

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 667

FINAL READING

Introduced by Storer, 43.

Read first time January 22, 2025

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to the Motor Vehicle Industry Regulation Act;
- 2 to amend section 60-1438, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to compensation for diagnostic work and
- 4 compensation for parts; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 60-1438 (1) Each new motor vehicle manufacturer or distributor shall
4 specify in writing to each of its new motor vehicle dealers licensed in
5 this state the dealer's obligations for preparation, delivery, and
6 warranty service on its products. The manufacturer or distributor shall
7 compensate the new motor vehicle dealer for warranty service which such
8 manufacturer or distributor requires the dealer to provide, including
9 warranty and recall obligations related to repairing and servicing motor
10 vehicles and all parts and components included in or manufactured for
11 installation in the motor vehicles of the manufacturer or distributor.
12 The manufacturer or distributor shall provide the new motor vehicle
13 dealer with the schedule of compensation to be paid to the dealer for
14 parts, work, and service and the time allowance for the performance of
15 the work and service.

16 (2)(a) The schedule of compensation shall include ~~reasonable~~
17 compensation for diagnostic work, as well as repair service, parts, and
18 labor. Time allowances for the diagnosis and performance of warranty work
19 and service shall be adequate for a qualified technician to perform the
20 work or service. A franchisor shall not unreasonably deny a written
21 request submitted by a franchisee for modification of a franchisor's
22 uniform time allowance for a specific warranty repair or unreasonably
23 deny a request submitted by a franchisee for an additional time allowance
24 for diagnostic or repair work on a specific vehicle covered under
25 warranty. Any such request shall include information and documentation
26 reasonably necessary for the franchisor to assess the merits of the
27 franchisee's request ~~reasonable and adequate for the work to be~~
28 ~~performed.~~ In the determination of ~~what constitutes reasonable~~
29 compensation under this section, the principal factors to be given
30 consideration shall be the prevailing wage rates being paid by dealers in
31 the community in which the dealer is doing business, and in no event

1 shall the compensation of the dealer for warranty parts and labor be less
2 than the rates charged by the dealer for like parts and service to retail
3 or fleet customers ~~, as long as such rates are reasonable.~~ In determining
4 prevailing wage rates, the rate of compensation for labor for that
5 portion of repair orders for all recommended maintenance services shall
6 not be used, including maintenance services relating to the following:
7 Oil, filters, any fluids, brake pads, brake discs, brake drums, spark
8 plugs, wiper blades, tire repair, or tire replacement for routine
9 maintenance, such as tire repair or replacement and oil and fluid
10 changes, shall not be used.

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

1 subject to the enforcement procedures of the act. When determining
2 compensation for parts, only retail sales that do not involve warranty
3 repairs shall be used and the rate of markup for all parts supplied on
4 repair orders for recommended maintenance services shall not be used,
5 including maintenance services relating to the following: Oil, filters,
6 any fluids, brake pads, brake discs, brake drums, spark plugs, wiper
7 blades, tire repair, or tire replacement ~~Only retail sales not involving~~
8 ~~warranty repairs or parts supplied for routine vehicle maintenance shall~~
9 ~~be considered in calculating average percentage markup.~~ No manufacturer
10 shall require a dealer to establish average percentage markup by a
11 methodology, or by requiring information, that is unduly burdensome or
12 time consuming to provide, including, but not limited to, part-by-part or
13 transaction-by-transaction calculations. A dealer shall not request a
14 change in the average percentage markup more than twice in one calendar
15 year.

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

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

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

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

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

29 (c)(i) A manufacturer or distributor may request up to one hundred
30 additional repair orders different from those provided under subdivision
31 (2)(b) of this section from a dealer of the manufacturer or distributor

1 to determine if such dealer's average percentage markup rate, retail
2 labor rate, or both are materially different than the rates such dealer
3 has declared with the manufacturer or distributor.

4 (ii) The manufacturer or distributor may adjust the subsequent rates
5 paid by the manufacturer or distributor to such dealer if the
6 manufacturer or distributor determines that such dealer's rates charged
7 to customers for nonwarranty work are less than the rates currently being
8 paid by the manufacturer or distributor to such dealer for warranty work.
9 The manufacturer or distributor shall have thirty days from receiving all
10 requested additional repair orders to rebut the new vehicle dealer's
11 labor rate, average percentage markup rate, or both.

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

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

16 (B) Repair orders selected by the dealer.

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

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

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

24 (a) Fail to perform any warranty obligation;

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

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

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

1 if:

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

3 (b) The dealer lacks documentation for the claim;

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

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

9 (5) All claims made by a new motor vehicle dealer pursuant to this
10 section for labor and parts shall be made within six months after
11 completing the work and shall be paid within thirty days after their
12 approval. All claims shall be either approved or disapproved by the
13 manufacturer or distributor within thirty days after their receipt on a
14 proper form generally used by the manufacturer or distributor and
15 containing the usually required information therein. Any claim not
16 specifically disapproved in writing within thirty days after the receipt
17 of the form shall be considered to be approved and payment shall be made
18 within thirty days. The manufacturer has the right to audit the claims
19 for one year after payment, except that if the manufacturer has
20 reasonable cause to believe that a claim submitted by a dealer is
21 intentionally false or fraudulent, the manufacturer has the right to
22 audit the claims for four years after payment. For purposes of this
23 subsection, reasonable cause means a bona fide belief based upon evidence
24 that the issues of fact are such that a person of ordinary caution,
25 prudence, and judgment could believe that a claim was intentionally false
26 or fraudulent. As a result of an audit authorized under this subsection,
27 the manufacturer has the right to charge back to the new motor vehicle
28 dealer the amount of any previously paid claim after the new motor
29 vehicle dealer has had notice and an opportunity to participate in all
30 franchisor internal appeal processes as well as all available legal
31 processes. The requirement to approve and pay the claim within thirty

1 days after receipt of the claim does not preclude chargebacks for any
2 fraudulent claim previously paid. A manufacturer may not deny a claim
3 based solely on a dealer's incidental failure to comply with a specific
4 claim processing requirement, such as a clerical error that does not put
5 into question the legitimacy of the claim. If a claim is rejected for a
6 clerical error, the dealer may resubmit a corrected claim in a timely
7 manner.

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

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

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