



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3808

Introduced 2/25/2005, by Rep. David E. Miller

SYNOPSIS AS INTRODUCED:

815 ILCS 710/6

from Ch. 121 1/2, par. 756

Amends the Motor Vehicle Franchise Act. Provides that the term "costs", in provisions concerning warranty reimbursement to franchisees for making warranty repairs, does not include any other items, including, but not limited to, legal fees or expenses, administrative expenses, direct or indirect costs, or profit markup. Provides that the certification required if a franchiser contracts with its Illinois dealers to include a detailed explanation and supporting documentation of how the manufacturer calculated the price increases imposed to recover its costs. Provides that a manufacturer shall take no adverse action against any franchisee receiving its "prevailing retail rate charged by that dealer" including, but not limited to, not giving credit to franchisees for surcharges paid when conducting a warranty audit or calculating a franchisee's warranty parts expense.

LRB094 10252 RXD 40519 b

1 AN ACT concerning business.

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, or
11 wholesale branch or division shall properly fulfill any
12 warranty agreement and adequately and fairly compensate each of
13 its motor vehicle dealers for labor and parts.

14 (b) In no event shall such compensation fail to include
15 reasonable compensation for diagnostic work, as well as repair
16 service, labor, and parts. Time allowances for the diagnosis
17 and performance of warranty work and service shall be
18 reasonable and adequate for the work to be performed. In the
19 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 by
22 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 be
25 less than the rates charged by such dealer for like service to
26 retail customers for nonwarranty service and repairs. The
27 franchiser shall reimburse the franchisee for any parts
28 provided in satisfaction of a warranty at the prevailing retail
29 price charged by that dealer for the same parts when not
30 provided in satisfaction of a warranty; provided that such
31 motor vehicle franchisee's prevailing retail price is not
32 unreasonable when compared with that of the holders of motor

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

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

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

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

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

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

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

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

36 (A) Establish a uniform parts reimbursement rate. The

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

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

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

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

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

25 (A) "costs" means the difference between the uniform
26 reimbursement rate set forth in an agreement entered into
27 pursuant to paragraph (1) of this subsection (g) and the
28 "prevailing retail price charged by that dealer" received
29 by those franchisees of the same line make and shall not
30 include any other items, including, but not limited to,
31 legal fees or expenses, administrative expenses, direct or
32 indirect costs, or profit markup;

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

36 (C) price increases imposed for the purpose of

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

9 (3) If a franchiser contracts with its Illinois dealers
10 pursuant to paragraph (1) of this subsection (g), the
11 franchiser shall certify under oath to the Motor Vehicle Review
12 Board that a majority of the franchisees of that line make did
13 agree to such an agreement and file a sample copy of the
14 agreement. On an annual basis, each franchiser shall certify
15 under oath to the Motor Vehicle Review Board that the
16 reimbursement costs it recovers under paragraph (2) of this
17 subsection (g) do not exceed the amounts authorized by
18 paragraph (2) of this subsection (g). The franchiser shall
19 maintain for a period of 3 years a file that contains the
20 information upon which its certification is based. The
21 certification shall include a detailed explanation and
22 supporting documentation of how the manufacturer calculated
23 the price increases imposed to recover its costs pursuant to
24 paragraph (2) of this subsection (g), including, but not
25 limited to, the manner in which the calculation was performed,
26 the numbers relied upon in making the calculation, and the
27 results of the calculation. Each time a manufacturer adjusts
28 any previously imposed cost recovery, it shall provide the same
29 information to the Motor Vehicle Review Board as required under
30 these certification provisions.

31 The manufacturer shall take no adverse action against any
32 franchisee receiving its "prevailing retail rate charged by
33 that dealer" including, but not limited to, not giving credit
34 to franchisees for surcharges paid when conducting a warranty
35 audit or calculating a franchisee's warranty parts expense.

36 (4) If a franchiser and its franchisees do not enter into

1 an agreement pursuant to paragraph (1) of this subsection (g),
2 and for any matter that is not the subject of an agreement,
3 this subsection (g) shall have no effect whatsoever.

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

13 (Source: P.A. 91-485, eff. 1-1-00; 92-498, eff. 12-12-01;
14 92-651, eff. 7-11-02.)