

SENATE BILL NO. 1081

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GREGORY (21).

5617S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 407.828, RSMo, and to enact in lieu thereof one new section relating to compensation made by motor vehicle franchisors to franchisees.

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Section A. Section 407.828, RSMo, is repealed and one new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

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 **and recall** 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

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

service. The schedule shall also include reasonable and adequate time allowances for the diagnosis and performance of preparation, delivery, and warranty service to be performed in a careful and professional manner. In the determination of what constitutes reasonable compensation for labor and service pursuant to this section, the principal factor to be given consideration shall be the prevailing wage rates being charged for similar labor and service by the franchisee for similar labor and service to retail customers for nonwarranty labor and service. The primary factor in determining reasonable compensation for parts under this section shall be the amount charged by the franchisee for similar parts to retail customers for nonwarranty parts]

(1) Fair and reasonable compensation requires the franchisor to pay each franchisee no less than the amount the retail customer pays for the same services with regard to rate and time. Any schedule of compensation previously agreed to by the franchisor and the franchisee for extended warranty repairs may be used in lieu of actual time expended. In the event that a schedule of compensation has not been agreed to for warranty repairs, or said schedule does not define time for an applicable warranty repair, the franchisor's schedule of compensation shall be used, multiplied by one and four-tenths. In no event shall such compensation fail to include full compensation for diagnostic work, as well as repair service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be no less than what is charged to retail customers for the same work to be performed. The primary factor in determining reasonable compensation for parts under this section shall be the amount charged by the franchisee for similar parts to retail

50 customers for nonwarranty parts. No warranty or factory
51 compensated repairs shall be excluded from this requirement,
52 including recalls or other voluntary stop-sell repairs
53 required by the franchisor. If a franchisor is required to
54 issue a recall, the franchisee shall be compensated for
55 labor time as provided in this subsection.

56 (2) Franchisors shall pay the franchisee the same
57 effective labor rate that the franchisee receives for
58 customer-pay repairs, including vehicle diagnostic times for
59 all warranty repairs. Additionally, if a technician is
60 required to communicate with a technical assistance center,
61 engineering, or some other external franchisor source in
62 order to provide a warranty repair, the franchisor shall pay
63 for the time from start of communications until the
64 communication is complete.

65 (3) The franchisee may submit a request to the
66 franchisor for warranty labor rate increases a maximum of
67 once per calendar year. Any claim made by a franchisee,
68 including claims for additional compensation in specific
69 instances of warranty or recall repairs under this section
70 shall be either approved or disapproved within twenty days
71 after the claim is submitted to the franchisor in the manner
72 and on the forms the franchisor reasonably prescribes. An
73 approved claim shall be paid within twenty days after its
74 approval. If a claim is not specifically disapproved in
75 writing or by electronic transmission within twenty days
76 after the date on which the franchisor receives it, the
77 claim shall be considered to be approved and payment shall
78 follow within twenty days. No franchisor shall require a
79 franchisee to submit a claim authorized under this section
80 sooner than thirty days after the franchisee completes the
81 preparation, delivery, warranty, or recall service

82 authorizing the claim for preparation, delivery, or warranty
83 service.

84 (4) A franchisor or distributor shall not otherwise
85 recover its costs from franchisees within this state,
86 including an increase in the wholesale price of a vehicle or
87 surcharge imposed on a franchisee solely intended to recover
88 the cost of reimbursing a franchisee for parts and labor
89 pursuant to this section, provided a franchisor or
90 distributor shall not be prohibited from increasing prices
91 for vehicles or parts in the normal course of business.

