

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1634**  
**97TH GENERAL ASSEMBLY**

5701H.02C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 407.826 and 407.828, RSMo, and to enact in lieu thereof two new sections 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Section A. Sections 407.826 and 407.828, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 407.826 and 407.828, to read as follows:

407.826. 1. (1) A franchisor shall be prohibited from owning or operating a new motor  
2 vehicle dealership in this state. It is not a violation of this section for a franchisor to own or  
3 operate a new motor vehicle dealership:

4 (a) For a temporary period of not more than twenty-four months if the dealership is for  
5 sale at a reasonable price and on reasonable terms and conditions to an independent qualified  
6 buyer. On showing by a franchisor of good cause, the time limit set forth above may be extended  
7 for an additional period of up to twelve months; or

8 (b) In a bona fide relationship with an independent person (i) who is required to make  
9 a significant investment in the new motor vehicle dealership subject to loss and (ii) operates the  
10 dealership and can reasonably expect to acquire full ownership of the dealership within a  
11 reasonable time and under reasonable terms and conditions.

12 (2) Nothing in this section shall be deemed to prohibit a franchisor from owning a  
13 minority interest in an entity that owns motor vehicle dealerships of the same line-make  
14 manufactured and franchised by the factory, provided that all of the following conditions are met  
15 at the time of acquisition and continue to be met during the time the entity maintains ownership:

16 (a) The interest owned by the factory in said entity shall not exceed forty-five percent  
17 of the total ownership;

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 (b) Any dealership in which the entity owns an interest shall be **located** no less than  
19 [nine miles of] **the distances set forth in section 407.817 from** any unaffiliated new motor  
20 vehicle dealership trading in the same line-make of vehicle;

21 (c) All of the licensed dealerships for the sale of such factory's new motor vehicle in the  
22 state trade exclusively in the factory's line-make;

23 (d) During any period in which the entity has such ownership interest, the factory shall  
24 have no more than four franchise agreements governing such line-make with dealers licensed to  
25 do business in this state;

26 (e) All the factory's franchise agreements confer rights on the franchisee of the line-make  
27 to develop and operate, within a defined geographic territory or area, as many dealership  
28 facilities as the franchisee and factory shall agree are appropriate;

29 (f) At the time the entity first acquires an ownership interest, not fewer than seventy-five  
30 percent of the franchisees of the line-make within this state own and operate two or more  
31 dealership facilities in the geographic territory or area covered by the franchise agreement with  
32 the factory;

33 (g) As of January 1, 2001, there were no more than ten dealerships of such line-make  
34 licensed as a new motor vehicle dealer in this state; and

35 (h) Prior to August 28, 2001, the factory has been continuously engaged, at least since  
36 July 1, 1998, in the retail sale of motor vehicles of its own line-make through direct or indirect  
37 ownership of dealerships in at least five states.

38 2. A franchisor shall not sell new motor vehicles directly to any retail consumer except  
39 through a franchisee for the line-make that includes the new motor vehicle unless such consumer  
40 is an employee of the franchisor, or is a not-for-profit organization or an agency of the federal,  
41 state or local governments. This subsection shall not preclude a franchisor from providing  
42 information to consumers for the purpose of marketing or facilitating the sale of a new motor  
43 vehicle or from establishing programs to sell or offer to sell new motor vehicles through  
44 participating franchisees.

45 3. The remedies and relief available pursuant to section 407.835 shall apply to this  
46 section.

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

7 for the performance of the labor and service for the franchisee's obligations for preparation,  
8 delivery, and warranty service.

9       2. The schedule of compensation shall include reasonable compensation for diagnostic  
10 work, as well as repair service and labor for the franchisee to meet its obligations for preparation,  
11 delivery, and warranty service. The schedule shall also include reasonable and adequate time  
12 allowances for the diagnosis and performance of preparation, delivery, and warranty service to  
13 be performed in a careful and professional manner. In the determination of what constitutes  
14 reasonable compensation for labor and service pursuant to this section, the principal factor to be  
15 given consideration shall be the prevailing wage rates being charged for similar labor and service  
16 by franchisees in the market in which the franchisee is doing business, and in no event shall the  
17 compensation of a franchisee for labor and service be less than the rates charged by the  
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 eighteen thousand pounds or  
27 more, reasonable compensation for parts shall be equal to the dealer's cost for the parts  
28 multiplied by the dealer's average percentage markup over dealer cost for parts. For this  
29 determination, a "dealer's average percentage markup over dealer cost for parts" is  
30 calculated by dividing total charges for parts in the dealer's qualifying nonwarranty repair  
31 orders by the total dealer cost for the parts. A dealer's "qualifying nonwarranty repair  
32 orders" means an order relating to a nonwarranty repair that would be warranty work if  
33 the vehicle repaired was covered by the franchisor's warranty. A "qualifying nonwarranty  
34 repair order" does not include routine maintenance such as oil changes or replacement of  
35 fluids, belts, nuts, bolts, fasteners, bulbs, batteries, or tires.**

