

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2198

AN ACT

To repeal sections 407.810, 407.815, 407.817, 407.822, 407.825, 407.828, and 407.835, RSMo, and to enact in lieu thereof thirteen new sections relating to motor vehicle franchise practices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 407.810, 407.815, 407.817, 407.822,
2 407.825, 407.828, and 407.835, RSMo, are repealed and thirteen
3 new sections enacted in lieu thereof, to be known as sections
4 407.810, 407.811, 407.812, 407.815, 407.817, 407.818, 407.819,
5 407.822, 407.825, 407.828, 407.831, 407.833, and 407.835, to read
6 as follows:

7 407.810. Sections 407.810 to 407.835 shall be known and may
8 be cited as the "Motor Vehicle Franchise Practices Act" or the
9 "MVFP Act".

10 407.811. It is declared to be the public policy of the
11 state to provide for fair and impartial regulation of those
12 persons engaged in the manufacturing, distributing, importing, or
13 selling of motor vehicles. The provisions of the MVFP act shall

1 be administered in such a manner that will promote fair dealing
2 and honesty in the motor vehicle industry and among those engaged
3 therein without unfair or unreasonable discrimination or undue
4 preference or advantage. It is further declared to be the policy
5 of the state to protect the public interest in the purchase and
6 trade of motor vehicles so as to ensure protection against
7 irresponsible vendors and dishonest or fraudulent sales practices
8 and to assist, provide, and secure a stable, efficient,
9 enforceable, and verifiable method for the distribution of motor
10 vehicles to consumers in the state.

11 407.812. 1. Any franchisor obtaining or renewing its
12 license after August 28, 2010, shall be bound by the provisions
13 of the MVFP act and shall comply with it, and no franchise
14 agreement made, entered, modified, or renewed after August 28,
15 2010, shall avoid the requirements of the MVFP act, or violate
16 its provisions, and no franchise agreement shall be performed
17 after the date the franchisor's license is issued or renewed in
18 such a manner that the franchisor avoids or otherwise does not
19 conform or comply with the requirements of the MVFP act.

20 Notwithstanding the effective date of any franchise agreement,
21 all franchisor licenses and renewals thereof are issued subject
22 to all provisions of the MVFP act and chapter 301 and any
23 regulations in effect upon the date of issuance, as well as all
24 future provisions of the MVFP act and chapter 301 and any
25 regulations which may become effective during the term of the
26 license.

27 2. The provisions of the MVFP act shall apply to each
28 franchise that a franchisor, manufacturer, importer, or

1 distributor has with a franchisee and all agreements between a
2 franchisee and a common entity or any person that is controlled
3 by a franchisor.

4 407.815. As used in sections 407.810 to 407.835, unless the
5 context otherwise requires, the following terms mean:

6 (1) "Administrative hearing commission", the body
7 established in chapter 621, RSMo, to conduct administrative
8 hearings;

9 (2) "All-terrain vehicle", any motorized vehicle
10 manufactured and used exclusively for off-highway use which is
11 fifty inches or less in width, with an unladen dry weight of six
12 hundred pounds or less, traveling on three, four or more low
13 pressure tires, with a seat designed to be straddled by the
14 operator, and handlebars for steering control;

15 (3) "Coerce", to [force a person to act in a given manner
16 or to compel by pressure or threat] compel or attempt to compel a
17 person to act in a given manner by pressure, intimidation, or
18 threat of harm, damage, or breach of contract, but shall not [be
19 construed to] include the following:

20 (a) Good faith recommendations, exposition, argument,
21 persuasion or attempts at persuasion without unreasonable
22 conditions;

23 (b) Notice given in good faith to any franchisee of such
24 franchisee's violation of terms or provisions of such franchise
25 or contractual agreement; or

26 (c) [Any other conduct set forth in section 407.830 as a
27 defense to an action brought pursuant to sections 407.810 to
28 407.835; or

1 (d)] Any [other] conduct set forth in sections 407.810 to
2 407.835 that is permitted of the franchisor [or is expressly
3 excluded from coercion or a violation of sections 407.810 to
4 407.835];

5 (4) "Common entity", a person:

6 (a) Who is either controlled or owned, beneficially or of
7 record, by one or more persons who also control or own more than
8 forty percent of the voting equity interest of a franchisor; or

9 (b) Who shares directors or officers or partners with a
10 franchisor;

11 (5) "Control", to possess, directly or indirectly, the
12 power to direct or cause the direction of the management or
13 policies of a person, whether through the ownership of voting
14 securities, by contract, or otherwise; except that "control" does
15 not include the relationship between a franchisor and a
16 franchisee under a franchise agreement;

17 (6) "Dealer-operator", the individual who works at the
18 established place of business of a dealer and who is responsible
19 for and in charge of day-to-day operations of that place of
20 business;

21 (7) "Distributor", a person, resident or nonresident, who,
22 in whole or in part, sells or distributes new motor vehicles to
23 motor vehicle dealers in this state;

24 (8) "Franchise" or "franchise agreement", a written
25 arrangement or contract for a definite or indefinite period, in
26 which a person grants to another person a license to use, or the
27 right to grant to others a license to use, a trade name,
28 trademark, service mark, or related characteristics, in which

1 there is a community of interest in the marketing of goods or
2 services, or both, at wholesale or retail, by agreement, lease or
3 otherwise, and in which the operation of the franchisee's
4 business with respect to such franchise is substantially reliant
5 on the franchisor for the continued supply of franchised new
6 motor vehicles, parts and accessories for sale at wholesale or
7 retail. The franchise includes all portions of all agreements
8 between a franchisor and a franchisee, including but not limited
9 to, a contract, new motor vehicle franchise, sales and service
10 agreement, or dealer agreement, regardless of the terminology
11 used to describe the agreement or relationship between the
12 franchisor and franchisee, and also includes all provisions,
13 schedules, attachments, exhibits and agreements incorporated by
14 reference therein;

15 [(5)] (9) "Franchisee", a person to whom a franchise is
16 granted;

17 [(6)] (10) "Franchisor", a person who grants a franchise to
18 another person;

19 (11) "Good faith", the duty of each party to any franchise
20 and all officers, employees, or agents thereof, to act in a fair
21 and equitable manner toward each other so as to guarantee the one
22 party freedom from coercion, intimidation, or threat of coercion
23 or intimidation from the other party;

24 (12) "Importer", a person who has written authorization
25 from a foreign manufacturer of a line-make of motor vehicles to
26 grant a franchise to a motor vehicle dealer in this state with
27 respect to that line-make;

28 (13) "Line-make", a collection of models, series, or groups

1 of motor vehicles manufactured by or for a particular
2 manufacturer, distributor or importer offered for sale, lease or
3 distribution pursuant to a common brand name or mark; provided,
4 however:

5 (a) Multiple brand names or marks may constitute a single
6 line-make, but only when included in a common dealer agreement
7 and the manufacturer, distributor or importer offers such
8 vehicles bearing the multiple names or marks together only, and
9 not separately, to its authorized dealers; and

10 (b) Motor vehicles bearing a common brand name or mark may
11 constitute separate line-makes when pertaining to motor vehicles
12 subject to separate dealer agreements or when such vehicles are
13 intended for different types of use;

14 (14) "Manufacturer", any person, whether a resident or
15 nonresident of this state, who manufactures or assembles motor
16 vehicles or who manufactures or installs on previously assembled
17 truck chassis special bodies or equipment which, when installed,
18 form an integral part of the motor vehicle and which constitute a
19 major manufacturing alteration. The term "manufacturer" includes
20 a central or principal sales corporation or other entity, other
21 than a franchisee, through which, by contractual agreement or
22 otherwise, it distributes its products;

23 [(7)] (15) "Motor vehicle", for the purposes of sections
24 407.810 to 407.835, any motor-driven vehicle required to be
25 registered pursuant to the provisions of chapter 301, RSMo,
26 except that, motorcycles and all-terrain vehicles as defined in
27 section 301.010, RSMo, shall not be included. The term "motor
28 vehicle" shall also include any engine, transmission, or rear

1 axle, regardless of whether attached to a vehicle chassis, that
2 is manufactured for the installation in any motor-driven vehicle
3 with a gross vehicle weight rating of more than sixteen thousand
4 pounds that is registered for the operations on the highways of
5 this state under chapter 301, RSMo;

6 [(8)] (16) "New", when referring to motor vehicles or
7 parts, means those motor vehicles or parts which have not been
8 held except as inventory, as that term is defined in subdivision
9 (4) of section 400.9-109, RSMo;

10 [(9)] (17) "Person", a natural person, sole proprietor,
11 partnership, corporation, or any other form of business entity or
12 organization;

13 (18) "Principal investor", the owner of the majority
14 interest of any franchisee;

15 (19) "Reasonable", shall be based on the circumstances of a
16 franchisee in the market served by the franchisee;

17 (20) "Require", to impose upon a franchisee a provision not
18 required by law or previously agreed to by a franchisee in a
19 franchise agreement;

20 (21) "Successor manufacturer", any manufacturer that
21 succeeds, or assumes any part of the business of, another
22 manufacturer, referred to as the "predecessor manufacturer", as
23 the result of:

24 (a) A change in ownership, operation, or control of the
25 predecessor manufacturer by sale or transfer of assets, corporate
26 stock, or other equity interest, assignment, merger,
27 consolidation, combination, joint venture, redemption, court-
28 approved sale, operation of law, or otherwise;

1 (b) The termination, suspension or cessation of a part or
2 all of the business operations of the predecessor manufacturer;

3 (c) The noncontinuation of the sale of the product line; or

4 (d) A change in distribution system by the predecessor
5 manufacturer, whether through a change in distributor or the
6 predecessor manufacturer's decision to cease conducting business
7 through a distributor altogether.

8 407.817. 1. Notwithstanding any provision of a franchise
9 to the contrary, for purposes of [this section] the MVFP act,
10 "relevant market area" means:

11 (1) For a proposed new motor vehicle dealer or a new motor
12 vehicle dealer who plans to locate or relocate his or her place
13 of business in a county having a population which is greater than
14 one hundred thousand, the area within a radius of [six] eight
15 miles of the intended site of the proposed or relocated dealer.
16 The [six-mile] eight-mile distance shall be determined by
17 measuring the distance between the nearest surveyed boundary of
18 the existing new motor vehicle dealer's principal place of
19 business and the nearest surveyed boundary line of the proposed
20 or relocated new motor vehicle dealer's principal place of
21 business; or

22 (2) For a proposed new motor vehicle dealer or a new motor
23 vehicle dealer who plans to locate or relocate his or her place
24 of business in a county having a population which is not greater
25 than one hundred thousand, the area within a radius of [ten]
26 fifteen miles of the intended site of the proposed or relocated
27 dealer[, or the county line, whichever is closer to the intended
28 site]. The [ten-mile] fifteen-mile distance shall be determined

1 by measuring the distance between the nearest surveyed boundary
2 line of the existing new motor vehicle dealer's principal place
3 of business and the nearest surveyed boundary line of the
4 proposed or relocated new motor vehicle dealer's principal place
5 of business.