92 3. A franchisor shall perform all warranty
93 obligations, including recall notices; include in written
94 notices of franchisor recalls to new motor vehicle owners
95 and franchisees the expected date by which necessary parts
96 and equipment will be available to franchisees for the
97 correction of the defects; and compensate any of the
98 franchisees in this state for repairs required by the
99 recall. Compensation for parts and labor for recall repairs
100 shall be determined under subsection 2 of this section. **If**
101 **a franchisor imposes a recall or stop-sale on any new**
102 **vehicle in a franchisee's inventory that prevents the sale**
103 **of the vehicle, the franchisor shall compensate the**
104 **franchisee for any interest and storage until the vehicle is**
105 **repaired and made ready for sale.**

106 4. [No franchisor shall require a franchisee to submit
107 a claim authorized under this section sooner than thirty
108 days after the franchisee completes the preparation,
109 delivery, or warranty service authorizing the claim for
110 preparation, delivery, or warranty service. All claims made
111 by a franchisee under this section shall be paid within
112 thirty days after their approval. All claims shall be
113 either approved or disapproved by the franchisor within

thirty days after their receipt on a proper form generally used by the franchisor and containing the usually required information therein. Any claims not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within fifteen days thereafter. A franchisee shall not be required to maintain defective parts for more than thirty days after submission of a claim.

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

[6.] 5. No franchisor shall require a franchisee to submit a claim authorized under subsection [5] 4 of this section sooner than thirty days after the franchisee becomes eligible to submit the claim. All claims made by a franchisee pursuant to subsection [5] 4 of this section for promotion events, including but not limited to rebates, programs, or activities shall be paid within ten days after their approval. All claims shall be either approved or disapproved by the franchisor within thirty days after their receipt on a proper form generally used by the franchisor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of this form shall be considered to be approved and payment shall be made within fifteen days.

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

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

(2) Parts sold at wholesale;

(3) Engine assemblies and transmission assemblies;

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

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

(6) Tires; and

(7) Vehicle reconditioning.

[8.] 7. If a franchisor, manufacturer, importer, or distributor furnishes a part or component to a franchisee, at no cost, to use in performing repairs under a recall, campaign service action, or warranty repair, the franchisor shall compensate the franchisee for the part or component in the same manner as warranty parts compensation under this section by compensating the franchisee at the average markup on the cost for the part or component as listed in the price schedule of the franchisor, manufacturer, importer, or distributor, less the cost for the part or component. This subsection shall not apply to entire engine assemblies, propulsion engine assemblies, including electric vehicle batteries, or entire transmission assemblies.

[9.] 8. A franchisor shall not require a franchisee to establish the retail rate customarily charged by the franchisee for parts, service, or labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A franchisee shall

not request a franchisor to approve a different labor rate or parts rate more than [twice in one] **once per** calendar year.

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

[11.] 10. (1) A franchisor may only audit warranty, sales, or incentive claims and charge-back to the franchisee unsubstantiated claims for a period of twelve months following payment, subject to all of the provisions of this section. Furthermore, if the franchisor has good cause to believe that a franchisee has submitted fraudulent claims, then the franchisor may only audit suspected fraudulent warranty, sales, or incentive claims and charge-back to the franchisee fraudulent claims for a period of two years following payment, subject to all provisions of this section.

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

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

[12.] 11. A franchisee may file a complaint with the administrative hearing commission pursuant to section 407.822 within sixty days after receipt of any written notice by a franchisor of any adverse decision on any claim for reimbursement submitted pursuant to this section, including, but not limited to, specific claims for reimbursement in individual warranty repair transactions, and requests for an increase in labor or parts rate. If a complaint is filed within the sixty days, then the denial or reduction of reimbursement, denial of a request for an increase in labor or parts rate, charge-back, or other determination by a franchisor which is adverse to a franchisee shall be stayed pending a hearing and determination of the matter under section 407.822. The franchisor shall file an answer to the complaint within thirty days after service of the complaint. If, following a hearing which shall be held within sixty days following service of the franchisor's answer, the administrative hearing commission determines that a franchisor has violated any requirements of this section, then the denial or reduction of reimbursement, denial of a request for an increase in labor or parts rate, or charge-back shall be void and the franchisor shall, within fifteen days of the commission's order, fairly compensate the franchisee as required by the provisions of this section. Section 407.835 shall apply to proceedings pursuant to this section.

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