to
146 establish the retail rate customarily charged by the
147 franchisee for parts, service, or labor by an unduly

148 burdensome or time-consuming method or by requiring
149 information that is unduly burdensome or time consuming to
150 provide, including, but not limited to, part-by-part or
151 transaction-by-transaction calculations. A franchisee shall
152 not request a franchisor to approve a different labor rate
153 or parts rate more than twice in one calendar year.

154 10. If a franchisee submits any claim under this
155 section to a franchisor that is incomplete, inaccurate, or
156 lacking any information usually required by the franchisor,
157 then the franchisor shall promptly notify the franchisee,
158 and the time limit to submit the claim shall be extended for
159 a reasonable length of time, not less than five business
160 days following notice by the franchisor to the franchisee,
161 for the franchisee to provide the complete, accurate, or
162 lacking information to the franchisor.

163 11. (1) A franchisor may only audit warranty, sales,
164 or incentive claims and charge-back to the franchisee
165 unsubstantiated claims for a period of twelve months
166 following payment, subject to all of the provisions of this
167 section. Furthermore, if the franchisor has good cause to
168 believe that a franchisee has submitted fraudulent claims,
169 then the franchisor may only audit suspected fraudulent
170 warranty, sales, or incentive claims and charge-back to the
171 franchisee fraudulent claims for a period of two years
172 following payment, subject to all provisions of this section.

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

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

180 reason for each intended charge-back, reimbursement, or
181 credit.

182 12. A franchisee may file a complaint with the
183 administrative hearing commission pursuant to section
184 407.822 within sixty days after receipt of any written
185 notice by a franchisor of any adverse decision on any claim
186 for reimbursement submitted pursuant to this section,
187 including, but not limited to, specific claims for
188 reimbursement in individual warranty repair transactions,
189 and requests for an increase in labor or parts rate. If a
190 complaint is filed within the sixty days, then the denial or
191 reduction of reimbursement, denial of a request for an
192 increase in labor or parts rate, charge-back, or other
193 determination by a franchisor which is adverse to a
194 franchisee shall be stayed pending a hearing and
195 determination of the matter under section 407.822. The
196 franchisor shall file an answer to the complaint within
197 thirty days after service of the complaint. If, following a
198 hearing which shall be held within sixty days following
199 service of the franchisor's answer, the administrative
200 hearing commission determines that a franchisor has violated
201 any requirements of this section, then the denial or
202 reduction of reimbursement, denial of a request for an
203 increase in labor or parts rate, or charge-back shall be
204 void and the franchisor shall, within fifteen days of the
205 commission's order, fairly compensate the franchisee as
206 required by the provisions of this section. Section 407.835
207 shall apply to proceedings pursuant to this section.

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