

SECOND REGULAR SESSION

# HOUSE BILL NO. 2333

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HINMAN.

6072H.01I

JOSEPH ENGLER, 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 franchisor warranty duties.

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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Section A. Section 407.828, RSMo, is repealed and one new section enacted in lieu  
2 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  
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.~~

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 the franchisee for similar labor and service to retail customers for  
17 nonwarranty labor and service.] The franchisor shall compensate the franchisee for

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 **warranty service parts and labor required of the franchisee by the franchisor under the**  
19 **provisions of this section.**

20 **2. Compensation for parts used in warranty service shall be reasonable.** For  
21 **purposes of this section,** the primary factor in determining reasonable compensation for parts  
22 ~~[under this section]~~ shall be the amount charged by the franchisee for similar parts to retail  
23 customers for nonwarranty repair parts. **A franchisor may request such documentation as**  
24 **is reasonable from the franchisee to substantiate the amount charged by the franchisee**  
25 **for parts used in nonwarranty repairs, but a franchisor shall not request documentation**  
26 **of a type or amount that is unduly or unnecessarily burdensome to the franchisee.**  
27 **Compensation for labor used in warranty service shall be reasonable and may be**  
28 **determined at the election of the dealer as described in subsection 3 of this section in lieu**  
29 **of any labor compensation schedule prescribed by the franchisor.**

30 **3. Compensation for warranty labor shall equal the dealer's labor rate for**  
31 **nonwarranty repairs multiplied by the time provided in whichever generally accepted**  
32 **industry labor time guide is used by the dealer for nonwarranty customer-paid service**  
33 **repair orders. If no time guide exists for a warranty repair, compensation for warranty**  
34 **labor shall equal the dealer's nonwarranty labor rate being charged at the time the**  
35 **repair is completed multiplied by the time actually spent to complete the repair order**  
36 **and shall not be less than the time charged to retail customers for the same or similar**  
37 **work performed. Compensation for warranty labor shall include all diagnostic time for**  
38 **repairs performed under this section including, but not limited to, all time spent**  
39 **communicating with the manufacturer's technical assistants or external manufacturer**  
40 **source in order to provide a warranty repair, and shall not be less than the time charged**  
41 **to retail customers for the same or similar work performed.**

42 **[3.] 4. A franchisor shall perform all warranty obligations, including recall notices;**  
43 **include in written notices of franchisor recalls to new motor vehicle owners and franchisees**  
44 **the expected date by which necessary parts and equipment will be available to franchisees for**  
45 **the correction of the defects; and compensate any of the franchisees in this state for repairs**  
46 **required by the recall. Compensation for parts and labor for recall repairs shall be determined**  
47 **under [subsection 2] the provisions of this section.**

48 **[4.] 5. No franchisor shall require a franchisee to submit a claim authorized under this**  
49 **section sooner than thirty days after the franchisee completes the [preparation, delivery, or]**  
50 **warranty service [authorizing the claim for preparation, delivery, or warranty service]. All**  
51 **claims made by a franchisee under this section shall be paid within thirty days after their**  
52 **approval. All claims shall be either approved or disapproved by the franchisor within thirty**  
53 **days after their receipt on a proper form generally used by the franchisor and containing the**  
54 **usually required information therein. Any claims not specifically disapproved in writing**

55 within thirty days after the receipt of the form shall be considered ~~[to be]~~ approved and  
56 payment shall be made **by the franchisor** within fifteen days thereafter. A franchisee shall  
57 not be required to maintain defective parts for more than thirty days after submission of a  
58 claim.

59 **[5.] 6.** A franchisor shall compensate the franchisee for franchisor-sponsored sales or  
60 service promotion events, including but not limited to, rebates, programs, or activities in  
61 accordance with established written guidelines for such events, programs, or activities, which  
62 guidelines shall be provided to each franchisee.

63 **[6.] 7.** No franchisor shall require a franchisee to submit a claim authorized under  
64 ~~subsection 5 of~~ this section sooner than thirty days after the franchisee becomes eligible to  
65 submit the claim. All claims made by a franchisee ~~pursuant to subsection 5 of this section~~  
66 **under this section** for promotion events, including but not limited to rebates, programs, or  
67 activities shall be paid within ten days after their approval. All claims shall be either  
68 approved or disapproved by the franchisor within thirty days after their receipt on a proper  
69 form generally used by the franchisor and containing the usually required information therein.  
70 Any claim not specifically disapproved in writing within thirty days after the receipt of this  
71 form shall be ~~[eonsidered to be]~~ **deemed** approved and payment shall be made within fifteen  
72 days.

