

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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

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

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

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

(b) In no event shall such compensation fail to include reasonable compensation for diagnostic work, as well as repair service, labor, and parts. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this Section, the principal factor to be given consideration shall be the prevailing wage rates being paid by the dealer in the relevant market area in which the motor vehicle dealer is doing business, and in no event shall such compensation of a motor vehicle dealer for warranty service be less than the rates charged by such dealer for like service to retail customers for nonwarranty service and repairs. The franchiser shall reimburse the franchisee for any parts provided in satisfaction of a warranty at the prevailing retail price charged by that dealer for the same parts when not provided in satisfaction of a warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor

vehicle franchises from the same motor vehicle franchiser for identical merchandise in the geographic area in which the motor vehicle franchisee is engaged in business. All claims, either original or resubmitted, made by motor vehicle dealers hereunder and under Section 5 for such labor and parts shall be either approved or disapproved within 30 days following their submission. All approved claims shall be paid within 30 days following their approval. The motor vehicle dealer who submits a claim which is disapproved shall be notified in writing of the disapproval within the same period, and each such notice shall state the specific grounds upon which the disapproval is based. The motor vehicle dealer shall be permitted to correct and resubmit such disapproved claims within 30 days of receipt of disapproval. Any claims not specifically disapproved in writing within 30 days from their submission shall be deemed approved and payment shall follow within 30 days. The manufacturer or franchiser shall have the right to require reasonable documentation for claims and to audit such claims within a one year period from the date the claim was paid or credit issued by the manufacturer or franchiser, and to charge back any false or unsubstantiated claims. The audit and charge back provisions of this Section also apply to all other incentive and reimbursement programs for a period of 18 months after the date of the transactions that are subject to audit by the franchiser. However, the manufacturer retains the right to charge back any fraudulent claim if the manufacturer establishes in a court of competent jurisdiction in this State that the claim is fraudulent.

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

(d) For the purposes of this Section, the "prevailing retail price charged by that dealer for the same parts" means the price paid by the motor vehicle franchisee for parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchiser and sold at retail. The motor vehicle franchisee may establish average percentage markup under this Section by submitting to the motor vehicle franchiser 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration, subject to audit of the submitted repair orders by the motor vehicle franchiser and adjustment of the average percentage markup based on that audit. Any audit must be conducted within 30 days following the declaration. Only retail sales not involving warranty repairs, parts covered by subsection (e) of this Section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchiser shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year.

(e) If a motor vehicle franchiser supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts

had been sold to the motor vehicle franchisee by the motor vehicle franchiser. The requirements of this subsection (e) shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchiser shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchiser for the assembly if the assembly had not been supplied by the franchiser other than by the sale of that assembly to the motor vehicle franchisee.

(f) The obligations imposed on motor vehicle franchisers by this Section shall apply to any parent, subsidiary, affiliate, or agent of the motor vehicle franchiser, any person under common ownership or control, any employee of the motor vehicle franchiser, and any person holding 1% or more of the shares of any class of securities or other ownership interest in the motor vehicle franchiser, if a warranty or service or repair plan is issued by that person instead of or in addition to one issued by the motor vehicle franchiser.

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

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

(A) Establish a uniform parts reimbursement rate. The

uniform parts reimbursement rate shall be greater than the franchiser's nationally established parts reimbursement rate in effect at the time the first such agreement becomes effective; however, any subsequent agreement shall result in a uniform reimbursement rate that is greater or equal to the rate set forth in the immediately prior agreement.

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

(C) Be available, during the period it is effective, to any motor vehicle franchisee of the same line make at any time and on the same terms.

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

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

(A) "costs" means the difference between the uniform reimbursement rate set forth in an agreement entered into pursuant to paragraph (1) of this subsection (g) and the "prevailing retail price charged by that dealer" received by those franchisees of the same line make. "Costs" do not include the following: legal fees or expenses; administrative expenses; a profit mark-up; or any other item;

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

(C) price increases imposed for the purpose of

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

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

(3.1) A franchiser subject to subdivision (g)(2) of this Section, upon request of a dealer subject to that subdivision, shall disclose to the dealer, in writing or in person if requested by the dealer, the method by which the franchiser calculated the amount of the costs to be reimbursed by the dealer. The franchiser shall also provide aggregate data showing (i) the total costs the franchiser incurred and (ii) the total number of new vehicles invoiced to each dealer that received the "prevailing retail price charged by that dealer" during the relevant period of time. In responding to a dealer's request under this subdivision (g)(3.1), a franchiser may not disclose any confidential or competitive information regarding any other dealer. Any dealer who receives information from a franchiser under this subdivision (g)(3.1) may not disclose that information to any third party unless the disclosure occurs in the course of a lawful proceeding before, or upon the

order of, the Motor Vehicle Review Board or a court of competent jurisdiction.

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

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

(6) A franchiser may not take any adverse action against a franchisee for not having executed an agreement contemplated by this subsection (g) or for receiving the "prevailing retail price charged by that dealer". Nothing in this subsection shall be construed to prevent a franchiser from making a determination of a franchisee's "prevailing retail price charged by that dealer", as provided by this Section.

(Source: P.A. 91-485, eff. 1-1-00; 92-498, eff. 12-12-01; 92-651, eff. 7-11-02.)

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