

## ENGROSSED LEGISLATIVE BILL 667

Introduced by Storer, 43.

A BILL FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to amend section 60-1438, Reissue Revised Statutes of Nebraska; to change provisions relating to compensation for diagnostic work and compensation for parts; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

**Section 1.** Section 60-1438, Reissue Revised Statutes of Nebraska, is amended to read:

60-1438 (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2)(a) The schedule of compensation shall include compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be adequate for a qualified technician to perform the work or service. A franchisor shall not unreasonably deny a written request submitted by a franchisee for modification of a franchisor's uniform time allowance for a specific warranty repair or unreasonably deny a request submitted by a franchisee for an additional time allowance for diagnostic or repair work on a

specific vehicle covered under warranty. Any such request shall include information and documentation reasonably necessary for the franchisor to assess the merits of the franchisee's request. In the determination of compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders for all recommended maintenance services shall not be used, including maintenance services relating to the following: Oil, filters, any fluids, brake pads, brake discs, brake drums, spark plugs, wiper blades, tire repair, or tire replacement.

(b)(i) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to prove that the denial was made pursuant to the Motor Vehicle Industry Regulation Act. If the board determines that the denial was not reasonable, the denial shall be

deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. When determining compensation for parts, only retail sales that do not involve warranty repairs shall be used and the rate of markup for all parts supplied on repair orders for recommended maintenance services shall not be used, including maintenance services relating to the following: Oil, filters, any fluids, brake pads, brake discs, brake drums, spark plugs, wiper blades, tire repair, or tire replacement. No manufacturer shall require a dealer 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 dealer shall not request a change in the average percentage markup more than twice in one calendar year.

(ii)(A) If a franchisor furnishes, or causes to be furnished, a part to a dealer at no cost or at a reduced cost for use in performing warranty work, the franchisor shall compensate the dealer for the dealer's cost of the part, if any, plus an amount equal to the markup on the dealer's part. Such amount shall be multiplied by the fair wholesale value of the part.

(B) For purposes of subdivision (b)(ii) of this subsection, fair wholesale value of the part means the greatest of the following:

(I) The amount the dealer paid for the part;

(II) The cost of the part, at the time the part was furnished, in a price schedule of the franchisor; and

(III) The cost of a substantially identical part, at the time the part was furnished, in a price schedule of the franchisor.

(c)(i) A manufacturer or distributor may request up to one hundred additional repair orders different from those provided under subdivision (2)(b) of this section from a dealer of the manufacturer or distributor to determine if such dealer's average percentage markup rate, retail labor rate, or both are materially different than the rates such dealer has declared with the manufacturer or distributor.

(ii) The manufacturer or distributor may adjust the subsequent rates paid

by the manufacturer or distributor to such dealer if the manufacturer or distributor determines that such dealer's rates charged to customers for nonwarranty work are less than the rates currently being paid by the manufacturer or distributor to such dealer for warranty work. The manufacturer or distributor shall have thirty days from receiving all requested additional repair orders to rebut the new vehicle dealer's labor rate, average percentage markup rate, or both.

(iii) The additional repair orders specified in subdivision (2)(c)(i) of this section shall be:

(A) From a ninety-day period selected by the manufacturer or distributor within the most recent previous twelve-month period; and

(B) Repair orders selected by the dealer.

(iv) A request for repair orders under this subdivision (c) shall not be made within twelve months after any prior request under this subdivision (c).

(d) Nothing in this section prohibits a dealer and manufacturer or distributor from reaching an agreement on a mutually acceptable retail labor rate or average percentage markup rate.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) A dealer's claim for warranty compensation may be denied only if:

(a) The dealer's claim is based on a nonwarranty repair;

(b) The dealer lacks documentation for the claim;

(c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or

(d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

(5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(6) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

(7) This section does not apply to recreational vehicles.

**Sec. 2.** Original section 60-1438, Reissue Revised Statutes of Nebraska,  
is repealed.

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**PRESIDENT OF THE LEGISLATURE**

*THIS IS TO CERTIFY that the within LB 667 was passed by the One Hundred Ninth  
Legislature of Nebraska at its First Session on the ..... day  
of ..... 20.....*

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**CLERK OF THE LEGISLATURE**

**Approved:**

..... 20....., ..... o'clock .....M.

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**GOVERNOR**