

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1914
103RD GENERAL ASSEMBLY

5454H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 407.828, RSMo, and to enact in lieu thereof one new section relating to franchisor warranty duties.

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Section A. Section 407.828, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 407.828, to read as follows: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, and recall** 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 the franchisee for similar labor and service to retail customers for nonwarranty labor and service. the primary factor in determining reasonable compensation~~

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 ~~for parts under this section shall be the amount charged by the franchisee for similar parts to~~
19 ~~retail customers for nonwarranty parts.]~~

20 **2. (1) Fair and reasonable compensation requires the franchisor to pay each**
21 **franchisee no less than the amount the retail customer pays for the same services with**
22 **regard to rate and time. Any schedule of compensation previously agreed to by the**
23 **franchisor and the franchisee for extended warranty repairs may be used in lieu of**
24 **actual time expended. In the event that a schedule of compensation has not been agreed**
25 **to for warranty repairs, or such schedule does not define time for an applicable**
26 **warranty repair, the franchisor's schedule of compensation shall be used, multiplied by**
27 **one and four tenths. In no event shall such compensation fail to include full**
28 **compensation for diagnostic work, as well as repair service, labor, and parts. Time**
29 **allowances for the diagnosis and performance of warranty work and service shall be no**
30 **less than what is charged to retail customers for the same work to be performed. The**
31 **primary factor in determining reasonable compensation for parts under this section**
32 **shall be the amount charged by the franchisee for similar parts to retail customers for**
33 **nonwarranty parts. No warranty or factory compensated repairs shall be excluded**
34 **from this requirement, including recalls or other voluntary stop-sell repairs required by**
35 **the franchisor. If a franchisor is required to issue a recall, the franchisee will be**
36 **compensated for labor time as above stated.**

37 **(2) Service technicians and other associated service department personnel**
38 **performing work for franchisees and subject to the increased labor time provisions of**
39 **this section shall be compensated in accordance with their established pay plan, with**
40 **compensation adjusted to reflect the increased time allowance.**

41 **(3) Franchisors shall pay the franchisee the same effective labor rate that the**
42 **franchisee receives for customer-pay repairs. This requirement includes vehicle**
43 **diagnostic times for all warranty repairs. Additionally, if a technician is required to**
44 **communicate with a technical assistance center, engineering, or some other external**
45 **franchisor source in order to provide a warranty repair, the franchisor shall pay for the**
46 **time from start of communications until the communication is complete.**

47 **(4) The franchisee may submit a request to the franchisor for warranty labor**
48 **rate increases a maximum of once per calendar year. Any claim made by a franchisee,**
49 **including claims for additional compensation in specific instances of warranty or recall**
50 **repairs under this section shall be either approved or disapproved within twenty days**
51 **after the claim is submitted to the franchisor in the manner and on the forms the**
52 **franchisor reasonably prescribes. An approved claim shall be paid within twenty days**
53 **after its approval. If a claim is not specifically disapproved in writing or by electronic**
54 **transmission within twenty days after the date on which the franchisor receives it, the**

55 **claim shall be deemed approved and payment shall follow within twenty days. No**
56 **franchisor shall require a franchisee to submit a claim authorized under this section**
57 **sooner than thirty days after the franchisee completes the preparation, delivery,**
58 **warranty, or recall service authorizing the claim for preparation, delivery, warranty, or**
59 **recall service.**

60 **(5) A franchisor or distributor shall not otherwise recover its costs from**
61 **franchisees within this state, including an increase in the wholesale price of a vehicle or**
62 **surcharge imposed on a franchisee solely intended to recover the cost of reimbursing a**
63 **franchisee for parts and labor under this section, provided a franchisor or distributor**
64 **shall not be prohibited from increasing prices for vehicles or parts in the normal course**
65 **of business.**

66 3. A franchisor shall perform all warranty obligations, including recall notices;
67 include in written notices of franchisor recalls to new motor vehicle owners and franchisees
68 the expected date by which necessary parts and equipment will be available to franchisees for
69 the correction of the defects; and compensate any of the franchisees in this state for repairs
70 required by the recall. Compensation for parts and labor for recall repairs shall be determined
71 under subsection 2 of this section. **If a franchisor imposes a recall or stop sale on any new**
72 **vehicle in a franchisee's inventory that prevents the sale of the vehicle, the franchisor**
73 **shall compensate the franchisee for any interest and storage until the vehicle is repaired**
74 **and made ready for sale.**

75 ~~[4. No franchisor shall require a franchisee to submit a claim authorized under this~~
76 ~~section sooner than thirty days after the franchisee completes the preparation, delivery, or~~
77 ~~warranty service authorizing the claim for preparation, delivery, or warranty service. All~~
78 ~~claims made by a franchisee under this section shall be paid within thirty days after their~~
79 ~~approval. All claims shall be either approved or disapproved by the franchisor within thirty~~
80 ~~days after their receipt on a proper form generally used by the franchisor and containing the~~
81 ~~usually required information therein. Any claims not specifically disapproved in writing~~
82 ~~within thirty days after the receipt of the form shall be considered to be approved and~~
83 ~~payment shall be made within fifteen days thereafter. A franchisee shall not be required to~~
84 ~~maintain defective parts for more than thirty days after submission of a claim.~~

85 ~~5.]~~ 4. A franchisor shall compensate the franchisee for franchisor-sponsored sales or
86 service promotion events, including but not limited to, rebates, programs, or activities in
87 accordance with established written guidelines for such events, programs, or activities, which
88 guidelines shall be provided to each franchisee.

