

1 AMENDMENT TO SENATE BILL 113

2 AMENDMENT NO. _____. Amend Senate Bill 113, AS AMENDED,
3 by replacing the title with the following:

4 "AN ACT in relation to vehicles." and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Motor Vehicle Franchise Act is amended
8 by changing Section 6 as follows:

9 (815 ILCS 710/6) (from Ch. 121 1/2, par. 756)

10 Sec. 6. Warranty agreements; claims; approval; payment;
11 written disapproval.

12 (a) Every manufacturer, distributor, wholesaler,
13 distributor branch or division, factory branch or division,
14 or wholesale branch or division shall properly fulfill any
15 warranty agreement and adequately and fairly compensate each
16 of its motor vehicle dealers for labor and parts.

17 (b) In no event shall such compensation fail to include
18 reasonable compensation for diagnostic work, as well as
19 repair service, labor, and parts. Time allowances for the
20 diagnosis and performance of warranty work and service shall
21 be reasonable and adequate for the work to be performed. In

1 the determination of what constitutes reasonable compensation
2 under this Section, the principal factor to be given
3 consideration shall be the prevailing wage rates being paid
4 by the dealer in the relevant market area in which the motor
5 vehicle dealer is doing business, and in no event shall such
6 compensation of a motor vehicle dealer for warranty service
7 be less than the rates charged by such dealer for like
8 service to retail customers for nonwarranty service and
9 repairs. The franchiser shall reimburse the franchisee for
10 any parts provided in satisfaction of a warranty at the
11 prevailing retail price charged by that dealer for the same
12 parts when not provided in satisfaction of a warranty;
13 provided that such motor vehicle franchisee's prevailing
14 retail price is not unreasonable when compared with that of
15 the holders of motor vehicle franchises from the same motor
16 vehicle franchiser for identical merchandise in the
17 geographic area in which the motor vehicle franchisee is
18 engaged in business. All claims, either original or
19 resubmitted, made by motor vehicle dealers hereunder and
20 under Section 5 for such labor and parts shall be either
21 approved or disapproved within 30 days following their
22 submission. All approved claims shall be paid within 30 days
23 following their approval. The motor vehicle dealer who
24 submits a claim which is disapproved shall be notified in
25 writing of the disapproval within the same period, and each
26 such notice shall state the specific grounds upon which the
27 disapproval is based. The motor vehicle dealer shall be
28 permitted to correct and resubmit such disapproved claims
29 within 30 days of receipt of disapproval. Any claims not
30 specifically disapproved in writing within 30 days from their
31 submission shall be deemed approved and payment shall follow
32 within 30 days. The manufacturer or franchiser shall have the
33 right to require reasonable documentation for claims and to
34 audit such claims within a one year period from the date the

1 claim was paid or credit issued by the manufacturer or
2 franchiser, and to charge back any false or unsubstantiated
3 claims. The audit and charge back provisions of this Section
4 also apply to all other incentive and reimbursement programs
5 for a period of 18 months after the date of the transactions
6 that are subject to audit by the franchiser. However, the
7 manufacturer retains the right to charge back any fraudulent
8 claim if the manufacturer establishes in a court of competent
9 jurisdiction in this State that the claim is fraudulent.

10 (c) The motor vehicle franchiser shall not, by
11 agreement, by restrictions upon reimbursement, or otherwise,
12 restrict the nature and extent of services to be rendered or
13 parts to be provided so that such restriction prevents the
14 motor vehicle franchisee from satisfying the warranty by
15 rendering services in a good and workmanlike manner and
16 providing parts which are required in accordance with
17 generally accepted standards. Any such restriction shall
18 constitute a prohibited practice.

19 (d) For the purposes of this Section, the "prevailing
20 retail price charged by that dealer for the same parts" means
21 the price paid by the motor vehicle franchisee for parts,
22 including all shipping and other charges, multiplied by the
23 sum of 1.0 and the franchisee's average percentage markup
24 over the price paid by the motor vehicle franchisee for parts
25 purchased by the motor vehicle franchisee from the motor
26 vehicle franchiser and sold at retail. The motor vehicle
27 franchisee may establish average percentage markup under this
28 Section by submitting to the motor vehicle franchiser 100
29 sequential customer paid service repair orders or 90 days of
30 customer paid service repair orders, whichever is less,
31 covering repairs made no more than 180 days before the
32 submission, and declaring what the average percentage markup
33 is. The average percentage markup so declared shall go into
34 effect 30 days following the declaration, subject to audit of

1 the submitted repair orders by the motor vehicle franchiser
2 and adjustment of the average percentage markup based on that
3 audit. Any audit must be conducted within 30 days following
4 the declaration. Only retail sales not involving warranty
5 repairs, parts covered by subsection (e) of this Section, or
6 parts supplied for routine vehicle maintenance, shall be
7 considered in calculating average percentage markup. No
8 motor vehicle franchiser shall require a motor vehicle
9 franchisee to establish average percentage markup by a
10 methodology, or by requiring information, that is unduly
11 burdensome or time consuming to provide, including, but not
12 limited to, part by part or transaction by transaction
13 calculations. A motor vehicle franchisee shall not request a
14 change in the average percentage markup more than twice in
15 one calendar year.