73 **[7.] 8.** In calculating the retail rate customarily charged by the franchisee for parts,  
74 service, and labor, the following work shall not be included in the calculation:

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

77 (2) Parts sold at wholesale;

78 (3) Engine assemblies and transmission assemblies;

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

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

83 (6) Tires; and

84 (7) Vehicle reconditioning.

85 **[8.] 9.** If a franchisor, manufacturer, importer, or distributor furnishes a part or  
86 component to a franchisee, at no cost, to use in performing repairs under a recall, campaign  
87 service action, or warranty repair, the franchisor shall compensate the franchisee for the part  
88 or component in ~~[the same manner as warranty parts compensation under this section by~~  
89 ~~compensating the franchisee at the average markup on the cost for the part or component as~~  
90 ~~listed in the price schedule of the franchisor, manufacturer, importer, or distributor, less the~~  
91 ~~cost for the part or component]~~ **an amount that is reasonable, and the primary factor in**

92 **determining reasonable compensation for parts under this subsection shall be the**  
93 **amount charged by the franchisee for similar parts to retail customers for nonwarranty**  
94 **repair parts.** This subsection shall not apply to entire engine assemblies, propulsion engine  
95 assemblies, including electric vehicle batteries, or entire transmission assemblies.

96 **[9-] 10.** A franchisor shall not require a franchisee to establish the retail rate  
97 customarily charged by the franchisee for parts, service, or labor by an unduly burdensome or  
98 time-consuming method or by requiring information that is unduly burdensome or time  
99 consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction  
100 calculations. A franchisee shall not request a franchisor to approve a different labor rate or  
101 parts rate more than twice in one calendar year.

102 **[10-] 11.** If a franchisee submits any claim under this section to a franchisor that is  
103 incomplete, inaccurate, or lacking any information usually required by the franchisor, then the  
104 franchisor shall promptly notify the franchisee, and the time limit to submit the claim shall be  
105 extended for a reasonable length of time, not less than five business days following notice by  
106 the franchisor to the franchisee, for the franchisee to provide the complete, accurate, or  
107 lacking information to the franchisor.

108 **[11-] 12.** (1) A franchisor may only audit warranty, sales, or incentive claims and  
109 charge-back to the franchisee unsubstantiated claims for a period of twelve months following  
110 payment, subject to all of the provisions of this section. Furthermore, if the franchisor has  
111 good cause to believe that a franchisee has submitted fraudulent claims, then the franchisor  
112 may only audit suspected fraudulent warranty, sales, or incentive claims and charge-back to  
113 the franchisee fraudulent claims for a period of two years following payment, subject to all  
114 provisions of this section.

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

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

121 **[12-] 13.** A franchisee may file a complaint with the administrative hearing  
122 commission pursuant to section 407.822 within sixty days after receipt of any written notice  
123 by a franchisor of any adverse decision on any claim for reimbursement submitted pursuant to  
124 this section, including, but not limited to, specific claims for reimbursement in individual  
125 warranty repair transactions, and requests for an increase in labor or parts rate. If a complaint  
126 is filed within the sixty days, then the denial or reduction of reimbursement, denial of a  
127 request for an increase in labor or parts rate, charge-back, or other determination by a  
128 franchisor which is adverse to a franchisee shall be stayed pending a hearing and

129 determination of the matter under section 407.822. The franchisor shall file an answer to the  
130 complaint within thirty days after service of the complaint. If, following a hearing which  
131 shall be held within sixty days following service of the franchisor's answer, the administrative  
132 hearing commission determines that a franchisor has violated any requirements of this  
133 section, then the denial or reduction of reimbursement, denial of a request for an increase in  
134 labor or parts rate, or charge-back shall be void and the franchisor shall, within fifteen days of  
135 the commission's order, fairly compensate the franchisee as required by the provisions of this  
136 section. Section 407.835 shall apply to proceedings pursuant to this section.

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