

SECOND REGULAR SESSION

# HOUSE BILL NO. 1634

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOUGH.

5701H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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Section A. Section 407.828, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.828, to read as follows: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

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 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 franchisees in the market in which the franchisee is doing business, and in no event shall the compensation of a franchisee for labor and service be less than the rates charged by the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 franchisee for similar labor and service to retail customers for nonwarranty labor and service,  
19 provided that such rates are reasonable. The primary factor in determining a fair and reasonable  
20 compensation for parts under this section shall be the prevailing amount charged for similar parts  
21 by other same line-make franchisees in the market in which the franchisee is doing business and  
22 the fair and reasonable compensation for parts shall not be less than the amount charged by the  
23 franchisee for similar parts to retail customers for nonwarranty parts, provided that such rates are  
24 reasonable. If another same line-make franchisee is not available within the market, then the  
25 prevailing amount charged for similar parts by other franchisees in the market shall be used as  
26 the primary factor. **For trucks with a licensed gross weight of twelve thousand pounds or  
27 more, reasonable compensation for labor shall be equal to the dealer's effective  
28 nonwarranty labor rate multiplied by the hours allowed under the franchisor's time  
29 allowances. For this determination, a dealer's "effective nonwarranty labor rate" is  
30 calculated by dividing total charges for labor in the dealer's qualifying nonwarranty repair  
31 orders by the total hours that would be allowed for the same repairs under the franchisor's  
32 time allowances. For trucks with a licensed gross weight of twelve thousand pounds or  
33 more, reasonable compensation for parts shall be equal to the dealer's cost for the parts  
34 multiplied by the dealer's average percentage markup over dealer cost for parts. For this  
35 determination, a "dealer's average percentage markup over dealer cost for parts" is  
36 calculated by dividing total charges for parts in the dealer's qualifying nonwarranty repair  
37 orders by the total dealer cost for the parts. A dealer's "qualifying nonwarranty repair  
38 orders" means an order relating to a nonwarranty repair that would be warranty work if  
39 the vehicle repaired was covered by the franchisor's warranty. A "qualifying nonwarranty  
40 repair" does not include routine maintenance such as oil changes or replacement of fluids,  
41 belts, nuts, bolts, fasteners, bulbs, batteries, or tires.**

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

48         4. No franchisor shall require a franchisee to submit a claim authorized under this section  
49 sooner than thirty days after the franchisee completes the preparation, delivery, or warranty  
50 service authorizing the claim for preparation, delivery, or warranty service. All claims made by  
51 a franchisee under this section shall be paid within thirty days after their approval. All claims  
52 shall be either approved or disapproved by the franchisor within thirty days after their receipt on  
53 a proper form generally used by the franchisor and containing the usually required information

54 therein. Any claims not specifically disapproved in writing within thirty days after the receipt  
55 of the form shall be considered to be approved and payment shall be made within fifteen days  
56 thereafter. A franchisee shall not be required to maintain defective parts for more than thirty  
57 days after submission of a claim.

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

62 6. No franchisor shall require a franchisee to submit a claim authorized under subsection  
63 5 of this section sooner than thirty days after the franchisee becomes eligible to submit the claim.  
64 All claims made by a franchisee pursuant to subsection 5 of this section for promotion events,  
65 including but not limited to rebates, programs, or activities shall be paid within ten days after  
66 their approval. All claims shall be either approved or disapproved by the franchisor within thirty  
67 days after their receipt on a proper form generally used by the franchisor and containing the  
68 usually required information therein. Any claim not specifically disapproved in writing within  
69 thirty days after the receipt of this form shall be considered to be approved and payment shall be  
70 made within ten days.

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

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

75 (2) Parts sold at wholesale;

76 (3) Engine assemblies and transmission assemblies;

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

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

80 (6) Tires; and

81 (7) Vehicle reconditioning.

82 8. If a franchisor, manufacturer, importer, or distributor furnishes a part or component  
83 to a franchisee, at no cost, to use in performing repairs under a recall, campaign service action,  
84 or warranty repair, the franchisor shall compensate the franchisee for the part or component in  
85 the same manner as warranty parts compensation under this section by compensating the  
86 franchisee at the average markup on the cost for the part or component as listed in the price  
87 schedule of the franchisor, manufacturer, importer, or distributor, less the cost for the part or  
88 component. **For parts used under a recall, campaign service action, or warranty repair for**

89 **trucks with a licensed gross weight of twelve thousand pounds or more, compensation shall**  
90 **be determined as set forth in subsection 2 of this section.**

91 9. A franchisor shall not require a franchisee to establish the retail rate customarily  
92 charged by the franchisee for parts, service, or labor by an unduly burdensome or  
93 time-consuming method or by requiring information that is unduly burdensome or time  
94 consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction  
95 calculations. A franchisee shall not request a franchisor to approve a different labor rate or parts  
96 rate more than twice in one calendar year.

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

103 11. (1) A franchisor may only audit warranty, sales, or incentive claims and charge-back  
104 to the franchisee unsubstantiated claims for a period of twelve months following payment,  
105 subject to all of the provisions of this section. Furthermore, if the franchisor has good cause to  
106 believe that a franchisee has submitted fraudulent claims, then the franchisor may only audit  
107 suspected fraudulent warranty, sales, or incentive claims and charge-back to the franchisee  
108 fraudulent claims for a period of two years following payment, subject to all provisions of this  
109 section.

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

112 (3) Prior to requiring any charge-back, reimbursement, or credit against a future  
113 transaction arising out of an audit, the franchisor shall submit written notice to the franchisee  
114 along with a copy of its audit and the detailed reason for each intended charge-back,  
115 reimbursement, or credit. A franchisee may file a complaint with the administrative hearing  
116 commission within thirty days after receipt of any such written notice challenging such action.  
117 If a complaint is filed within the thirty days, then the charge-back, reimbursement, or credit shall  
118 be stayed pending a hearing and determination of the matter under section 407.822. If the  
119 administrative hearing commission determines that any portion of the charge-back,  
120 reimbursement, or credit is improper, then that portion of the charge-back, reimbursement, or  
121 credit shall be void and not allowed.

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