

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 75

H.P. 83

House of Representatives, January 16, 2003

An Act to Amend the Motor Vehicle Franchise Laws

Reference to the Committee on Business and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative RINES of Wiscasset.

Cosponsored by Representatives: BERRY of Belmont, GERZOFKY of Brunswick, PERRY of Bangor, RICHARDSON of Brunswick, Senator: HALL of Lincoln.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 10 MRSA §1176**, as amended by PL 1997, c. 521, §25, is repealed and the following enacted in its place:

6 **§1176. Warranty**

8 **1. Warranty reimbursement.** If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations, in the case of motor vehicles over 10,000 pounds gross vehicle weight rating, shall adequately and fairly compensate the franchisee for parts provided and, in the case of all other motor vehicles, shall reimburse the franchisee for parts provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty. Further, the franchisor shall reimburse the franchisee for labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty as long as the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the motor vehicle dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. A claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 30 days of its approval. All the claims must be either approved or disapproved within 30 days of their receipt. When a claim is disapproved, the franchisee that submitted it must be notified in writing of its disapproval within that period, together with the specific reasons for its disapproval. A franchisor may not, by agreement, by restriction upon reimbursement or otherwise, restrict the nature or extent of labor performed or parts provided so that the restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards.

44 **2. Legal actions.** If a claim is disapproved by the manufacturer and the motor vehicle dealer brings legal action to collect the disapproved claim and is successful in the action, the court shall award the motor vehicle dealer the cost of the action together with reasonable attorney's fees. Reasonable attorney's fees are determined by the value of the time

2 reasonably expended by the attorney and not by the amount of the
3 recovery on behalf of the dealer.

4 3. Service facility ownership by franchisor prohibited. It
5 is unlawful for a franchisor, manufacturer, factory branch,
6 distributor branch or subsidiary to own, operate or control,
7 either directly or indirectly, a motor vehicle warranty or
8 service facility located in the State except on an emergency or
9 interim basis or when no qualified applicant has applied for
10 appointment as a motor vehicle dealer in a market previously
11 served by a new motor vehicle dealer of that manufacturer,
12 factory branch, distributor branch or subsidiary's line make.

14 4. Express written contracts permitted. An express written
15 contract is permitted between a franchisor and a majority of its
16 franchisees for performing warranty repairs.

18 A. Notwithstanding subsection 1, any motor vehicle
19 franchisor and at least a majority of its state franchisees
20 of the same line make may agree in an express written
21 contract citing this subsection upon a uniform warranty
22 reimbursement policy used by contracting franchisees to
23 perform warranty repairs. The policy must involve
24 reimbursement for parts used in warranty repairs or the use
25 of a Uniform Time Standards Manual or both. Reimbursement
26 for parts under the agreement is used instead of the
27 franchisees' retail rate customarily charged by that
28 franchisee as defined under subsection 1 to calculate
29 compensation due from the franchisor for parts used in
30 warranty repairs. This paragraph does not authorize a
31 franchisor and its state franchisees to establish a uniform
32 hourly labor reimbursement.

34 Each franchisor may only have one agreement for each line
35 make of a franchisee. The agreement must:

36
37 (1) Establish a uniform parts reimbursement rate. The
38 uniform parts reimbursement rate must be greater than
39 the franchisor's nationally established parts
40 reimbursement rate in effect at the time the first
41 agreement becomes effective. A subsequent agreement
42 must result in a uniform reimbursement rate that is
43 greater or equal to the rate set forth in the
44 immediately prior agreement;

45 (2) Apply to all warranty repair orders written during
46 the period that the agreement is effective;
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2 (3) Be available, during the period it is effective,
3 to a franchisee of the same line make at any time and
4 on the same terms; and

5 (4) Be for a term not to exceed 3 years as long as a
6 party to the agreement may terminate the agreement upon
7 the anniversary of the agreement and with 30 days'
8 prior written notice. The agreement remains in effect
9 for the term of the agreement regardless of the number
10 of motor vehicle dealers of the same line make that may
11 terminate the agreement.

12 B. A franchisor that enters into an agreement with its
13 franchisees pursuant to paragraph A may seek to recover its
14 costs from only those franchisees that are receiving their
15 retail rate customarily charged by those franchisees under
16 subsection 1 subject to the following requirements:

17 (1) The costs of the franchisor may be recovered only
18 by increasing the invoice price on new vehicles
19 received by those franchisees. For purposes of this
20 paragraph, "costs" means the difference between the
21 uniform reimbursement rate set forth in an agreement
22 entered into pursuant to paragraph A and the retail
23 rate customarily charged by that franchisee received by
24 those franchisees of the same line make; and

25 (2) Invoice price increases imposed for the purpose of
26 recovering costs may vary from time to time and from
27 model to model but must apply uniformly to all
28 franchisees of the same line make in the State that
29 have requested reimbursement for warranty repairs at
30 their retail rate customarily charged by that
31 franchisee, except that a franchisor may make an
32 exception for vehicles that are titled in the name of
33 the consumer in another state.

34 C. If a franchisor contracts with its state motor vehicle
35 dealers pursuant to this subsection, the franchisor shall
36 certify under oath to the Secretary of State that a majority
37 of the franchisees of that line make did agree to such an
38 agreement and file a sample copy of the agreement. On an
39 annual basis, each franchisor shall certify under oath to
40 the Secretary of State that the reimbursement costs it
41 recovers under paragraph B do not exceed the amounts
42 authorized by paragraph B. The franchisor shall maintain
43 for a period of 3 years a file that contains the information
44 upon which its certification is based.

2 D. If a franchisor and its franchisees do not enter into an
3 agreement pursuant to paragraph A or if any matter arises
4 that is not the subject of an agreement, this subsection has
5 no effect.

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

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SUMMARY

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19 The bill permits a motor vehicle franchisor and a dealer to
20 enter into an agreement for the reimbursement of warranty repairs
21 if a majority of a motor vehicle franchisor's state dealers
22 agree. Motor vehicle franchisors will certify to the Secretary
23 of State that a majority of their dealers participate under the
24 agreement and that costs recovered are only those permitted by
 the agreement.