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

42           4. No franchisor shall require a franchisee to submit a claim authorized under this section  
43 sooner than thirty days after the franchisee completes the preparation, delivery, or warranty  
44 service authorizing the claim for preparation, delivery, or warranty service. All claims made by  
45 a franchisee under this section shall be paid within thirty days after their approval. All claims  
46 shall be either approved or disapproved by the franchisor within thirty days after their receipt on  
47 a proper form generally used by the franchisor and containing the usually required information  
48 therein. Any claims not specifically disapproved in writing within thirty days after the receipt  
49 of the form shall be considered to be approved and payment shall be made within fifteen days  
50 thereafter. A franchisee shall not be required to maintain defective parts for more than thirty  
51 days after submission of a claim.

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

56           6. No franchisor shall require a franchisee to submit a claim authorized under subsection  
57 5 of this section sooner than thirty days after the franchisee becomes eligible to submit the claim.  
58 All claims made by a franchisee pursuant to subsection 5 of this section for promotion events,  
59 including but not limited to rebates, programs, or activities shall be paid within ten days after  
60 their approval. All claims shall be either approved or disapproved by the franchisor within thirty  
61 days after their receipt on a proper form generally used by the franchisor and containing the  
62 usually required information therein. Any claim not specifically disapproved in writing within  
63 thirty days after the receipt of this form shall be considered to be approved and payment shall be  
64 made within ten days.

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

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

69           (2) Parts sold at wholesale;

70           (3) Engine assemblies and transmission assemblies;

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

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

74           (6) Tires; and

75           (7) Vehicle reconditioning.

76           8. If a franchisor, manufacturer, importer, or distributor furnishes a part or component  
77 to a franchisee, at no cost, to use in performing repairs under a recall, campaign service action,

78 or warranty repair, the franchisor shall compensate the franchisee for the part or component in  
79 the same manner as warranty parts compensation under this section by compensating the  
80 franchisee at the average markup on the cost for the part or component as listed in the price  
81 schedule of the franchisor, manufacturer, importer, or distributor, less the cost for the part or  
82 component. **For parts used under a recall, campaign service action, or warranty repair for**  
83 **trucks with a licensed gross weight of eighteen thousand pounds or more, compensation**  
84 **shall be determined as set forth in subsection 2 of this section, less the cost for the part or**  
85 **component.**

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

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

98 11. (1) A franchisor may only audit warranty, sales, or incentive claims and charge-back  
99 to the franchisee unsubstantiated claims for a period of twelve months following payment,  
100 subject to all of the provisions of this section. Furthermore, if the franchisor has good cause to  
101 believe that a franchisee has submitted fraudulent claims, then the franchisor may only audit  
102 suspected fraudulent warranty, sales, or incentive claims and charge-back to the franchisee  
103 fraudulent claims for a period of two years following payment, subject to all provisions of this  
104 section.

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

107 (3) Prior to requiring any charge-back, reimbursement, or credit against a future  
108 transaction arising out of an audit, the franchisor shall submit written notice to the franchisee  
109 along with a copy of its audit and the detailed reason for each intended charge-back,  
110 reimbursement, or credit. A franchisee may file a complaint with the administrative hearing  
111 commission within thirty days after receipt of any such written notice challenging such action.  
112 If a complaint is filed within the thirty days, then the charge-back, reimbursement, or credit shall  
113 be stayed pending a hearing and determination of the matter under section 407.822. If the

114 administrative hearing commission determines that any portion of the charge-back,  
115 reimbursement, or credit is improper, then that portion of the charge-back, reimbursement, or  
116 credit shall be void and not allowed.

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