

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 398

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1413S.06P

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 407.812 and 407.828, RSMo, and to enact in lieu thereof two new sections relating to the motor vehicle franchise practices act.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.812 and 407.828, RSMo, are  
2 repealed and two new sections enacted in lieu thereof, to be  
3 known as sections 407.812 and 407.828, to read as follows:

407.812. 1. Any franchisor obtaining or renewing its  
2 license after August 28, 2010, shall be bound by the  
3 provisions of the MVFP act and shall comply with it, and no  
4 franchise agreement made, entered, modified, or renewed  
5 after August 28, 2010, shall avoid the requirements of the  
6 MVFP act, or violate its provisions, and no franchise  
7 agreement shall be performed after the date the franchisor's  
8 license is issued or renewed in such a manner that the  
9 franchisor avoids or otherwise does not conform or comply  
10 with the requirements of the MVFP act. Notwithstanding the  
11 effective date of any franchise agreement, all franchisor  
12 licenses and renewals thereof are issued subject to all  
13 provisions of the MVFP act and chapter 301 and any  
14 regulations in effect upon the date of issuance, as well as

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 all future provisions of the MVFP act and chapter 301 and  
16 any regulations which may become effective during the term  
17 of the license.

18 2. The provisions of the MVFP act shall apply to each  
19 franchise that a franchisor, manufacturer, importer, or  
20 distributor has with a franchisee and all agreements between  
21 a franchisee and a common entity or any person that is  
22 controlled by a franchisor.

23 3. No dealer or manufacturer licensed in this state  
24 under sections 301.550 to 301.573 shall allow any subsidiary  
25 or related entity to engage in the business of selling motor  
26 vehicles, as defined in section 301.010, to retail consumers  
27 in this state, except as otherwise permitted by law. Any  
28 dealer or manufacturer licensed in this state shall have  
29 standing to enforce the provisions of this subsection.

30 4. No entity controlling, controlled by, or sharing a  
31 common parent entity or sibling entity with a licensed  
32 dealer or manufacturer shall engage in the business of  
33 selling motor vehicles to retail consumers in this state,  
34 except as permitted by sections 301.550 to 301.575 and the  
35 MVFP act. Any dealer or manufacturer licensed in this state  
36 shall have standing to enforce the provisions of this  
37 subsection.

38 5. No dealer or manufacturer not licensed in this  
39 state under sections 301.550 to 301.575 shall engage in the  
40 business of selling motor vehicles to retail consumers in  
41 this state, except as permitted by sections 301.550 to  
42 301.575 and the MVFP act. Any dealer or manufacturer in  
43 this state shall have standing to enforce the provisions of  
44 this subsection, provided that a franchise relationship  
45 exists between the parties.

46           6. A manufacturer, importer, or distributor may engage  
47 in the business of selling motor vehicles to retail  
48 consumers in this state from a dealership if the  
49 manufacturer, importer, or distributor owned the dealership  
50 and first applies for a license for the dealership on or  
51 before August 28, 2023, provided that the license is  
52 subsequently granted, and the ownership or controlling  
53 interest of such dealership is not transferred, sold, or  
54 conveyed to another person or entity required to be licensed  
55 under this chapter.

407.828. 1. Notwithstanding any provision in a  
2 franchise to the contrary, each franchisor shall specify in  
3 writing to each of its franchisees in this state the  
4 franchisee's obligations for preparation, delivery, and  
5 warranty service on its products. The franchisor shall  
6 fairly and reasonably compensate the franchisee for  
7 preparation, delivery, and warranty service required of the  
8 franchisee by the franchisor. The franchisor shall provide  
9 the franchisee with the schedule of compensation to be paid  
10 to the franchisee for parts, labor, and service, and the  
11 time allowance for the performance of the labor and service  
12 for the franchisee's obligations for preparation, delivery,  
13 and warranty service.

14           2. The schedule of compensation shall include  
15 reasonable compensation for diagnostic work, as well as  
16 repair service and labor for the franchisee to meet its  
17 obligations for preparation, delivery, and warranty  
18 service. The schedule shall also include reasonable and  
19 adequate time allowances for the diagnosis and performance  
20 of preparation, delivery, and warranty service to be  
21 performed in a careful and professional manner. In the  
22 determination of what constitutes reasonable compensation

23 for labor and service pursuant to this section, the  
24 principal factor to be given consideration shall be the  
25 prevailing wage rates being charged for similar labor and  
26 service by [franchisees in the market in which the  
27 franchisee is doing business, and in no event shall the  
28 compensation of a franchisee for labor and service be less  
29 than the rates charged by] the franchisee for similar labor  
30 and service to retail customers for nonwarranty labor and  
31 service[, provided that such rates are reasonable]. The  
32 primary factor in determining [a fair and] reasonable  
33 compensation for parts under this section shall be the  
34 [prevailing amount charged for similar parts by other same  
35 line-make franchisees in the market in which the franchisee  
36 is doing business and the fair and reasonable compensation  
37 for parts shall not be less than the] amount charged by the  
38 franchisee for similar parts to retail customers for  
39 nonwarranty parts[, provided that such rates are  
40 reasonable. If another same line-make franchisee is not  
41 available within the market, then the prevailing amount  
42 charged for similar parts by other franchisees in the market  
43 shall be used as the primary factor].

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

54           4. No franchisor shall require a franchisee to submit  
55 a claim authorized under this section sooner than thirty  
56 days after the franchisee completes the preparation,  
57 delivery, or warranty service authorizing the claim for  
58 preparation, delivery, or warranty service. All claims made  
59 by a franchisee under this section shall be paid within  
60 thirty days after their approval. All claims shall be  
61 either approved or disapproved by the franchisor within  
62 thirty days after their receipt on a proper form generally  
63 used by the franchisor and containing the usually required  
64 information therein. Any claims not specifically  
65 disapproved in writing within thirty days after the receipt  
66 of the form shall be considered to be approved and payment  
67 shall be made within fifteen days thereafter. A franchisee  
68 shall not be required to maintain defective parts for more  
69 than thirty days after submission of a claim.