6 2. As used in this section, "relocate" and "relocation"
7 shall not include the relocation of a new motor vehicle dealer
8 within two miles of its established place of business.

9 3. Before a franchisor enters into a franchise establishing
10 an additional franchise, reopening a previously existing
11 franchise, or relocating [a new motor vehicle dealer] an existing
12 franchise within a relevant market area where the same line-make
13 is represented, the franchisor shall give written notice to each
14 [new motor vehicle dealer] franchisee of the same line-make in
15 the relevant market area of its intention to establish an
16 additional [dealer] franchise, reopen a previously existing
17 franchise, or [to] relocate an existing [dealer] franchise within
18 that relevant market area. Such notice shall state:

19 (1) The specific location at which the additional,
20 reopened, or relocated franchise will be established; and

21 (2) The date on or after which the franchisor intends to be
22 engaged in business with the additional, reopened, or relocated
23 franchise at the proposed location.

24 4. Within thirty days after receiving the notice provided
25 for in subsection 3 of this section, or within thirty days after
26 the end of any appeal procedure provided by the franchisor, a
27 [new motor vehicle dealer] franchisee to whom notice was required
28 in subsection 3 of this section may bring an action pursuant to

1 section 407.822 to determine whether good cause exists for [the]
2 establishing an additional franchise, reopening a previously
3 existing franchise, or relocating [of a proposed new motor
4 vehicle dealer] an existing franchise.

5 5. This section shall not apply to the reopening or
6 replacement in a relevant market area of a closed [dealership]
7 franchise that has been closed within the preceding year, if the
8 established place of business of the reopened or replacement
9 [dealer] franchise is within two miles of the established place
10 of business of the closed [dealership] franchise and only if the
11 reopened or replaced franchise is offered to the franchisee who
12 had previously operated the closed franchise within the preceding
13 year if that franchise had not been terminated under the
14 provisions of the MVFP act or had not voluntarily closed the
15 franchise.

16 6. In determining whether good cause exists for
17 establishing an additional franchise, reopening a previously
18 existing franchise, or relocating [an additional new motor
19 vehicle dealer] a franchise for the same line-make, the [court]
20 administrative hearing commission shall take into consideration
21 [the existing] all relevant circumstances, including, but not
22 limited to, the following:

23 (1) The size and permanency of the investment and
24 obligations incurred by the existing franchisees of the same
25 line-make in the relevant market area; and any damage that such
26 existing franchisees may suffer from the establishment,
27 reopening, or relocation of a franchise into the relevant market
28 area;

1 (2) The effect on the retail motor vehicle business and the
2 consuming public in the relevant market area;

3 (3) Whether it is injurious or beneficial to the public
4 welfare;

5 (4) Whether the [new motor vehicle dealers] existing
6 franchisees of the same line-make in that relevant market area
7 are providing adequate competition and convenient consumer care
8 for the motor vehicles of that line-make in the relevant market
9 area, including the adequacy of motor vehicle sales and qualified
10 service personnel;

11 (5) Whether the establishment, reopening, or relocation of
12 [the new motor vehicle dealer] a franchise would promote
13 competition; and whether the benefits to the public and the
14 franchisor from any such increased competition outweigh the harm
15 to the existing franchisees in the relevant market area;

16 (6) Growth or decline of the population and the number of
17 new motor vehicle registrations in the relevant market area; and

18 (7) The effect on the reopening or relocating [dealer]
19 franchisee of a denial of its relocation into the relevant market
20 area.

21 7. The remedies and relief available pursuant to this
22 section [407.835 shall apply to this section] are not exclusive
23 and are in addition to those provided in section 407.835 or
24 otherwise permitted by law or equity.

25 407.818. No franchisor shall engage in business in this
26 state without a license therefor as provided in sections 301.550
27 to 301.573. No motor vehicle, foreign or domestic, may be sold,
28 leased, or offered for sale or lease in this state unless the

1 franchisor, which issues a franchise to a franchisee in this
2 state, is licensed under sections 301.550 to 301.573. No
3 franchisor shall modify the area of responsibility to avoid the
4 requirements of section 407.817 or 407.833, or any other section
5 of the MVFP act. Each franchisor shall renew its license
6 annually by the date specified by the department of revenue.

7 407.819. 1. Notwithstanding any provision in a franchise
8 to the contrary, no successor manufacturer shall, for a period of
9 two years from the date of acquisition of control by that
10 successor manufacturer of a line-make from a predecessor
11 manufacturer, offer a franchise to any person for a line-make of
12 a predecessor manufacturer in any portion of the relevant market
13 area in which the predecessor manufacturer previously cancelled,
14 terminated, noncontinued, failed to renew, or otherwise ended a
15 franchise agreement with a franchisee who had a franchise
16 facility in that relevant market area without first offering the
17 franchise to the former franchisee at no cost, unless:

18 (1) Within sixty days of the former franchisee's
19 cancellation, termination, noncontinuance, or nonrenewal, the
20 predecessor manufacturer had consolidated the line-make with
21 another of its line-makes for which the predecessor manufacturer
22 had a franchisee with a then-existing franchise facility in that
23 relevant market area;

24 (2) The successor manufacturer has paid the former
25 franchisee the fair market value of the former franchisee's motor
26 vehicle dealership in accordance with this section;

27 (3) The predecessor manufacturer successfully terminated
28 the former franchisee under subdivision (5) of section 407.825.

1 2. For purposes of this section, the fair market value of a
2 former franchisee's motor vehicle dealership shall be calculated
3 as of the date of the following that yields the highest fair
4 market value: the date the predecessor manufacturer announced
5 the action that resulted in the cancellation, termination,
6 noncontinuance, or nonrenewal; the date the action that resulted
7 in cancellation, termination, noncontinuance, or nonrenewal
8 became final; or the date twelve months prior to the date that
9 the predecessor manufacturer announced the action that resulted
10 in the cancellation, termination, noncontinuance, or nonrenewal.

11 407.822. 1. Any party seeking relief pursuant to the
12 provisions of sections 407.810 to 407.835 may file [an
13 application for a hearing] a complaint with the administrative
14 hearing commission within the time periods specified in this
15 section. The [application for a hearing] complaint shall comply
16 with the requirements for a request for agency action set forth
17 in chapter 536, RSMo. Simultaneously, with the filing of the
18 [application for a hearing] complaint with the administrative
19 hearing commission, the [applicant] petitioner shall send by
20 certified mail, return receipt requested, a copy of the
21 [application] complaint to the party or parties against whom
22 relief is sought. Upon receiving a timely [application for a
23 hearing] complaint, the administrative hearing commission shall
24 enter an order fixing a date, time and place for a hearing on the
25 record. The administrative hearing commission shall send by
26 certified mail, return receipt requested, a copy of the order to
27 the party seeking relief and a copy of the order and complaint to
28 the party or parties against whom relief is sought. The order

1 shall also state that the party against whom relief is sought
2 shall not proceed with the initiation of its activity or
3 activities until the administrative hearing commission issues its
4 final decision or order, and the party against whom relief is
5 sought shall, within thirty days of such order, file an answer or
6 other responsive pleading directed to each claim for relief set
7 forth in the [application for hearing] complaint. Failure to
8 answer or otherwise respond within such time frame may be deemed
9 by the administrative hearing commission as an admission of the
10 grounds for relief set forth in the [application for hearing]
11 complaint.

12 2. Unless otherwise expressly provided in sections 407.810
13 to 407.835, the provisions of chapter 536, RSMo, shall govern
14 hearings and prehearing procedures conducted pursuant to the
15 authority of this section. Any party may obtain discovery in the
16 same manner, and under the same conditions and requirements, as
17 is or may hereafter be provided for with respect to discovery in
18 civil actions by rule of the supreme court of Missouri for use in
19 the circuit courts, and the administrative hearing commission may
20 enforce discovery by the same methods as provided by supreme
21 court rule for use in civil cases. The administrative hearing
22 commission shall issue a final decision or order, in proceedings
23 arising pursuant to the provisions of sections 407.810 to
24 407.835, within ninety days from the conclusion of the hearing.
25 In any proceeding initiated pursuant to sections 407.810 to
26 407.835 involving a matter requiring a franchisor to show good
27 cause for any intended action being protested by a franchisee,
28 the franchisor shall refrain from taking the protested action if,

1 after a hearing on the matter before the administrative hearing
2 commission, the administrative hearing commission determines that
3 good cause does not exist for the franchisor to take such action.
4 The franchisee may, if necessary, seek enforcement of the
5 decision of the administrative hearing commission pursuant to the
6 provisions of section 407.835. Venue for such proceedings shall
7 be in the circuit court of Cole County, Missouri, or in the
8 circuit court of the county in which the franchisee resides or
9 operates the franchise business. In determining any relief
10 necessary for enforcement of the decision of the administrative
11 hearing commission, the court shall defer to the commission's
12 factual findings, and review shall be limited to a determination
13 of whether the commission's decision was authorized by law and
14 whether the commission abused its discretion. Any final
15 decisions of the administrative hearing commission shall be
16 subject to review pursuant to a petition for review to be filed
17 in the court of appeals in the district in which the hearing, or
18 any part of the hearing, is held and by delivery of copies of the
19 petition to each party of record, within thirty days after the
20 mailing or delivery of the final decision and notice of the final
21 decision in such a case. Appeal of the administrative hearing
22 commission's decision pursuant to this section shall not preclude
23 any action authorized by section 407.835, brought in a court of
24 competent jurisdiction, requesting an award of legal or equitable
25 relief, provided that if such an action is brought solely for the
26 purpose of enforcing a decision of the administrative hearing
27 commission which is on appeal pursuant to this subsection, the
28 court in which such action is pending may hold in abeyance its

1 judgment pending issuance of a decision by the court of appeals.
2 Review pursuant to this section shall be exclusive and decisions
3 of the administrative hearing commission reviewable pursuant to
4 this section shall not be reviewable in any other proceeding, and
5 no other official or court shall have power to review any such
6 decision by an action in the nature of mandamus or otherwise,
7 except pursuant to the provisions of this section. The party
8 seeking review shall be responsible for the filing of the
9 transcript and record of all proceedings before the
10 administrative hearing commission with the appropriate court of
11 appeals.

12 3. Any franchisee receiving a notice from a franchisor
13 pursuant to the provisions of sections 407.810 to 407.835, or any
14 franchisee adversely affected by a franchisor's acts or proposed
15 acts described in the provisions of sections 407.810 to 407.835,
16 shall be entitled to file [an application for a hearing] a
17 complaint before the administrative hearing commission for a
18 determination as to whether the franchisor has good cause for its
19 acts or proposed acts.

