

FIRST REGULAR SESSION

HOUSE BILL NO. 894

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

2041H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 407.812 and 407.828, RSMo, are repealed and two new sections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

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

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

15 **3. No franchisor, manufacturer, importer, or distributor licensed in this state as a**
16 **franchisor at any time before January 1, 2023, shall allow any subsidiary or related**
17 **entity to engage in the business of selling motor vehicles, as defined in section 301.010, to**

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 **retail consumers in this state, except as permitted by the MVFP act. Each franchisee of**
19 **such franchisor, manufacturer, importer, or distributor shall have standing to enforce**
20 **the provisions of this subsection.**

21 **4. No entity controlling, controlled by, or sharing a common parent entity or**
22 **sibling entity with a franchisor, manufacturer, importer, or distributor shall engage in**
23 **the business of selling motor vehicles to retail consumers in this state, except as**
24 **permitted by the MVFP act. Each franchisee of such franchisor, manufacturer,**
25 **importer, or distributor shall have standing to enforce the provisions of this subsection.**

26 **5. No manufacturer, importer, or distributor not licensed in this state as a**
27 **franchisor before January 1, 2023, shall engage in the business of selling motor vehicles**
28 **to retail consumers in this state, except as permitted by the MVFP act. Any franchisor**
29 **or franchisee in this state shall have standing to enforce the provisions of this subsection.**

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

9 2. The schedule of compensation shall include **commercially** reasonable
10 compensation for diagnostic work, as well as repair service and labor for the franchisee to
11 meet its obligations for preparation, delivery, and warranty service. The schedule shall also
12 include ~~[reasonable and]~~ adequate time allowances for the diagnosis and performance of
13 preparation, delivery, and warranty service to be performed in a careful and professional
14 manner. In the determination of what constitutes **commercially** reasonable compensation for
15 labor and service pursuant to this section, the principal factor to be given consideration shall
16 be the prevailing wage rates being charged for similar labor and service by ~~[franchisees in the~~
17 ~~market in which the franchisee is doing business, and in no event shall the compensation of a~~
18 ~~franchisee for labor and service be less than the rates charged by]~~ the franchisee for similar
19 labor and service to retail customers for nonwarranty labor and service~~], provided that such~~
20 ~~rates are reasonable].~~ The primary factor in determining ~~[a fair and]~~ **commercially**
21 reasonable compensation for parts under this section shall be the ~~[prevailing amount charged~~
22 ~~for similar parts by other same line make franchisees in the market in which the franchisee is~~
23 ~~doing business and the fair and reasonable compensation for parts shall not be less than the]~~
24 amount charged by the franchisee for similar parts to retail customers for nonwarranty parts~~];~~
25 ~~provided that such rates are reasonable. If another same line make franchisee is not available~~

26 ~~within the market, then the prevailing amount charged for similar parts by other franchisees in~~
27 ~~the market shall be used as the primary factor].~~

28 3. A franchisor shall perform all warranty obligations, including recall notices;
29 include in written notices of franchisor recalls to new motor vehicle owners and franchisees
30 the expected date by which necessary parts and equipment will be available to franchisees for
31 the correction of the defects; and ~~reasonably~~ compensate any of the franchisees in this state
32 for **the actual cost of** repairs required by the recall. ~~Reasonable~~ Compensation for parts,
33 labor, and service shall be determined under subsection 2 of this section.

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

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

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

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

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

61 (2) Parts sold at wholesale;

62 (3) Engine assemblies and transmission assemblies;

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

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

67 (6) Tires; and

68 (7) Vehicle reconditioning.

69 8. If a franchisor, manufacturer, importer, or distributor furnishes a part or component
70 to a franchisee, at no cost, to use in performing repairs under a recall, campaign service
71 action, or warranty repair, the franchisor shall compensate the franchisee for the part or
72 component in the same manner as warranty parts compensation under this section by
73 compensating the franchisee at the average markup on the cost for the part or component as
74 listed in the price schedule of the franchisor, manufacturer, importer, or distributor, less the
75 cost for the part or component.

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

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

88 11. (1) A franchisor may only audit warranty, sales, or incentive claims and charge-
89 back to the franchisee unsubstantiated claims for a period of twelve months following
90 payment, subject to all of the provisions of this section. Furthermore, if the franchisor has
91 good cause to believe that a franchisee has submitted fraudulent claims, then the franchisor
92 may only audit suspected fraudulent warranty, sales, or incentive claims and charge-back to
93 the franchisee fraudulent claims for a period of two years following payment, subject to all
94 provisions of this section.

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

97 (3) Prior to requiring any charge-back, reimbursement, or credit against a future
98 transaction arising out of an audit, the franchisor shall submit written notice to the franchisee

99 along with a copy of its audit and the detailed reason for each intended charge-back,
100 reimbursement, or credit.

101 **12.** A franchisee may file a complaint with the administrative hearing commission
102 **pursuant to section 407.822** within ~~[thirty]~~ **ninety** days after receipt of any ~~[such]~~ written
103 notice ~~[challenging such action]~~ **by a franchisor of any adverse decision on any claim for**
104 **reimbursement submitted pursuant to this section, including but not limited to specific**
105 **claims for reimbursement in individual warranty repair transactions, and requests for**
106 **an increase in labor or parts rate.** If a complaint is filed within the ~~[thirty]~~ **ninety** days,
107 then the ~~[charge-back, reimbursement, or credit]~~ **denial or reduction of reimbursement,**
108 **denial of a request for an increase in labor or parts rate, charge-back, or other**
109 **determination by a franchisor which is adverse to a franchisee shall be stayed pending a**
110 **hearing and determination of the matter under section 407.822. The franchisor shall file an**
111 **answer to the complaint within twenty days after service of the complaint. If, following**
112 **a hearing which shall be held within sixty days following service of the franchisee's**
113 **complaint,** the administrative hearing commission determines that ~~[any portion of the charge-~~
114 ~~back, reimbursement, or credit is improper, then that portion of the charge back,~~
115 ~~reimbursement, or credit shall be void and not allowed]~~ **a franchisor has violated any**
116 **requirements of this section, then the denial or reduction of reimbursement, denial of a**
117 **request for an increase in labor or parts rate, or charge-back shall be void and the**
118 **franchisor shall, within fifteen days of the commission's order, fairly compensate the**
119 **franchisee as required by the provisions of this section. Section 407.835 shall apply to**
120 **proceedings pursuant to this section.**

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