

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 894
102ND GENERAL ASSEMBLY

2041H.02C

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Section A. Sections 407.812 and 407.828, RSMo, are repealed and two new sections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 dealer or manufacturer licensed in this state pursuant to the provisions of**
16 **sections 301.550 to 301.573 shall allow any subsidiary or related entity to engage in the**
17 **business of selling motor vehicles, except as otherwise permitted by law. Any dealer or**

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 **manufacturer licensed in this state shall have standing to enforce the provisions of this**
19 **subsection provided that a franchise relationship exists between the parties.**

20 **4. No entity controlling, controlled by, or sharing a common parent entity or**
21 **sibling entity with a licensed dealer or manufacturer, shall engage in the business of**
22 **selling motor vehicles to retail consumers in this state, except as permitted by sections**
23 **301.550 to 301.575 and the MVFP act. Any dealer or manufacturer licensed in this state**
24 **shall have standing to enforce the provisions of this subsection.**

25 **5. No dealer or manufacturer, that is not licensed in this state pursuant to**
26 **sections 301.550 to 301.575 shall engage in the business of selling motor vehicles to retail**
27 **consumers in this state, except as permitted by sections 301.550 to 301.575 and the**
28 **MVFP act. Any dealer or manufacturer licensed in this state shall have standing to**
29 **enforce the provisions of this subsection, provided that a franchise relationship exists**
30 **between the parties.**

31 **6. A manufacturer, importer, or distributor may engage in the business of selling**
32 **motor vehicles to retail consumers in this state from a dealership if the manufacturer,**
33 **importer, or distributor owned the dealership and held a license for the dealership on or**
34 **before January 1, 2023, provided that the ownership or controlling interest of such**
35 **dealership is not transferred, sold, or conveyed to another person or entity required to**
36 **be licensed under this chapter.**

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 warranty
5 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 reasonable compensation for
10 diagnostic work, as well as repair service and labor for the franchisee to meet its obligations
11 for preparation, delivery, and warranty service. The schedule shall also include reasonable
12 and adequate time allowances for the diagnosis and performance of preparation, delivery, and
13 warranty service to be performed in a careful and professional manner. In the determination
14 of what constitutes reasonable compensation for labor and service pursuant to this section, the
15 principal factor to be given consideration shall be the prevailing wage rates being charged for
16 similar labor and service by ~~franchisees in the market in which the franchisee is doing~~
17 ~~business, and in no event shall the compensation of a franchisee for labor and service be less~~
18 ~~than the rates charged by] the franchisee for similar labor and service to retail customers for~~

19 nonwarranty labor and service~~[, provided that such rates are reasonable]~~. The primary factor
20 in determining ~~[a fair and]~~ reasonable compensation for parts under this section shall be the
21 ~~[prevailing amount charged for similar parts by other same line make franchisees in the~~
22 ~~market in which the franchisee is doing business and the fair and reasonable compensation for~~
23 ~~parts shall not be less than the]~~ amount charged by the franchisee for similar parts to retail
24 customers for nonwarranty parts~~[, provided that such rates are reasonable. If another same~~
25 ~~line make franchisee is not available within the market, then the prevailing amount charged~~
26 ~~for similar parts by other franchisees in the market shall be used as the primary factor]~~.

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

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

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

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

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

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

60 (2) Parts sold at wholesale;

61 (3) Engine assemblies and transmission assemblies;

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

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

66 (6) Tires; and

67 (7) Vehicle reconditioning.

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

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

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

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

93 may only audit suspected fraudulent warranty, sales, or incentive claims and charge-back to
94 the franchisee fraudulent claims for a period of two years following payment, subject to all
95 provisions of this section.

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

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

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

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