20 4. Not less than sixty days before the effective date of
21 the initiation of any enumerated act pursuant to subdivisions
22 (5), (6), (7) and (14) of [subsection 1 of] section 407.825, a
23 franchisor shall give written notice to the affected franchisee
24 or franchisees, by certified mail, return receipt requested,
25 except as follows:

26 (1) Upon the initiation of an act pursuant to subdivision
27 (5) of [subsection 1 of] section 407.825, such notice shall be
28 given not less than fifteen days before the effective date of

1 such act only if the grounds for the notice include the
2 following:

3 (a) Transfer of any ownership or interest in the franchised
4 dealership without the consent of the motor vehicle franchisor;

5 (b) Material misrepresentation by the motor vehicle
6 franchisee in applying for the franchise that substantially and
7 adversely affects the franchisor;

8 (c) Insolvency of the motor vehicle franchisee or the
9 filing of any petition by or against the motor vehicle franchisee
10 under any bankruptcy or receivership law that is not vacated
11 within twenty days from the institution thereof;

12 (d) Any unfair business practice by the motor vehicle
13 franchisee after the motor vehicle franchisor has issued a
14 written thirty-day warning to the motor vehicle franchisee to
15 desist from such practice and the franchisee has failed to desist
16 from the practice after having received the written thirty-day
17 warning;

18 (e) Conviction of the motor vehicle franchisee of a crime
19 which is a felony;

20 (f) Failure of the motor vehicle franchisee to conduct
21 customary sales and service operations during customary business
22 hours for at least seven consecutive business days unless such
23 closing is due to an act of God, strike or labor difficulty or
24 other cause over which the motor vehicle franchisee has no
25 control; or

26 (g) Revocation of the motor vehicle franchisee's license;

27 (2) Upon initiation of an act pursuant to subdivision (7)
28 of [subsection 1 of] section 407.825, such notice shall be given

1 within sixty days of the franchisor's receipt of a written
2 proposal to consummate such sale or transfer and the receipt of
3 all necessary information and documents generally used by the
4 franchisor to conduct its review. The franchisor shall
5 acknowledge in writing to the applicant the receipt of the
6 information and documents and if the franchisor requires
7 additional information or documents to complete its review, the
8 franchisor shall notify the applicant within fifteen days of the
9 receipt of the information and documents. If the franchisor
10 fails to request additional information and documents from the
11 applicant within fifteen days after receipt of the initial forms,
12 the sixty-day time period for approval shall be deemed to run
13 from the initial receipt date. Otherwise, the sixty-day time
14 period for approval shall run from receipt of the supplemental
15 requested information. In no event shall the total time period
16 for approval exceed ~~[seventy-five]~~ ninety days from the date of
17 the receipt of ~~[all necessary information and documents generally
18 used by the franchisor to conduct its review]~~ the written
19 proposal. The franchisor's notice of disapproval shall also
20 specify the reasonable standard which the franchisor contends is
21 not satisfied and the reason the franchisor contends such
22 standard is not satisfied. Failure on the part of the franchisor
23 to provide such notice shall be conclusively deemed an approval
24 by the franchisor of the proposed sale or transfer to the
25 proposed transferee. A franchisee's application for a hearing
26 shall be filed with the administrative hearing commission within
27 twenty days from receipt of such franchisor's notice;

28 (3) Pursuant to paragraphs (a) and (b) of subdivision (14)

1 of [subsection 1 of] section 407.825, such notice shall be given
2 within sixty days of the franchisor's receipt of a deceased or
3 incapacitated franchisee's designated family member's intention
4 to succeed to the franchise or franchises or of the franchisor's
5 receipt of the personal and financial data of the designated
6 family member, whichever is later.

7 5. A franchisor's notice to a franchisee or franchisees
8 pursuant to subdivisions (5), (6), (7) and (14) of [subsection 1
9 of] section 407.825 shall contain a statement of the particular
10 grounds supporting the intended action or activity which shall
11 include any reasonable standards which were not satisfied. The
12 notice [shall also contain at a minimum] is not effective unless
13 it also contains, on the first page thereof, a conspicuous
14 statement which reads as follows: "NOTICE TO FRANCHISEE: YOU
15 MAY BE ENTITLED TO FILE A PROTEST WITH THE MISSOURI
16 ADMINISTRATIVE HEARING COMMISSION IN JEFFERSON CITY, MISSOURI,
17 AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE CONTENTS OF THIS
18 NOTICE. ANY ACTION MUST BE FILED WITHIN [TWENTY] THIRTY DAYS
19 FROM RECEIPT OF THIS NOTICE. YOU ALSO HAVE THE RIGHT TO DEMAND
20 NONBINDING MEDIATION. YOUR DEMAND FOR MEDIATION MAY BE MAILED TO
21 THE ADDRESS SHOWN ON THIS NOTICE. FOR FURTHER INFORMATION,
22 CONTACT YOUR ATTORNEY AND REFER TO SECTIONS 407.810 TO 407.835,
23 RSMO.".

24 6. When more than one [application for a hearing] complaint
25 is filed with the administrative hearing commission, the
26 administrative hearing commission may consolidate the
27 applications into one proceeding to expedite the disposition of
28 all relevant issues.

1 7. Unless otherwise specifically required by another
2 provision of the MVFP act, in all proceedings [before the
3 administrative hearing commission] pursuant to [this section,
4 section 407.825 and section 621.053, RSMo, where the franchisor
5 is required to give notice pursuant to subsection 4 of this
6 section] sections 407.810 to 407.835, the franchisor shall have
7 the burden of proving by a preponderance of the evidence that it
8 has acted in good faith, that all required notices were given,
9 and that good cause exists for its actions. [In all other
10 actions, the franchisee shall have the burden of proof.]

11 8. If a franchisee prevails in an action against a
12 franchisor under any provision of sections 407.810 to 407.835,
13 then the franchisee shall also have a cause of action against the
14 franchisor for damages and reasonable expenses of litigation,
15 including, but not limited to, depositions, transcripts, expert
16 witnesses, and attorney fees.

17 9. A franchisee may mail a demand for mediation to its
18 franchisor at any time after it receives any notice from a
19 franchisor as required by any provision of the MVFP act. In
20 addition, prior to, contemporaneous with, or after the filing of
21 a complaint with the administrative hearing commission, a
22 franchisee may mail a demand for mediation to its franchisor for
23 any violation by the franchisor of any provision of the MVFP act.
24 The mailing of the demand for mediation is effective when mailed
25 to the address shown on the notice from the franchisor, the
26 address shown on the franchise agreement, the address of the
27 franchisor shown on its license with the department of revenue,
28 the address of the franchisor's registered agent in this state,

1 or the address of its attorney in a proceeding pending at the
2 administrative hearing commission concerning the subject of the
3 demand for mediation. The demand for mediation shall contain a
4 short statement of the dispute and the relief sought by the
5 franchisee; however, the contents of the demand are not
6 jurisdictional.

7 10. The mailing of a demand for mediation stays any time
8 period for the franchisee to initiate any action under the MVFP
9 act that is the subject of the dispute described in the demand
10 for mediation. If the parties fail to resolve the matter in
11 dispute after meeting with the mediator, then the time period for
12 filing any action with the administrative hearing commission
13 shall start on the first business day after the date of the last
14 date of any meeting with the mediator.

15 11. If a proceeding is pending before the administrative
16 hearing commission concerning the subject of the demand for
17 mediation, the franchisee shall also file a copy of the demand
18 for mediation with the administrative hearing commission. The
19 filing of a copy of the demand for mediation with the
20 administrative hearing commission shall stay any further action
21 by the administrative hearing commission, other than the issuance
22 of the order required of the administrative hearing commission
23 under subsection 1 of this section informing the franchisor that
24 it shall not proceed with the initiation of its activity or
25 activities until the administrative hearing commission issues its
26 final decision or order. If the matter is not resolved after the
27 meeting with the mediator, then either party may inform the
28 administrative hearing commission that the matter is not resolved

1 and the administrative hearing commission shall issue its order
2 terminating the stay of its proceeding.

3 12. Within five business days after the date of receipt of
4 the demand for mediation, the franchisor shall contact the
5 franchisee or its legal representative reflected in the demand
6 for mediation to exchange suggested lists of mediators. The
7 parties shall mutually accept a mediator within two business days
8 after the date of exchanging suggested lists of mediators. If
9 the parties cannot agree on a mediator, then the presiding judge
10 in Cole County or in the circuit court for the county in which
11 the franchisee does business shall appoint the mediator. Within
12 twenty days after the receipt of the demand for mediation, the
13 parties shall meet with the mediator for the purpose of
14 attempting to resolve the dispute. The meeting shall take place
15 in this state at a location designated by the mediator. The
16 mediator may extend the date of the meeting upon the agreement of
17 the parties or upon good cause shown by either party.

18 13. The director of revenue shall require each franchisor
19 to establish and maintain a panel of mediators who may serve as
20 mediators for disputes that may arise in this state with its
21 franchisees.

22 407.825. Notwithstanding the terms of any franchise
23 agreement to the contrary, the performance, whether by act or
24 omission, by a motor vehicle franchisor, whether directly or
25 indirectly through an agent, employee, affiliate, common entity,
26 or representative, or through an entity controlled by a
27 franchisor, of any or all of the following acts enumerated in
28 this section are hereby defined as unlawful practices, the

1 remedies for which are set forth in section 407.835:

2 (1) To engage in any conduct which is capricious[, in bad
3 faith,] or not in good faith or unconscionable and which causes
4 damage to a motor vehicle franchisee or to the public; provided,
5 that good faith conduct engaged in by motor vehicle franchisors
6 as sellers of new motor vehicles or parts or as holders of
7 security interest therein, in pursuit of rights or remedies
8 accorded to sellers of goods or to holders of security interests
9 pursuant to the provisions of chapter 400, RSMo, uniform
10 commercial code, shall not constitute unfair practices pursuant
11 to sections 407.810 to 407.835;

12 (2) To coerce, attempt to coerce, require or attempt to
13 require any motor vehicle franchisee to accept delivery of any
14 new motor vehicle or vehicles, equipment, tools, parts or
15 accessories therefor, or any other commodity or commodities which
16 such motor vehicle franchisee has not ordered after such motor
17 vehicle franchisee has rejected such commodity or commodities, or
18 which is not required by law or the franchise agreement. It
19 shall not be deemed a violation of this section for a motor
20 vehicle franchisor to require a motor vehicle franchisee to have
21 an inventory of parts, tools, and equipment reasonably necessary
22 to service the motor vehicles sold by a motor vehicle franchisor;
23 or new motor vehicles reasonably necessary to meet the demands of
24 dealers or the public or to display to the public the full line
25 of a motor vehicle franchisor's product line;