16 (e) If a motor vehicle franchiser supplies a part or
17 parts for use in a repair rendered under a warranty other
18 than by sale of that part or parts to the motor vehicle
19 franchisee, the motor vehicle franchisee shall be entitled to
20 compensation equivalent to the motor vehicle franchisee's
21 average percentage markup on the part or parts, as if the
22 part or parts had been sold to the motor vehicle franchisee
23 by the motor vehicle franchiser. The requirements of this
24 subsection (e) shall not apply to entire engine assemblies
25 and entire transmission assemblies. In the case of those
26 assemblies, the motor vehicle franchiser shall reimburse the
27 motor vehicle franchisee in the amount of 30% of what the
28 motor vehicle franchisee would have paid the motor vehicle
29 franchiser for the assembly if the assembly had not been
30 supplied by the franchiser other than by the sale of that
31 assembly to the motor vehicle franchisee.

32 (f) The obligations imposed on motor vehicle franchisers
33 by this Section shall apply to any parent, subsidiary,
34 affiliate, or agent of the motor vehicle franchiser, any

1 person under common ownership or control, any employee of the
2 motor vehicle franchiser, and any person holding 1% or more
3 of the shares of any class of securities or other ownership
4 interest in the motor vehicle franchiser, if a warranty or
5 service or repair plan is issued by that person instead of or
6 in addition to one issued by the motor vehicle franchiser.

7 (g) (1) Any motor vehicle franchiser and at least a
8 majority of its Illinois franchisees of the same line make
9 may agree in an express written contract citing this Section
10 upon a uniform warranty reimbursement policy used by
11 contracting franchisees to perform warranty repairs. The
12 policy shall only involve either reimbursement for parts used
13 in warranty repairs or the use of a Uniform Time Standards
14 Manual, or both. Reimbursement for parts under the agreement
15 shall be used instead of the franchisees' "prevailing retail
16 price charged by that dealer for the same parts" as defined
17 in this Section to calculate compensation due from the
18 franchiser for parts used in warranty repairs. This Section
19 does not authorize a franchiser and its Illinois franchisees
20 to establish a uniform hourly labor reimbursement.

21 Each franchiser shall only have one such agreement with
22 each line make. Any such agreement shall:

23 (A) Establish a uniform parts reimbursement rate.
24 The uniform parts reimbursement rate shall be greater
25 than the franchiser's nationally established parts
26 reimbursement rate in effect at the time the first such
27 agreement becomes effective; however, any subsequent
28 agreement shall result in a uniform reimbursement rate
29 that is greater or equal to the rate set forth in the
30 immediately prior agreement.

31 (B) Apply to all warranty repair orders written
32 during the period that the agreement is effective.

33 (C) Be available, during the period it is
34 effective, to any motor vehicle franchisee of the same

1 line make at any time and on the same terms.

2 (D) Be for a term not to exceed 3 years so long as
3 any party to the agreement may terminate the agreement
4 upon the annual anniversary of the agreement and with 30
5 days' prior written notice; however, the agreement shall
6 remain in effect for the term of the agreement regardless
7 of the number of dealers of the same line make that may
8 terminate the agreement.

9 (2) A franchiser that enters into an agreement with its
10 franchisees pursuant to paragraph (1) of this subsection (g)
11 may seek to recover its costs from only those franchisees
12 that are receiving their "prevailing retail price charged by
13 that dealer" under subsections (a) through (f) of this
14 Section, subject to the following requirements:

15 (A) "costs" means the difference between the
16 uniform reimbursement rate set forth in an agreement
17 entered into pursuant to paragraph (1) of this subsection
18 (g) and the "prevailing retail price charged by that
19 dealer" received by those franchisees of the same line
20 make;

21 (B) the costs shall be recovered only by increasing
22 the invoice price on new vehicles received by those
23 franchisees; and

24 (C) price increases imposed for the purpose of
25 recovering costs imposed by this Section may vary from
26 time to time and from model to model, but shall apply
27 uniformly to all franchisees of the same line make in the
28 State of Illinois that have requested reimbursement for
29 warranty repairs at their "prevailing retail price
30 charged by that dealer", except that a franchiser may
31 make an exception for vehicles that are titled in the
32 name of a consumer in another state.

33 (3) If a franchiser contracts with its Illinois dealers
34 pursuant to paragraph (1) of this subsection (g), the

1 franchiser shall certify under oath to the Motor Vehicle
2 Review Board that a majority of the franchisees of that line
3 make did agree to such an agreement and file a sample copy
4 the agreement. On an annual basis, each franchiser shall
5 certify under oath to the Motor Vehicle Review Board that the
6 reimbursement costs it recovers under paragraph (2) of this
7 subsection (g) do not exceed the amounts authorized by
8 paragraph (2) of this subsection (g). The franchiser shall
9 maintain for a period of 3 years a file that contains the
10 information upon which its certification is based.

11 (4) If a franchiser and its franchisees do not enter
12 into an agreement pursuant to paragraph (1) of this
13 subsection (g), and for any matter that is not the subject of
14 an agreement, this subsection (g) shall have no effect
15 whatsoever.

16 (5) For purposes of this subsection (g), a Uniform Time
17 Standard Manual is a document created by a franchiser that
18 establishes the time allowances for the diagnosis and
19 performance of warranty work and service. The allowances
20 shall be reasonable and adequate for the work and service to
21 be performed. Each franchiser shall have a reasonable and
22 fair process that allows a franchisee to request a
23 modification or adjustment of a standard or standards
24 included in such a manual.

25 (Source: P.A. 91-485, eff. 1-1-00.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law."