

1 AN ACT concerning business transactions.

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

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

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

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

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

14 (b) In no event shall the such compensation fail to
15 include reasonable compensation for diagnostic work, as well
16 as repair service, labor, and parts. Time allowances for the
17 diagnosis and performance of warranty work and service shall
18 be reasonable and adequate for the work to be performed. In
19 the determination of what constitutes reasonable compensation
20 under this Section, the principal factor to be given
21 consideration shall be the prevailing wage rates being paid
22 by the dealer in the relevant market area in which the motor
23 vehicle dealer is doing business, and in no event shall such
24 compensation of a motor vehicle dealer for warranty service
25 be less than the rates charged by such dealer for like
26 service to retail customers for nonwarranty service and
27 repairs. The franchiser shall reimburse the franchisee for
28 any parts provided in satisfaction of a warranty at the
29 prevailing retail price charged by that dealer for the same
30 parts when not provided in satisfaction of a warranty;
31 provided that such motor vehicle franchisee's prevailing

1 retail price is not unreasonable when compared with that of
2 the holders of motor vehicle franchises from the same motor
3 vehicle franchiser for identical merchandise in the
4 geographic area in which the motor vehicle franchisee is
5 engaged in business. All claims, either original or
6 resubmitted, made by motor vehicle dealers hereunder and
7 under Section 5 for such labor and parts shall be either
8 approved or disapproved within 30 days following their
9 submission. All approved claims shall be paid within 30 days
10 following their approval. The motor vehicle dealer who
11 submits a claim which is disapproved shall be notified in
12 writing of the disapproval within the same period, and each
13 such notice shall state the specific grounds upon which the
14 disapproval is based. The motor vehicle dealer shall be
15 permitted to correct and resubmit such disapproved claims
16 within 30 days of receipt of disapproval. Any claims not
17 specifically disapproved in writing within 30 days from their
18 submission shall be deemed approved and payment shall follow
19 within 30 days. The manufacturer or franchiser shall have
20 the right to require reasonable documentation for claims and
21 to audit such claims within a one year period from the date
22 the claim was paid or credit issued by the manufacturer or
23 franchiser, and to charge back any false or unsubstantiated
24 claims. The audit and charge back provisions of this Section
25 also apply to all other incentive and reimbursement programs
26 for a period of 18 months after the date of the transactions
27 that are subject to audit by the franchiser. However, the
28 manufacturer retains the right to charge back any fraudulent
29 claim if the manufacturer establishes in a court of competent
30 jurisdiction in this State that the claim is fraudulent.

31 (c) The motor vehicle franchiser shall not, by
32 agreement, by restrictions upon reimbursement, or otherwise,
33 restrict the nature and extent of services to be rendered or
34 parts to be provided so that such restriction prevents the

1 motor vehicle franchisee from satisfying the warranty by
2 rendering services in a good and workmanlike manner and
3 providing parts which are required in accordance with
4 generally accepted standards. Any such restriction shall
5 constitute a prohibited practice.

6 (d) For the purposes of this Section, the "prevailing
7 retail price charged by that dealer for the same parts" means
8 the price paid by the motor vehicle franchisee for parts,
9 including all shipping and other charges, multiplied by the
10 sum of 1.0 and the franchisee's average percentage markup
11 over the price paid by the motor vehicle franchisee for parts
12 purchased by the motor vehicle franchisee from the motor
13 vehicle franchiser and sold at retail. The motor vehicle
14 franchisee may establish average percentage markup under this
15 Section by submitting to the motor vehicle franchiser 100
16 sequential customer paid service repair orders or 90 days of
17 customer paid service repair orders, whichever is less,
18 covering repairs made no more than 180 days before the
19 submission, and declaring what the average percentage markup
20 is. The average percentage markup so declared shall go into
21 effect 30 days following the declaration, subject to audit of
22 the submitted repair orders by the motor vehicle franchiser
23 and adjustment of the average percentage markup based on that
24 audit. Any audit must be conducted within 30 days following
25 the declaration. Only retail sales not involving warranty
26 repairs, parts covered by subsection (e) of this Section, or
27 parts supplied for routine vehicle maintenance, shall be
28 considered in calculating average percentage markup. No
29 motor vehicle franchiser shall require a motor vehicle
30 franchisee to establish average percentage markup by a
31 methodology, or by requiring information, that is unduly
32 burdensome or time consuming to provide, including, but not
33 limited to, part by part or transaction by transaction
34 calculations. A motor vehicle franchisee shall not request a

1 change in the average percentage markup more than twice in
2 one calendar year.

3 (e) If a motor vehicle franchiser supplies a part or
4 parts for use in a repair rendered under a warranty other
5 than by sale of that part or parts to the motor vehicle
6 franchisee, the motor vehicle franchisee shall be entitled to
7 compensation equivalent to the motor vehicle franchisee's
8 average percentage markup on the part or parts, as if the
9 part or parts had been sold to the motor vehicle franchisee
10 by the motor vehicle franchiser. The requirements of this
11 subsection (e) shall not apply to entire engine assemblies
12 and entire transmission assemblies. In the case of those
13 assemblies, the motor vehicle franchiser shall reimburse the
14 motor vehicle franchisee in the amount of 30% of what the
15 motor vehicle franchisee would have paid the motor vehicle
16 franchiser for the assembly if the assembly had not been
17 supplied by the franchiser other than by the sale of that
18 assembly to the motor vehicle franchisee.

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

28 (g) (1) Any motor vehicle franchiser and at least a
29 majority of its Illinois franchisees of the same line make
30 may agree in an express written contract citing this Section
31 upon a uniform warranty reimbursement policy used by
32 contracting franchisees to perform warranty repairs. The
33 policy shall only involve either reimbursement for parts used
34 in warranty repairs or the use of a Uniform Time Standards

1 Manual, or both. Reimbursement for parts under the agreement
2 shall be used instead of the franchisees' "prevailing retail
3 price charged by that dealer for the same parts" as defined
4 in this Section to calculate compensation due from the
5 franchiser for parts used in warranty repairs. This Section
6 does not authorize a franchiser and its Illinois franchisees
7 to establish a uniform hourly labor reimbursement.

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

10 (A) Establish a uniform parts reimbursement rate.

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

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

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

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

30 (2) A franchiser that enters into an agreement with its
31 franchisees pursuant to paragraph (1) of this subsection (g)
32 may seek to recover its costs from only those franchisees
33 that are receiving their "prevailing retail price charged by
34 that dealer" under subsections (a) through (f) of this

1 Section, subject to the following requirements:

2 (A) "costs" means the difference between the
3 uniform reimbursement rate set forth in an agreement
4 entered into pursuant to paragraph (1) of this subsection
5 (g) and the "prevailing retail price charged by that
6 dealer" received by those franchisees of the same line
7 make;

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

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

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

32 (4) If a franchiser and its franchisees do not enter
33 into an agreement pursuant to paragraph (1) of this
34 subsection (g), and for any matter that is not the subject of

1 an agreement, this subsection (g) shall have no effect
2 whatsoever.

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

12 (Source: P.A. 91-485, eff. 1-1-00; 92-498, eff. 12-12-01;
13 92-651, eff. 7-11-02.)