26 (3) To **[unreasonably]** withhold, reduce, delay, or refuse to
27 deliver in reasonable quantities and within a reasonable time
28 after receipt of orders for new motor vehicles, such motor

1 vehicles as are so ordered and as are covered by such franchise
2 and as are specifically publicly advertised by such motor vehicle
3 franchisor to be available for immediate delivery; provided,
4 however, the failure to deliver any motor vehicle shall not be
5 considered a violation of sections 407.810 to 407.835 if such
6 failure is due to an act of God, work stoppage, or delay due to a
7 strike or labor difficulty, shortage of products or materials,
8 freight delays, embargo or other [cause] causes of which such
9 motor vehicle franchisor shall have no control;

10 (4) To coerce, attempt to coerce, require or attempt to
11 require any motor vehicle franchisee to enter into any agreement
12 with such motor vehicle franchisor or its agent, employee,
13 affiliate, or representative, or a person controlled by the
14 franchisor or to do any other act prejudicial to such motor
15 vehicle franchisee[, by threatening to cancel any franchise or
16 any contractual agreement existing between such motor vehicle
17 franchisor and motor vehicle franchisee; provided, however, that
18 notice in good faith to any motor vehicle franchisee of such
19 motor vehicle franchisee's violation of any provisions of such
20 franchise or contractual agreement shall not constitute a
21 violation of sections 407.810 to 407.835];

22 (5) To terminate, cancel [or], refuse to continue, or
23 refuse to renew any franchise without good cause, [directly or
24 indirectly through the actions of the franchisor,] unless such
25 new motor vehicle franchisee, without good cause, substantially
26 defaults in the performance of such franchisee's reasonable
27 [and], lawful, and material obligations under such franchisee's
28 franchise[, or such new motor vehicle franchisor discontinues the

1 sale in the state of Missouri of such franchisor's products which
2 are the subject of the franchise]. In determining whether good
3 cause exists, the administrative hearing commission shall take
4 into consideration [the existing] all relevant circumstances,
5 including, but not limited to, the following factors:

6 (a) [The franchisee's sales in relation to sales in the
7 market;

8 (b) The franchisee's investment and obligations;

9 (c) Injury to the public welfare;

10 (d) The adequacy of the franchisee's service facilities,
11 equipment, parts and personnel in relation to those of other
12 franchisees of the same line-make;

13 (e) Whether warranties are being honored by the franchisee;

14 (f) The parties' compliance with their franchise agreement;

15 (g) The desire of a franchisor for market penetration or a
16 market study, if any, prepared by the franchisor or franchisee
17 are two factors which may be considered;

18 (h) The harm to the franchisor;] The amount of business
19 transacted by the franchisee;

20 (b) The investments necessarily made and obligations
21 incurred by the franchisee, including but not limited to
22 goodwill, in the performance of its duties under the franchise
23 agreement, together with the duration and permanency of such
24 investments and obligations;

25 (c) The potential for harm and inconvenience to consumers
26 as a result of disruption of the business of the franchisee;

27 (d) The franchisee's failure to provide adequate service
28 facilities, equipment, parts, and qualified service personnel;

1 (e) The franchisee's failure to perform warranty work on
2 behalf of the manufacturer, subject to reimbursement by the
3 manufacturer;

4 (f) The franchisee's failure to substantially comply, in
5 good faith, with requirements of the franchise that are
6 determined to be reasonable, lawful, and material;

7 (g) The franchisor's failure to honor its requirements
8 under the franchise;

9 (h) The potential harm to the area that the franchisee
10 serves;

11 (i) The demographic and geographic characteristics of the
12 area the franchisee serves; and

13 (j) The harm to the franchisor;

14 (6) To prevent by contract or otherwise, any motor vehicle
15 franchisee from changing the capital structure of the
16 franchisee's franchise [of such motor vehicle franchisee] or the
17 means by or through which the franchisee finances the operation
18 of the franchisee's franchise, provided the motor vehicle
19 franchisee at all times meets any reasonable capital standards
20 agreed to between the motor vehicle franchisee and the motor
21 vehicle franchisor and grants to the motor vehicle franchisor a
22 purchase money security interest in the new motor vehicles, new
23 parts and accessories purchased from the motor vehicle
24 franchisor;

25 (7) (a) To prevent, by contract or otherwise, any sale or
26 transfer of a franchisee's franchise or [franchises or] interest
27 or management thereof; provided, if the franchise specifically
28 permits the franchisor to approve or disapprove any such proposed

1 sale or transfer, a franchisor shall only be allowed to
2 disapprove a proposed sale or transfer if the interest being sold
3 or transferred when added to any other interest owned by the
4 transferee constitutes fifty percent or more of the ownership
5 interest in the franchise and if the proposed transferee fails to
6 satisfy any standards of the franchisor which are in fact
7 normally relied upon by the franchisor prior to its entering into
8 a franchise, and which relate to the [proposed management or
9 ownership of the franchise operations or to the] qualification,
10 capitalization, integrity or character of the proposed transferee
11 and which are reasonable. A franchisee or proposed franchisee
12 may request, at any time, that the franchisor provide a copy of
13 the standards which are normally relied upon by the franchisor to
14 evaluate a proposed sale or transfer and a proposed transferee;

15 (b) The franchisee and the prospective franchisee shall
16 cooperate [fully] with the franchisor in providing information
17 relating to the prospective transferee's qualifications,
18 capitalization, integrity and character;

19 (c) In the event of a proposed sale or transfer of a
20 franchise, the franchisor shall be permitted to exercise a right
21 of first refusal to acquire the franchisee's assets or ownership
22 if:

23 a. The franchise agreement permits the franchisor to
24 exercise a right of first refusal to acquire the franchisee's
25 assets or ownership in the event of a proposed sale or transfer;

26 b. Such sale or transfer is conditioned upon the franchisor
27 or franchisee entering a franchise agreement with the proposed
28 transferee;

1 c. The exercise of the right of first refusal shall result
2 in the franchisee and the franchisee's owners receiving the same
3 or greater consideration and the same terms and conditions as
4 contracted to receive in connection with the proposed sale or
5 transfer;

6 d. The sale or transfer does not involve the sale or
7 transfer to an immediate member or members of the family of one
8 or more franchisee owners, defined as a spouse, child,
9 grandchild, spouse of a child or grandchild, brother, sister or
10 parent of the franchisee owner, or to the qualified manager,
11 defined as an individual who has been employed by the franchisee
12 for at least two years and who otherwise qualifies as a
13 franchisee operator, or a partnership or corporation controlled
14 by such persons; and

15 e. The franchisor agrees to pay the reasonable expenses,
16 including attorney's fees which do not exceed the usual,
17 customary and reasonable fees charged for similar work done for
18 other clients, incurred by the proposed transferee prior to the
19 franchisor's exercise of its right of first refusal in
20 negotiating and implementing the contract for the proposed sale
21 or transfer of the franchise or the franchisee's assets.
22 Notwithstanding the foregoing, no payment of such expenses and
23 attorney's fees shall be required if the franchisee has not
24 submitted or caused to be submitted an accounting of those
25 expenses within fourteen days of the franchisee's receipt of the
26 franchisor's written request for such an accounting. Such
27 accounting may be requested by a franchisor before exercising its
28 right of first refusal;

1 (d) For determining whether good cause exists for the
2 purposes of this subdivision, the administrative hearing
3 commission shall take into consideration [the existing] all
4 relevant circumstances, including, but not limited to, the
5 following factors:

6 a. Whether the franchise agreement specifically permits the
7 franchisor to approve or disapprove any proposed sale or
8 transfer;

9 b. Whether the interest to be sold or transferred when
10 added to any other interest owned by the proposed transferee
11 constitutes fifty percent or more of the ownership interest in
12 the franchise;

13 c. Whether the proposed transferee fails to satisfy [any]
14 the standards of the franchisor which are in fact normally relied
15 upon by the franchisor prior to its entering into a franchise,
16 and which related to the [proposed management or ownership of the
17 franchise operations or to the] qualification, capitalization,
18 integrity or character of the proposed transferee and which are
19 lawful and reasonable;

20 d. [Injury to the public welfare] The amount of business
21 transacted by the franchisee;

22 e. The [harm to the franchisor] investments and obligations
23 incurred by the franchisee, including but not limited to
24 goodwill, in the performance of its duties under the franchise
25 agreement, together with the duration and permanency of such
26 investments and obligations;

27 f. The investments and obligations that the proposed
28 transferee is prepared to make in the business;

1 g. The potential for harm and inconvenience to consumers as
2 a result of the franchisor's decision;

3 h. The franchisor's failure to honor its requirements under
4 the franchise;

5 i. The potential harm to the area that the franchisee
6 serves;

7 j. The ability or willingness of the franchisee to continue
8 in the business if the proposed transfer is not permitted;

9 k. The demographic and geographic characteristics of the
10 area the franchisee serves; and

11 l. The harm to the franchisor;

12 (8) To prevent by contract or otherwise any motor vehicle
13 franchisee from changing the executive management of the motor
14 vehicle franchisee's business, [except that any attempt by a]
15 unless the motor vehicle franchisor [to demonstrate by giving
16 reasons] demonstrates that such change in executive management
17 will be detrimental to the distribution of the motor vehicle
18 franchisor's motor vehicles [shall not constitute a violation of
19 this subdivision];

20 (9) To impose unreasonable standards of performance upon a
21 motor vehicle franchisee or to require, attempt to require,
22 coerce or attempt to coerce a franchisee to adhere to performance
23 standards that are not applied uniformly to other similarly
24 situated franchisees;

25 (10) To require, attempt to require, coerce, or attempt to
26 coerce a motor vehicle franchisee at the time of entering into a
27 franchise or any other arrangement to assent to a release,
28 assignment, novation, waiver or estoppel which would relieve any

1 person from liability imposed by sections 407.810 to 407.835;

2 (11) To prohibit directly or indirectly the right of free
3 association among motor vehicle franchisees for any lawful
4 purpose;

5 (12) To provide any term or condition in any lease or other
6 agreement ancillary or collateral to a franchise, including, but
7 not limited to, any agreement with a common entity or any person
8 required by the franchisor or controlled by or affiliated with
9 the franchisor, which term or condition directly or indirectly
10 violates the provisions of sections 407.810 to 407.835;

11 (13) Upon any termination, cancellation [or], refusal to
12 continue, or refusal to renew any franchise or any
13 discontinuation of any line-make or parts or products related to
14 such line-make [by a franchisor, fail], failing to pay reasonable
15 compensation to a franchisee as follows:

16 (a) The franchisee's net acquisition cost for any new,
17 undamaged and unsold vehicle in the franchisee's inventory of
18 either the current model year or one year-prior model year
19 purchased from the franchisor [within one hundred twenty days] or
20 another franchisee of the same line-make in the ordinary course
21 of business prior to receipt of a notice of termination or
22 nonrenewal, provided the vehicle has less than [five hundred]
23 seven hundred fifty miles registered on the odometer, including
24 mileage incurred in delivery from the franchisor or in
25 transporting the vehicle between dealers for sale[, at the
26 dealer's net acquisition cost, plus any cost to the dealer for
27 returning the vehicle inventory to the franchisor];