70           5. A franchisor shall compensate the franchisee for  
71 franchisor-sponsored sales or service promotion events,  
72 including but not limited to, rebates, programs, or  
73 activities in accordance with established written guidelines  
74 for such events, programs, or activities, which guidelines  
75 shall be provided to each franchisee.

76           6. No franchisor shall require a franchisee to submit  
77 a claim authorized under subsection 5 of this section sooner  
78 than thirty days after the franchisee becomes eligible to  
79 submit the claim. All claims made by a franchisee pursuant  
80 to subsection 5 of this section for promotion events,  
81 including but not limited to rebates, programs, or  
82 activities shall be paid within ten days after their  
83 approval. All claims shall be either approved or  
84 disapproved by the franchisor within thirty days after their  
85 receipt on a proper form generally used by the franchisor

86 and containing the usually required information therein.  
87 Any claim not specifically disapproved in writing within  
88 thirty days after the receipt of this form shall be  
89 considered to be approved and payment shall be made within  
90 **[ten] fifteen** days.

91 7. In calculating the retail rate customarily charged  
92 by the franchisee for parts, service, and labor, the  
93 following work shall not be included in the calculation:

94 (1) Repairs for franchisor, manufacturer, or  
95 distributor special events, specials, or promotional  
96 discounts for retail customer repairs;

97 (2) Parts sold at wholesale;

98 (3) Engine assemblies and transmission assemblies;

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

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

104 (6) Tires; and

105 (7) Vehicle reconditioning.

106 8. If a franchisor, manufacturer, importer, or  
107 distributor furnishes a part or component to a franchisee,  
108 at no cost, to use in performing repairs under a recall,  
109 campaign service action, or warranty repair, the franchisor  
110 shall compensate the franchisee for the part or component in  
111 the same manner as warranty parts compensation under this  
112 section by compensating the franchisee at the average markup  
113 on the cost for the part or component as listed in the price  
114 schedule of the franchisor, manufacturer, importer, or  
115 distributor, less the cost for the part or component. **This**  
116 **subsection shall not apply to entire engine assemblies,**

117 **propulsion engine assemblies, including electric vehicle**  
118 **batteries, or entire transmission assemblies.**

119           9. A franchisor shall not require a franchisee to  
120 establish the retail rate customarily charged by the  
121 franchisee for parts, service, or labor by an unduly  
122 burdensome or time-consuming method or by requiring  
123 information that is unduly burdensome or time consuming to  
124 provide, including, but not limited to, part-by-part or  
125 transaction-by-transaction calculations. A franchisee shall  
126 not request a franchisor to approve a different labor rate  
127 or parts rate more than twice in one calendar year.

128           10. If a franchisee submits any claim under this  
129 section to a franchisor that is incomplete, inaccurate, or  
130 lacking any information usually required by the franchisor,  
131 then the franchisor shall promptly notify the franchisee,  
132 and the time limit to submit the claim shall be extended for  
133 a reasonable length of time, not less than five business  
134 days following notice by the franchisor to the franchisee,  
135 for the franchisee to provide the complete, accurate, or  
136 lacking information to the franchisor.

137           11. (1) A franchisor may only audit warranty, sales,  
138 or incentive claims and charge-back to the franchisee  
139 unsubstantiated claims for a period of twelve months  
140 following payment, subject to all of the provisions of this  
141 section. Furthermore, if the franchisor has good cause to  
142 believe that a franchisee has submitted fraudulent claims,  
143 then the franchisor may only audit suspected fraudulent  
144 warranty, sales, or incentive claims and charge-back to the  
145 franchisee fraudulent claims for a period of two years  
146 following payment, subject to all provisions of this section.

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

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

156 **12.** A franchisee may file a complaint with the  
157 administrative hearing commission **pursuant to section**  
158 **407.822** within **[thirty]** **sixty** days after receipt of any  
159 **[such]** written notice **[challenging such action]** **by a**  
160 **franchisor of any adverse decision on any claim for**  
161 **reimbursement submitted pursuant to this section, including,**  
162 **but not limited to, specific claims for reimbursement in**  
163 **individual warranty repair transactions, and requests for an**  
164 **increase in labor or parts rate.** If a complaint is filed  
165 within the **[thirty]** **sixty** days, then the **[charge-back,**  
166 **reimbursement, or credit]** **denial or reduction of**  
167 **reimbursement, denial of a request for an increase in labor**  
168 **or parts rate, charge-back, or other determination by a**  
169 **franchisor which is adverse to a franchisee** shall be stayed  
170 pending a hearing and determination of the matter under  
171 section 407.822. **The franchisor shall file an answer to the**  
172 **complaint within thirty days after service of the**  
173 **complaint.** If, following a hearing which shall be held  
174 **within sixty days following service of the franchisor's**  
175 **answer,** the administrative hearing commission determines  
176 that **[any portion of the charge-back, reimbursement, or**  
177 **credit is improper, then that portion of the charge-back,**  
178 **reimbursement, or credit shall be void and not allowed]** **a**



179 franchisor has violated any requirements of this section,  
180 then the denial or reduction of reimbursement, denial of a  
181 request for an increase in labor or parts rate, or charge-  
182 back shall be void and the franchisor shall, within fifteen  
183 days of the commission's order, fairly compensate the  
184 franchisee as required by the provisions of this section.  
185 Section 407.835 shall apply to proceedings pursuant to this  
186 section.

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