

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. "Costs" do not  
30 include the following: legal fees or expenses;  
31 administrative expenses; a profit mark-up; or any other  
32 item;

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.

21 (3.1) A franchiser subject to subdivision (g)(2) of this  
22 Section, upon request of a dealer subject to that subdivision,  
23 shall disclose to the dealer, in writing or in person if  
24 requested by the dealer, the method by which the franchiser  
25 calculated the amount of the costs to be reimbursed by the  
26 dealer. The franchiser shall also provide aggregate data  
27 showing (i) the total costs the franchiser incurred and (ii)  
28 the total number of new vehicles invoiced to each dealer that  
29 received the "prevailing retail price charged by that dealer"  
30 during the relevant period of time. In responding to a dealer's  
31 request under this subdivision (g)(3.1), a franchiser may not  
32 disclose any confidential or competitive information regarding  
33 any other dealer. Any dealer who receives information from a  
34 franchiser under this subdivision (g)(3.1) may not disclose  
35 that information to any third party unless the disclosure  
36 occurs in the course of a lawful proceeding before, or upon the

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

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

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

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

23 (Source: P.A. 91-485, eff. 1-1-00; 92-498, eff. 12-12-01;  
24 92-651, eff. 7-11-02.)

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