28 (b) The franchisee's cost of each new, unused, undamaged

1 and unsold part or accessory if the part or accessory is in the
2 current parts catalog, less applicable allowances[, plus five
3 percent of the catalog price of the part for the cost of packing
4 and returning the part to the franchisor]. In the case of sheet
5 metal, a comparable substitute for the original package may be
6 used. Reconditioned or core parts shall be valued at their core
7 value, the price listed in the current parts catalog or the
8 amount paid for expedited return of core parts, whichever is
9 higher. If the part or accessory was purchased by the franchisee
10 from an outgoing authorized franchisee, the franchisor shall
11 purchase the part or accessory for [either] the price in the
12 current parts catalog [or the franchisee's actual purchase price
13 of the part, whichever is less]. In the case of parts or
14 accessories which no longer appear in the current parts catalog,
15 the franchisor [may] shall purchase the [part] parts or
16 accessories for [either] the price in the last version of the
17 parts catalog in which the part or accessory appeared [or the
18 franchisee's actual purchase price of the part, whichever is
19 less. The franchisee shall maintain accurate records regarding
20 the actual purchase price of parts bought from an outgoing
21 authorized franchisee. In the absence of such records, the
22 franchisor is not required to purchase parts which are not in the
23 current parts catalog];

24 (c) The [depreciated] fair market value [determined
25 pursuant to generally accepted accounting principles] of each
26 undamaged sign owned by the franchisee which bears a trademark or
27 trade name used or claimed by the franchisor if the sign was
28 purchased from, or purchased at the request of, the franchisor.

1 During the first seven years after its purchase, the fair market
2 value of each sign shall be the franchisee's costs of purchasing
3 the sign, less depreciation, using straight-line depreciation and
4 a seven-year life of the asset;

5 (d) The fair market value of all [special] equipment,
6 tools, data processing programs and equipment and automotive
7 service equipment owned by the franchisee which were recommended
8 in writing and designated as [special] equipment, tools, data
9 processing programs and equipment, and automotive service
10 equipment and purchased from, or purchased at the request of, the
11 franchisor [within three years of the termination of the
12 franchise], if the equipment, tools, programs and equipment are
13 in usable and good condition, except for reasonable wear and
14 tear. During the first seven years after their purchase, the
15 fair market value of each item of equipment, tools, and
16 automotive service equipment shall be the franchisee's costs of
17 purchasing the item, less depreciation, using straight-line
18 depreciation and a seven-year life of the asset. During the
19 first three years after its purchase, the fair market value of
20 each item of required data processing programs and equipment
21 shall be the franchisee's cost of purchasing the item, less
22 depreciation, using straight-line depreciation and a three-year
23 life of the asset;

24 (e) [Except as provided in paragraph (a) of this
25 subdivision, the cost of transporting,] In addition to the costs
26 referenced in paragraphs (a) to (d) of this subdivision, the
27 franchisor shall pay the franchisee an additional five percent
28 for handling, packing, storing and loading of any property

1 subject to repurchase pursuant to this section [shall not exceed
2 reasonable and customary charges; and], and the franchisor shall
3 pay the shipper for shipping the property subject to repurchase
4 from the location of the franchisee to the location directed by
5 the franchisor;

6 (f) [The franchisor shall pay the franchisee the amounts
7 specified in this subdivision within ninety days after the tender
8 of the property subject to the franchisee providing evidence of
9 good and clear title upon return of the property to the
10 franchisor. The franchisor shall remove the property within one
11 hundred eighty days after the tender of the property from the
12 franchisee's property. Unless previous arrangements have been
13 made and agreed upon, the franchisee is under no obligation to
14 provide insurance for the property left after one hundred eighty
15 days] The amount remaining to be paid on any equipment or service
16 contracts required by or leased from the franchisor or a
17 subsidiary or company affiliated with or controlled or
18 recommended by the franchisor. However, if the franchise
19 agreement is voluntarily terminated by the franchisee, without
20 coercion by the franchisor, then:

21 a. If the amount remaining to be paid on any equipment or
22 service contract is owed to the franchisor, the franchisor shall
23 cancel the obligation rather than paying the amount to the
24 franchisee; and

25 b. If the amount remaining to be paid on any equipment or
26 service contract is owed to a subsidiary or a company affiliated
27 with or controlled or recommended by the franchisor, the
28 franchisor may pay such amount to the subsidiary or the company

1 affiliated with or controlled by the franchisor, but if the
2 franchisor does not pay such amount to the subsidiary or the
3 company affiliated with or controlled by the franchisor, such
4 amount may be paid to the franchisee by the subsidiary or company
5 affiliated with or controlled by the franchisor;

6 (g) If the dealer leases the dealership facilities, then
7 the franchisor shall be liable for twelve months' payment of the
8 gross rent or the remainder of the term of the lease, whichever
9 is less. If the dealership facilities are not leased, then the
10 franchisor shall be liable for the equivalent of twelve months'
11 payment of gross rent. This paragraph shall not apply when the
12 termination, cancellation, or nonrenewed line was under good
13 cause related to a conviction and imprisonment for a felony
14 involving moral turpitude that is substantially related to the
15 qualifications, function, or duties of a franchisee as well as
16 fraud and voluntary terminations of a franchise. Gross rent is
17 the monthly rent plus the monthly cost of insurance and taxes.
18 Such reasonable rent shall be paid only to the extent that the
19 dealership premises are recognized in the franchise and only if
20 they are used solely for performance in accordance with the
21 franchise and not substantially in excess of those facilities
22 recommended by the manufacturer or distributor. If the facility
23 is used for the operations of more than one franchise, the gross
24 rent compensation shall be adjusted based on the planning volume
25 and facility requirements of the manufacturers, distributors, or
26 branch or division thereof;

27 (h) The franchisor shall pay to the franchisee the amount
28 remaining to be paid on any leases of computer hardware or

1 software that is used to manage and report data to the
2 manufacturer or distributor for financial reporting requirements
3 and the amount remaining to be paid on any manufacturer or
4 distributor required equipment leases, service contracts, and
5 sign leases. The franchisor's obligation shall not exceed one
6 year on any such lease. However, if the franchise agreement is
7 voluntarily terminated by the franchisee, without coercion by the
8 franchisor, then:

9 a. If the amount remaining to be paid is owed to the
10 franchisor, the franchisor shall cancel the obligation rather
11 than paying the amount to the franchisee; and

12 b. If the amount remaining to be paid is owed to a
13 subsidiary or a company affiliated with or controlled or
14 recommended by the franchisor, the franchisor may pay such amount
15 to the subsidiary or the company affiliated with or controlled by
16 the franchisor, subject to the limit of the franchisor's one year
17 obligation, but if the franchisor does not pay such amount to the
18 subsidiary or the company affiliated with or controlled by the
19 franchisor, such amount may be paid to the franchisee by the
20 subsidiary or company affiliated with or controlled by the
21 franchisor, subject to the limit of the franchisor's one year
22 obligation;

23 (i) In addition to the other payments set forth in this
24 section, if a termination, cancellation, or nonrenewal is
25 premised upon the franchisor discontinuing the sale in this state
26 of a line-make that was the subject of the franchise, then the
27 franchisor shall also be liable to the franchisee for an amount
28 at least equivalent to the fair market value of the franchisee's

1 goodwill for the discontinued line-makes of the motor vehicle
2 franchise on the date immediately preceding the date the
3 franchisor announces the action which results in termination,
4 cancellation, or nonrenewal, whichever amount is higher. At the
5 franchisee's option, the franchisor may avoid paying fair market
6 value of the motor vehicle franchise to the franchisee under this
7 paragraph if the franchisor, or another motor vehicle franchisor
8 under an agreement with the franchisor, offers the franchisee a
9 replacement motor vehicle franchise with terms substantially
10 similar to that offered to other same line-make dealers;

11 (j) The franchisor shall pay the franchisee all amounts
12 incurred by the franchisee to upgrade its facilities that were
13 required by the franchisor within twelve months prior to receipt
14 of a notice of termination or nonrenewal; however, a franchisee
15 shall not receive any benefits under this subdivision if it was
16 terminated for the grounds set forth in subdivision (1) of
17 subsection 4 of section 407.822. However, if the franchise
18 agreement is voluntarily terminated by the franchisee, without
19 coercion by the franchisor, and for a reason other than the death
20 or incapacitation of the dealer principal, then the franchisor
21 shall have no obligation under this paragraph; and

22 (k) The franchisor shall pay the franchisee the amounts
23 specified in this subdivision along with any other amounts that
24 may be due to the franchisee under the franchise agreement within
25 sixty days after the tender of the property subject to the
26 franchisee providing evidence of good and clear title upon return
27 of the property to the franchisor. The franchisor shall remove
28 the property within sixty days after the tender of the property

1 from the franchisee's property. Unless previous arrangements
2 have been made and agreed upon, the franchisee is under no
3 obligation to provide insurance for the property left after sixty
4 days;

5 (1) This subdivision shall not apply to a termination,
6 cancellation or nonrenewal due to a sale of the assets or stock
7 of the motor vehicle dealership;

8 (14) To prevent or refuse to honor the succession to a
9 franchise or franchises by any legal heir or devisee under the
10 will of a franchisee, under any written instrument filed with the
11 franchisor designating any person as the person's successor
12 franchisee, or pursuant to the laws of descent and distribution
13 of this state; provided:

14 (a) Any designated family member of a deceased or
15 incapacitated franchisee shall become the succeeding franchisee
16 of such deceased or incapacitated franchisee if such designated
17 family member gives the franchisor written notice of such family
18 member's intention to succeed to the franchise or franchises
19 within one hundred twenty days after the death or incapacity of
20 the franchisee, and agrees to be bound by all of the lawful terms
21 and conditions of the current franchise agreement, and the
22 designated family member meets the current lawful and reasonable
23 criteria generally applied by the franchisor in qualifying
24 franchisees. In order for the franchisor to claim that any such
25 reasonable criteria are generally applied by the franchisor in
26 qualifying franchisees, it shall have previously provided a copy
27 to the proposed successor franchisee within ten days after
28 receiving the proposed successor franchisee's notice. A

1 franchisee may request, at any time, that the franchisor provide
2 a copy of such criteria generally applied by the franchisor in
3 qualifying franchisees;

4 (b) The franchisor may request from a designated family
5 member such personal and financial data as is reasonably
6 necessary to determine whether the existing franchise agreement
7 should be honored. The designated family member shall supply the
8 personal and financial data promptly upon the request;