89 ~~[6.]~~ 5. No franchisor shall require a franchisee to submit a claim authorized under
90 subsection 5 of this section sooner than thirty days after the franchisee becomes eligible to
91 submit the claim. All claims made by a franchisee pursuant to subsection 5 of this section for

92 promotion events, including but not limited to rebates, programs, or activities shall be paid
93 within ten days after their approval. All claims shall be either approved or disapproved by the
94 franchisor within thirty days after their receipt on a proper form generally used by the
95 franchisor and containing the usually required information therein. Any claim not
96 specifically disapproved in writing within thirty days after the receipt of this form shall be
97 considered to be approved and payment shall be made within fifteen days.

98 ~~[7-]~~ **6.** In calculating the retail rate customarily charged by the franchisee for parts,
99 service, and labor, the following work shall not be included in the calculation:

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

102 (2) Parts sold at wholesale;

103 (3) Engine assemblies and transmission assemblies;

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

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

108 (6) Tires; and

109 (7) Vehicle reconditioning.

110 ~~[8-]~~ **7.** If a franchisor, manufacturer, importer, or distributor furnishes a part or
111 component to a franchisee, at no cost, to use in performing repairs under a recall, campaign
112 service action, or warranty repair, the franchisor shall compensate the franchisee for the part
113 or component in the same manner as warranty parts compensation under this section by
114 compensating the franchisee at the average markup on the cost for the part or component as
115 listed in the price schedule of the franchisor, manufacturer, importer, or distributor, less the
116 cost for the part or component. This subsection shall not apply to entire engine assemblies,
117 propulsion engine assemblies, including electric vehicle batteries, or entire transmission
118 assemblies.

119 ~~[9-]~~ **8.** A franchisor shall not require a franchisee to establish the retail rate
120 customarily charged by the franchisee for parts, service, or labor by an unduly burdensome or
121 time-consuming method or by requiring information that is unduly burdensome or time
122 consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction
123 calculations. A franchisee shall not request a franchisor to approve a different labor rate or
124 parts rate more than ~~[twice]~~ **once** ~~[in one]~~ **per** calendar year.

125 ~~[10-]~~ **9.** If a franchisee submits any claim under this section to a franchisor that is
126 incomplete, inaccurate, or lacking any information usually required by the franchisor, then the
127 franchisor shall promptly notify the franchisee, and the time limit to submit the claim shall be
128 extended for a reasonable length of time, not less than five business days following notice by

129 the franchisor to the franchisee, for the franchisee to provide the complete, accurate, or
130 lacking information to the franchisor.

131 ~~[11.]~~ **10.** (1) A franchisor may only audit warranty, sales, or incentive claims and
132 charge-back to the franchisee unsubstantiated claims for a period of twelve months following
133 payment, subject to all of the provisions of this section. Furthermore, if the franchisor has
134 good cause to believe that a franchisee has submitted fraudulent claims, then the franchisor
135 may only audit suspected fraudulent warranty, sales, or incentive claims and charge-back to
136 the franchisee fraudulent claims for a period of two years following payment, subject to all
137 provisions of this section.

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

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

144 ~~[12.]~~ **11.** A franchisee may file a complaint with the administrative hearing
145 commission pursuant to section 407.822 within sixty days after receipt of any written notice
146 by a franchisor of any adverse decision on any claim for reimbursement submitted pursuant to
147 this section, including, but not limited to, specific claims for reimbursement in individual
148 warranty repair transactions, and requests for an increase in labor or parts rate. If a complaint
149 is filed within the sixty days, then the denial or reduction of reimbursement, denial of a
150 request for an increase in labor or parts rate, charge-back, or other determination by a
151 franchisor which is adverse to a franchisee shall be stayed pending a hearing and
152 determination of the matter under section 407.822. The franchisor shall file an answer to the
153 complaint within thirty days after service of the complaint. If, following a hearing which
154 shall be held within sixty days following service of the franchisor's answer, the administrative
155 hearing commission determines that a franchisor has violated any requirements of this
156 section, then the denial or reduction of reimbursement, denial of a request for an increase in
157 labor or parts rate, or charge-back shall be void and the franchisor shall, within fifteen days of
158 the commission's order, fairly compensate the franchisee as required by the provisions of this
159 section. Section 407.835 shall apply to proceedings pursuant to this section.

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