9 (c) If the designated family member does not meet the
10 reasonable and lawful criteria generally applied by the
11 franchisor in qualifying franchisees, the discontinuance of the
12 current franchise agreement shall take effect not less than
13 ninety days after the date the franchisor serves the required
14 notice on the designated family member pursuant to subsection 4
15 of section 407.822;

16 (d) The provisions of this subdivision shall not preclude a
17 franchisee from designating any person as the person's successor
18 by written instrument filed with the franchisor, and if such an
19 instrument is filed, it alone shall determine the succession
20 rights to the management and operation of the franchise; and

21 (e) For determining whether good cause exists, the
22 administrative hearing commission shall take into consideration
23 **[the existing]** all circumstances, including, but not limited to,
24 the following factors:

25 a. Whether the franchise agreement specifically permits the
26 franchisor to approve or disapprove any successor;

27 b. Whether the proposed successor substantially fails to
28 satisfy **[any]** the material standards of the franchisor which are

1 in fact normally relied upon by the franchisor prior to the
2 successor entering into a franchise, and which relate to the
3 proposed management or ownership of the franchise operation or to
4 the qualification, capitalization, integrity or character of the
5 proposed successor and which are lawful and reasonable;

6 c. [Injury to the public welfare] The amount of the
7 business transacted by the franchisee;

8 d. The [harm to the franchisor] investments in and the
9 obligations incurred by the franchisee, including but not limited
10 to goodwill in the performance of its duties under the franchise
11 agreement, together with the duration and permanency of such
12 investments and obligations;

13 e. The investments and obligations that the proposed
14 successor franchisee is prepared to make in the business;

15 f. The potential for harm and inconvenience to consumers as
16 a result of the franchisor's decision;

17 g. The franchisor's failure to honor its requirements under
18 the franchise;

19 h. The potential harm and injury to the public welfare in
20 the area that the franchisee serves;

21 i. The ability or willingness of the franchisee to continue
22 in the business if the proposed transfer is not permitted;

23 j. The demographic and geographic characteristics of the
24 area the franchisee serves; and

25 k. The harm to the franchisor;

26 (15) To coerce, [threaten, intimidate or] attempt to
27 coerce, require, or attempt to require a franchisee under any
28 condition affecting or related to a franchise agreement, [or] to

1 waive, limit or disclaim a right that the franchisee may have
2 pursuant to the provisions of sections 407.810 to 407.835. Any
3 contracts or agreements which contain such provisions shall be
4 deemed against the public policy of the state of Missouri and are
5 void and unenforceable. Nothing in this section shall prohibit
6 voluntary settlement agreements that specifically identifies the
7 provisions of sections 407.810 to 407.835 that the franchisee is
8 waiving, limiting, or disclaiming;

9 (16) To initiate any act enumerated in this [subsection]
10 section on grounds that it has advised a franchisee of its
11 intention to discontinue representation at the time of a
12 franchisee change or require any franchisee to enter into a site
13 control agreement as a condition to initiating any act enumerated
14 in this [subsection] section. Such condition shall not be
15 construed to nullify an existing site control agreement for a
16 franchisee's property;

17 (17) To require, attempt to require, coerce, or attempt to
18 coerce any franchisee in this state to refrain from, or to
19 terminate, cancel, or refuse to continue any franchise based upon
20 participation by the franchisee in the management of, investment
21 in or the acquisition of a franchise for the sale of any other
22 line of new vehicle or related products in the same or separate
23 facilities as those of the franchisor. This subdivision does not
24 apply unless the franchisee maintains a reasonable line of credit
25 for each make or line of new vehicle, the franchisee remains in
26 compliance with the franchise and any reasonable facilities
27 requirements of the franchisor, and no change is made in the
28 principal management of the franchisee. The reasonable

1 facilities requirement shall not include any requirement that a
2 franchisee establish or maintain exclusive facilities, personnel,
3 or display space, when such requirements [or any of them] would
4 not otherwise be justified by reasonable business considerations.
5 Before the addition of a line-make to the dealership facilities
6 the franchisee [must] shall first request consent of the
7 franchisor, if required by the franchise agreement. Any decision
8 of the franchisor with regard to dualing of two or more
9 franchises shall be granted or denied within sixty days of a
10 written request from the [new vehicle dealer] franchisee. The
11 [franchiser's] franchisor's failure to respond timely to a
12 dualing request shall be deemed to be approval of the
13 franchisee's request;

14 (18) To fail or refuse to offer to sell to all franchisees
15 for a line-make reasonable quantities of every motor vehicle sold
16 or offered for sale to any franchisee of that line-make[.];
17 however, the failure to deliver any such motor vehicle shall not
18 be considered a violation of this section if the failure [is not
19 arbitrary, or] is due to a [lack of manufacturing capacity or to
20 a strike or labor difficulty, a shortage of materials, a freight
21 embargo or other] cause over which the franchisor has no control.
22 A franchisor may impose reasonable requirements on the franchisee
23 including, but not limited to, the purchase of reasonable
24 quantities of advertising materials, the purchase of special
25 tools required to properly service a motor vehicle, the
26 undertaking of sales person or service person training related to
27 the motor vehicle, the meeting of reasonable display and facility
28 requirements as a condition of receiving a motor vehicle, or

1 other reasonable requirements; provided, that if a franchisor
2 requires a franchisee to purchase essential service tools with a
3 purchase price in the aggregate of more than seventy-five hundred
4 dollars in order to receive a particular model of new motor
5 vehicle, the franchisor shall upon written request provide such
6 franchisee with a good faith estimate in writing of the number of
7 vehicles of that particular model that the franchisee will be
8 allocated during that model year in which the tools are required
9 to be purchased;

10 (19) To directly or indirectly condition the awarding of a
11 franchise to a prospective franchisee, the addition of a line-
12 make or franchise to an existing franchisee, the renewal of a
13 franchise of an existing franchisee, the approval of the
14 relocation of an existing franchisee's facility, or the approval
15 of the sale or transfer of the ownership of a franchise on the
16 willingness of a franchisee, proposed franchisee, or owner of an
17 interest in the dealership facility to enter into a site control
18 agreement or exclusive use agreement. For purposes of this
19 subdivision, the terms "site control agreement" and "exclusive
20 use agreement" include any agreement that has the effect of
21 either requiring that the franchisee establish or maintain
22 exclusive dealership facilities or restricting the ability of the
23 franchisee, or the ability of the franchisee's lessor in the
24 event the dealership facility is being leased, to transfer, sell,
25 lease, or change the use of the dealership premises, whether by
26 sublease, lease, collateral pledge of lease, right of first
27 refusal to purchase or lease, option to purchase, option to
28 lease, or other similar agreement, regardless of the parties to

1 such agreement. Any provision contained in any agreement entered
2 into on or after August 28, 2010, that is inconsistent with the
3 provisions of this subdivision shall be voidable at the election
4 of the affected franchisee, prospective franchisee, or owner of
5 an interest in the dealership facility, provided this subdivision
6 shall not apply to a voluntary agreement where separate,
7 adequate, and reasonable consideration have been offered and
8 accepted;

9 (20) Except for the grounds listed in subdivision (1) of
10 subsection 4 of section 407.822, prior to the issuance of any
11 notice of intent to terminate a franchise agreement under the
12 MVFP act for unsatisfactory sales or service performance, the
13 franchisor shall provide the franchisee with no less than one
14 hundred twenty days written notice of the specific asserted
15 grounds for termination. Thereafter, the franchisee shall have
16 one hundred twenty days to cure the asserted grounds for
17 termination, provided the grounds are both reasonable and of
18 material significance to the franchise relationship. If the
19 franchisee fails to cure the asserted grounds for termination by
20 the end of the cure period, then the franchisor may give the
21 sixty day notice required by subsection 4 of section 407.822 if
22 it intends to terminate the franchise;

23 (21) To require, attempt to require, coerce, or attempt to
24 coerce a franchisee, by franchise agreement or otherwise, or as a
25 condition to the renewal or continuation of a franchise
26 agreement, to:

27 (a) Exclude from the use of the franchisee's facilities a
28 line-make for which the franchisee has a franchise agreement to

1 utilize the facilities; or

2 (b) Materially change the franchisee's facilities or method
3 of conducting business if the change would impose substantial or
4 unreasonable financial hardship on the business of the
5 franchisee;

6 (22) To fail to perform or cause to be performed any
7 written warranties made with respect to any motor vehicle or
8 parts thereof;

9 (23) To withhold, reduce, or delay unreasonably or without
10 just cause services contracted for by franchisees;

11 (24) To coerce, attempt to coerce, require, or attempt to
12 require any franchisee to provide installment financing with a
13 specified financial institution;

14 (25) To require, attempt to require, coerce, or attempt to
15 coerce any franchisee to close or change the location of the
16 franchisee, or to make any substantial alterations to the
17 franchise premises or facilities when doing so would be
18 unreasonable under the current market and economic conditions.

19 Prior to suggesting the need for any such action, the franchisor
20 shall provide the franchisee with a written good faith estimate
21 of the minimum number of the models of new motor vehicles that
22 the franchisor will supply to the franchisee during a reasonable
23 time period, not less than three years, so the franchisee may
24 determine if it is a sufficient supply of motor vehicles so as to
25 justify such changes, in light of the current market and
26 reasonably foreseeable projected and economic conditions. A
27 franchisor or its common entity or an entity controlled by or
28 affiliated with the franchisor may not take or threaten to take

1 any action that is unfair or adverse to a franchisee who does not
2 enter into an agreement with the franchisor under this
3 subdivision. This subdivision does not affect any contract
4 between a franchisor and any of its franchisees regarding
5 relocation, expansion, improvement, remodeling, renovation, or
6 alteration which exists on August 28, 2010;

7 (26) To authorize or permit a person to perform warranty
8 service repairs on motor vehicles unless the person is a
9 franchisee with whom the manufacturer has entered into a
10 franchise agreement for the sale and service of the
11 manufacturer's motor vehicles unless for emergency repairs when a
12 franchisee is not available or repairs pursuant to a fleet
13 contract as long as all parts and labor to perform the repairs
14 are less than one thousand five hundred dollars at retail per
15 repaired vehicle;

16 (27) To discriminate between or refuse to offer to its same
17 line-make franchisees all models manufactured for that line-make
18 based upon unreasonable sales and service standards;

19 (28) To fail to make practically available any incentive,
20 rebate, bonus, or other similar benefit to a franchisee that is
21 offered to another franchisee of the same line-make within this
22 state;

23 (29) To condition a franchise agreement on improvements to
24 a facility unless reasonably required by the technology of a
25 motor vehicle being sold at the facility;

26 (30) To condition the sale, transfer, relocation, or
27 renewal of a franchise agreement, or to condition sales,
28 services, parts, or finance incentives, upon site control or an

1 agreement to renovate or make improvements to a facility; except
2 that voluntary acceptance of such conditions by the franchisee
3 shall not constitute a violation;

4 (31) Failing to offer to all of its franchisees of the same
5 line-make any consumer rebates, dealer incentives, price or
6 interest rate reduction, or finance terms that the franchisor
7 offers or advertises, or allows its franchisees of the same line-
8 make to offer or advertise;

9 (32) Offering rebates, cash incentives, or other
10 promotional items for the sale of a vehicle by its franchisees
11 unless: the same rebate, cash incentive, or promotion is offered
12 to all of its franchisees of the same line-make; and any rebate,
13 cash incentive, or promotion that is based on the sale of an
14 individual vehicle is not increased for meeting a performance
15 standard;

16 (33) Unreasonably discriminating among its franchisees in
17 any program that provides assistance to its franchisees,
18 including internet listings, sales leads, warranty policy
19 adjustments, marketing programs, and dealer recognition programs;

20 (34) To fail to include in any franchise with a franchisee
21 the following language: "If any provision herein contravenes the
22 laws or regulations of any state or other jurisdiction wherein
23 this agreement is to be performed, or denies access to the
24 procedures, forums, or remedies provided for by such laws or
25 regulations, such provision shall be deemed to be modified to
26 conform to such laws or regulations, and all other terms and
27 provisions shall remain in full force," or words to that effect;

28 (35) To withhold, reduce, or delay unreasonably or without

1 just cause delivery of motor vehicle parts and accessories,
2 commodities, or moneys due franchisees;

3 (36) To use or consider the performance of a franchisee
4 relating to the sale of the franchisor's vehicles or the
5 franchisee's ability to satisfy any minimum sales or market share
6 quota or responsibility relating to the sale of the new vehicles
7 in determining:

8 (a) The franchisee's eligibility to purchase program,
9 certified, or other used motor vehicles from the franchisor;

10 (b) The volume, type, or model of program, certified, or
11 other used motor vehicles that a franchisee is eligible to
12 purchase from the franchisor;

13 (c) The price of any program, certified, or other used
14 motor vehicle that the franchisee purchased from the franchisor;
15 or

16 (d) The availability or amount of any discount, credit,
17 rebate, or sales incentive that the franchisee is eligible to
18 receive from the franchisor, for the purpose of any program,
19 certified, or other used motor vehicle offered for sale by the
20 franchisor;

21 (37) To refuse to allocate, sell, or deliver motor
22 vehicles; to charge back or withhold payments or other things of
23 value for which the franchisee is otherwise eligible under a
24 sales promotion, program, or contest; to prevent a franchisee
25 from participating in any promotion, program, or contest; or to
26 take or threaten to take any adverse action against a franchisee,
27 including charge-backs, reducing vehicle allocations, or
28 terminating or threatening to terminate a franchise because the

1 franchisee sold or leased a motor vehicle to a customer who
2 exported the vehicle to a foreign country or who resold the
3 vehicle, unless the franchisor proves that the franchisee knew or
4 reasonably should have known that the customer intended to export
5 or resell the motor vehicle. There is a rebuttable presumption
6 that the franchisee neither knew nor reasonably should have known
7 of its customer's intent to export or resell the vehicle if the
8 vehicle is titled or registered in any state in this country. A
9 franchisor may not take any action against a franchisee,
10 including reducing its allocations or supply of motor vehicles to
11 the franchisee, or charging back a franchisee for an incentive
12 payment previously paid, unless the franchisor first meets in
13 person, by telephone, or video conference with an officer or
14 other designated employee of the franchisee. At such meeting,
15 the franchisor shall provide a detailed explanation, with
16 supporting documentation, as to the basis for its claim that the
17 franchisee knew or reasonably should have known of the customer's
18 intent to export or resell the motor vehicle. Thereafter, the
19 franchisee shall have a reasonable period, commensurate with the
20 number of motor vehicles at issue, but not less than fifteen
21 days, to respond to the franchisor's claims. If, following the
22 franchisee's response and completion of all internal dispute
23 resolution processes provided through the franchisor, the dispute
24 remains unresolved, the franchisee may file a complaint with the
25 administrative hearing commission within thirty days after
26 receipt of a written notice from the franchisor that it still
27 intends to take adverse action against the franchisee with
28 respect to the motor vehicles still at issue. If a complaint is

1 timely filed, the administrative hearing commission shall notify
2 the franchisor of the filing of the complaint, and the franchisor
3 shall not take any action adverse to the franchisee until the
4 administrative hearing commission renders a final determination,
5 which is not subject to further appeal, that the franchisor's
6 proposed action is in compliance with the provisions of this
7 subdivision. In any hearing under this subdivision, the
8 franchisor has the burden of proof on all issues raised by this
9 subdivision;

10 (38) To require a franchisee to provide its customer lists
11 or service files to the franchisor, unless necessary for the sale
12 and delivery of a new motor vehicle to a consumer, to validate
13 and pay consumer or dealer incentives, for reasonable marketing
14 purposes or for the submission to the franchisor for any services
15 supplied by the franchisee for any claim for warranty parts or
16 repairs. Nothing in this section shall limit the franchisor's
17 ability to require or use customer information to satisfy any
18 safety or recall notice obligation;

19 (39) To mandate the use by the franchisee, or condition
20 access to any services offered by the franchisor on the
21 franchisee's use, or condition the acceptance of an order of any
22 product or service offered by the franchisor on the franchisee's
23 use, or condition the acceptance of any claim for payment from
24 the franchisee on the franchisee's use, or condition the
25 franchisee's participation in any program offered by the
26 franchisor, a common entity or an entity controlled by the
27 franchisor on the franchisee's use of any form, equipment, part,
28 tool, furniture, fixture, data processing program or equipment,

1 automotive service equipment, or sign from the franchisor, a
2 vendor recommended by the franchisor, a common entity or an
3 entity controlled by the franchisor if the franchisee is able to
4 obtain the identical or reasonably equivalent product from
5 another vendor;

6 (40) Establishing any performance standard or program for
7 measuring franchisee performance that may have a material impact
8 on a franchisee that is not fair, reasonable, and equitable, or
9 applying any such standard or program to a franchisee in a manner
10 that is not fair, reasonable, and equitable. Within ten days of
11 a request of a franchisee, a franchisor shall disclose in writing
12 to the franchisee a description of how a performance standard or
13 program is designed and all relevant information used in the
14 application of the performance standard or program to that
15 franchisee unless the information is available to the franchisee
16 on the franchisor's website;

17 (41) Establishing or implementing a plan or system for the
18 allocation, scheduling, or delivery of new motor vehicles, parts,
19 or accessories to its franchisees that is not fair, reasonable,
20 and equitable or modifying an existing plan or system so as to
21 cause the plan or system to be unreasonable, unfair, or
22 inequitable. Within ten days of any request of a franchisee, the
23 franchisor shall disclose in writing to the franchisee the method
24 and mode of distribution of that line-make among the franchisor's
25 franchisees of the same line-make within the same metro area for
26 franchisees located in a metropolitan area and within the county
27 and contiguous counties of any franchisee not located in a
28 metropolitan area; and

1 (42) To violate any other provision of the MVFP act that
2 adversely impacts a franchisee.

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

15 2. The schedule of compensation shall include reasonable
16 compensation for diagnostic work, as well as repair service and
17 labor for the franchisee to meet its obligations for preparation,
18 delivery, and warranty service. The schedule shall also include
19 reasonable and adequate time allowances for the diagnosis and
20 performance of preparation, delivery, and warranty [work and]
21 service [shall be reasonable and adequate for the work] to be
22 performed in a careful and professional manner. In the
23 determination of what constitutes reasonable compensation for
24 labor and service pursuant to this section, the principal factor
25 to be given consideration shall be the prevailing wage rates
26 being [paid] charged for similar labor and service by franchisees
27 in the [community] market in which the franchisee is doing
28 business, and in no event shall the compensation of a franchisee

1 for [warranty] labor and service be less than the rates charged
2 by the franchisee for [like] similar labor and service to retail
3 customers for nonwarranty labor and service [and repairs],
4 provided that such rates are reasonable. The primary factor in
5 determining a fair and reasonable compensation for parts under
6 this section shall be the prevailing amount charged for similar
7 parts by other same line-make franchisees in the market in which
8 the franchisee is doing business and the fair and reasonable
9 compensation for parts shall not be less than the amount charged
10 by the franchisee for similar parts to retail customers for
11 nonwarranty parts, provided that such rates are reasonable. If
12 another same line-make franchisee is not available within the
13 market, then the prevailing amount charged for similar parts by
14 other franchisees in the market shall be used as the primary
15 factor.

16 3. A franchisor shall [not:

17 (1) Fail to] perform [any] all warranty [obligation;

18 (2) Fail to] obligations, including recall notices; include
19 in written notices of franchisor recalls to new motor vehicle
20 owners and franchisees the expected date by which necessary parts
21 and equipment will be available to franchisees for the correction
22 of the defects; [or

23 (3) Fail to] and reasonably compensate any of the
24 franchisees in this state for repairs [effected] required by the
25 recall. Reasonable compensation for parts, labor, and service
26 shall be determined under subsection 2 of this section.

27 4. [All claims made by a franchisee pursuant to this
28 section for labor and parts shall be paid within thirty days

1 after their approval. All claims shall be either approved or
2 disapproved by the franchisor within thirty days after their
3 receipt on a proper form generally used by the franchisor and
4 containing the usually required information therein. Any claims
5 not specifically disapproved in writing within thirty days after
6 the receipt of the form shall be considered to be approved and
7 payment shall be made within thirty days. A claim which has been
8 approved and paid may not be charged back to the franchisee
9 unless the franchisor can show that the claim was fraudulent,
10 false, or unsubstantiated, except that a charge back for false or
11 fraudulent claims shall not be made more than two years after
12 payment, and a charge back for unsubstantiated claims shall not
13 be made more than fifteen months after payment. A franchise
14 shall maintain all records of warranty repairs, including the
15 related time records of its employees, for at least two years
16 following payment of any warranty claim.] No franchisor shall
17 require a franchisee to submit a claim authorized under this
18 section sooner than thirty days after the franchisee completes
19 the preparation, delivery, or warranty service authorizing the
20 claim for preparation, delivery, or warranty service. All claims
21 made by a franchisee under this section shall be paid within
22 thirty days after their approval. All claims shall be either
23 approved or disapproved by the franchisor within thirty days
24 after their receipt on a proper form generally used by the
25 franchisor and containing the usually required information
26 therein. Any claims not specifically disapproved in writing
27 within thirty days after the receipt of the form shall be
28 considered to be approved and payment shall be made within

1 fifteen days thereafter. A franchisee shall not be required to
2 maintain defective parts for more than thirty days after
3 submission of a claim.

4 5. A franchisor shall compensate the franchisee for
5 franchisor-sponsored sales or service promotion events, including
6 but not limited to, rebates, programs, or activities in
7 accordance with established written guidelines for such events,
8 programs, or activities, which guidelines shall be provided to
9 each franchisee.

10 6. No franchisor shall require a franchisee to submit a
11 claim authorized under subsection 5 of this section sooner than
12 thirty days after the franchisee becomes eligible to submit the
13 claim. All claims made by a franchisee pursuant to subsection 5
14 of this section for promotion events, including but not limited
15 to rebates, programs, or activities shall be paid within ten days
16 after their approval. All claims shall be either approved or
17 disapproved by the franchisor within thirty days after their
18 receipt on a proper form generally used by the franchisor and
19 containing the usually required information therein. Any claim
20 not specifically disapproved in writing within thirty days after
21 the receipt of this form shall be considered to be approved and
22 payment shall be made within [thirty] ten days. [The franchisor
23 has the right to charge back any claim for twelve months after
24 the later of either the close of the promotion event, program, or
25 activity, or the date of the payment.]

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

1 (1) Repairs for franchisor, manufacturer, or distributor
2 special events, specials, or promotional discounts for retail
3 customer repairs;

4 (2) Parts sold at wholesale;

5 (3) Engine assemblies and transmission assemblies;

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

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

11 (6) Tires; and

12 (7) Vehicle reconditioning.

13 8. If a franchisor, manufacturer, importer, or distributor
14 furnishes a part or component to a franchisee, at no cost, to use
15 in performing repairs under a recall, campaign service action, or
16 warranty repair, the franchisor shall compensate the franchisee
17 for the part or component in the same manner as warranty parts
18 compensation under this section by compensating the franchisee at
19 the average markup on the cost for the part or component as
20 listed in the price schedule of the franchisor, manufacturer,
21 importer, or distributor, less the cost for the part or
22 component.

23 9. A franchisor shall not require a franchisee to establish
24 the retail rate customarily charged by the franchisee for parts,
25 service, or labor by an unduly burdensome or time consuming
26 method or by requiring information that is unduly burdensome or
27 time consuming to provide, including, but not limited to, part-
28 by-part or transaction-by-transaction calculations. A franchisee

1 shall not request a franchisor to approve a different labor rate
2 or parts rate more than twice in one calendar year.

3 10. If a franchisee submits any claim under this section to
4 a franchisor that is incomplete, inaccurate, or lacking any
5 information usually required by the franchisor, then the
6 franchisor shall promptly notify the franchisee, and the time
7 limit to submit the claim shall be extended for a reasonable
8 length of time, not less than five business days following notice
9 by the franchisor to the franchisee, for the franchisee to
10 provide the complete, accurate, or lacking information to the
11 franchisor.

12 11. (1) A franchisor may only audit warranty, sales, or
13 incentive claims and charge-back to the franchisee
14 unsubstantiated claims for a period of twelve months following
15 payment, subject to all of the provisions of this section.
16 Furthermore, if the franchisor has good cause to believe that a
17 franchisee has submitted fraudulent claims, then the franchisor
18 may only audit suspected fraudulent warranty, sales, or incentive
19 claims and charge-back to the franchisee fraudulent claims for a
20 period of two years following payment, subject to all provisions
21 of this section.

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

25 (3) Prior to requiring any charge-back, reimbursement, or
26 credit against a future transaction arising out of an audit, the
27 franchisor shall submit written notice to the franchisee along
28 with a copy of its audit and the detailed reason for each

1 intended charge-back, reimbursement, or credit. A franchisee may
2 file a complaint with the administrative hearing commission
3 within thirty days after receipt of any such written notice
4 challenging such action. If a complaint is filed within the
5 thirty days, then the charge-back, reimbursement, or credit shall
6 be stayed pending a hearing and determination of the matter under
7 section 408.822. If the administrative hearing commission
8 determines that any portion of the charge-back, reimbursement, or
9 credit is improper, then that portion of the charge-back,
10 reimbursement, or credit shall be void and not allowed.

11 407.831. 1. Notwithstanding the terms of any franchise
12 agreement to the contrary, each franchisor, including any
13 successor manufacturer of that franchisor, shall indemnify and
14 hold harmless each franchisee obtaining a new motor vehicle from
15 the franchisor from and against any liability, including
16 reasonable attorney's fees, expert witness fees, court costs, and
17 other expenses incurred in the litigation, so long as such fees
18 and costs are reasonable, that the franchisee may be subjected to
19 by the purchaser of the vehicle because of damage to the motor
20 vehicle that occurred before delivery of the vehicle to the
21 franchisee and that was not disclosed in writing to the
22 franchisee prior to delivery of the vehicle. This indemnity
23 obligation of the franchisor applies regardless of whether the
24 damage falls below the six percent threshold under subsection 2
25 of this section. The failure of the franchisor to indemnify and
26 hold harmless the franchisee is a violation of this section.

27 2. If the cost of repairing damage to a new motor vehicle
28 that occurs before delivery to the franchisee's location exceeds

1 six percent of the manufacturer's suggested retail price, as
2 measured by retail repair costs, the franchisee may reject or, if
3 title has passed to the franchisee, require the franchisor who
4 delivered the vehicle to repurchase the vehicle within ten
5 business days after delivery, unless the damage occurred during
6 shipment and the method of transportation, carrier, or
7 transporter of the motor vehicle was designated by the
8 franchisee. Upon repurchase, the franchisor shall be subrogated
9 to all of the franchisee's rights against the carrier or
10 transporter of the motor vehicle regarding damage. The cost of
11 repairing glass, tires, bumpers, moldings, and audio equipment
12 with identical manufacturer's original equipment shall not be
13 included in determining the cost of repairing damage under this
14 subsection.

15 407.833. 1. Notwithstanding the term of any franchise to
16 the contrary, a franchisor shall not modify a franchise during
17 the term of the franchise or upon its renewal if the modification
18 substantially and adversely affects the franchisee's rights,
19 obligations, investment, or return on investment without giving
20 ninety days written notice of the proposed modification to the
21 franchisee unless the modification is required by law or court
22 order. Within the ninety-day notice period the franchisee may
23 file with the administrative hearing commission and serve upon
24 the franchisor a complaint for a determination of whether there
25 is good cause for permitting the proposed modification and
26 whether the proposed modification violates any provision of the
27 MVFP act. The administrative hearing commission shall promptly
28 schedule a hearing and decide the matter. Multiple complaints

1 pertaining to the same proposed franchise modification shall be
2 consolidated for hearing. The proposed franchise modification
3 shall not take effect pending the determination of the matter.

4 2. The burden of proof shall be on the franchisor, except
5 that the burden of proof with regard to the factor set forth in
6 subdivision (3) of this subsection shall be on the franchisee,
7 and the administrative hearing commission may consider any
8 relevant factor including:

9 (1) The reasons for the proposed modification;

10 (2) Whether the proposed modification is applied to or
11 affects all franchisees in a nondiscriminating manner;

12 (3) The degree to which the proposed modification will have
13 a substantial and adverse effect upon the franchisee's rights,
14 investment, or return on investment;

15 (4) Whether the proposed modification is in the public
16 interest;

17 (5) The degree to which the proposed modification is
18 necessary to the orderly and profitable distribution of products
19 by the franchisor;

20 (6) Whether the proposed modification is offset by other
21 modifications beneficial to the franchisee;

22 (7) Whether the proposed modification violates any
23 provision of the MVFP act.

24 3. The decision of the administrative hearing commission
25 shall be in writing and shall contain findings of fact and a
26 determination of whether there is good cause for permitting the
27 proposed modification and whether the proposed modification
28 violates any provision of the MVFP act. The administrative

1 hearing commission shall deliver copies of the decision to the
2 parties personally or by registered mail. If the administrative
3 hearing commission determines that there is not good cause for
4 permitting the proposed modification or that the proposed
5 modification violates any provision of the MVFP act, then the
6 franchisor shall not proceed with the proposed modification.

7 4. For purposes of this section, the term "modification"
8 includes, but is not limited to, any change, amendment,
9 supplement, deletion, addition, or replacement of any provision
10 of the franchise.

11 407.835. 1. Notwithstanding any provision of the franchise
12 to the contrary, in addition to the administrative relief
13 provided in sections 407.810 to 407.835, any [motor vehicle]
14 franchisee may bring an action in any court of competent
15 jurisdiction against a [motor vehicle] franchisor with whom the
16 franchisee has a franchise, manufacturer, distributor, or
17 importer for an act or omission which constitutes [an unlawful
18 practice as defined in section 407.825] a violation of a
19 franchise or the MVFP act to recover actual damages sustained by
20 reason thereof, plus actual and reasonable expenses of
21 litigation, including, but not limited to, depositions,
22 transcripts, expert witnesses, and attorney fees, and, where
23 appropriate, such [motor vehicle] franchisee shall be entitled to
24 injunctive relief, but the remedies set forth in this section
25 shall not be deemed exclusive and shall be in addition to any
26 other remedies permitted by law or equity.

27 2. In any action wherein a franchisor, manufacturer,
28 distributor, or importer has been found liable in damages to any

1 franchisee for a willful violation of a franchise or the MVFP
2 act, then any franchisee so damaged shall be entitled to recover
3 actual damages sustained thereby, plus actual and reasonable
4 expenses of litigation, including, but not limited to,
5 depositions, transcripts, expert witnesses, and attorney fees,
6 and, where appropriate, such motor vehicle franchisee shall be
7 entitled to injunctive relief, but the remedies set forth in this
8 section shall not be deemed exclusive and shall be in addition to
9 any other remedies permitted by law or equity. In addition, a
10 court or jury may award a franchisee punitive damages in such
11 amount as it deems appropriate.

12 3. In the event of a dispute between a franchisee and a
13 franchisor:

14 (1) At the option of the franchisee, venue of any civil
15 action, other than a proceeding before the administrative hearing
16 commission, shall be proper in the circuit court of Cole County
17 or the circuit court in the judicial circuit where the franchisee
18 resides or has its principal place of business;

19 (2) Missouri law shall govern the franchise and the
20 dispute, both substantively and procedurally;

21 (3) No mandatory arbitration provision in any franchise
22 shall be valid;

23 (4) No waiver of jury trial in any franchise shall be
24 valid;

25 (5) No provision in any franchise providing for a
26 franchisee to pay a franchisor's attorney fees, mediation costs,
27 arbitration costs, or litigation costs shall be valid;

28 (6) No provision in any franchise providing for mediation,

1 arbitration, or litigation to occur outside this state shall be
2 valid; and

3 (7) Unless otherwise provided in the MVFP act, the
4 franchisor shall have the burden of proving by a preponderance of
5 the evidence that it has acted in good faith, that all required
6 notices were given, that good cause exists for its actions, and
7 that its actions were fair and reasonable giving due regard to
8 the equities of the affected parties, except for the franchisee's
9 damages and expenses of litigation.

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