

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2198
95TH GENERAL ASSEMBLY

5133L.04C

D. ADAM CRUMBLISS, Chief Clerk

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:

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2 407.835, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as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

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

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

**407.812. 1. Any franchisor obtaining or renewing its license after August 28, 2010,
2 shall be bound by the provisions of the MVFP act and shall comply with it, and no
3 franchise agreement made, entered, modified, or renewed after August 28, 2010, shall**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 **avoid the requirements of the MVFP act, or violate its provisions, and no franchise**
5 **agreement shall be performed after the date the franchisor's license is issued or renewed**
6 **in such a manner that the franchisor avoids, circumvents, or otherwise does not conform**
7 **or comply with the requirements of the MVFP act. Notwithstanding the effective date of**
8 **any franchise agreement, all franchisor licenses and renewals thereof are issued subject to**
9 **all provisions of the MVFP act and chapter 301 and any regulations in effect upon the date**
10 **of issuance, as well as all future provisions of the MVFP act and chapter 301 and any**
11 **regulations which may become effective during the term of the license.**

12 **2. The provisions of the MVFP act shall apply to each franchise that a franchisor,**
13 **manufacturer, importer, or distributor has with a franchisee and all agreements between**
14 **a franchisee and a common entity or any person that is controlled by a franchisor.**

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

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

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

9 (3) "Coerce", to [force a person to act in a given manner or to compel by pressure or
10 threat] **compel or attempt to compel a person to act in a given manner by pressure,**
11 **intimidation, or threat of harm, damage, or breach of contract,** but shall not [be construed
12 to] include the following:

13 (a) Good faith recommendations, exposition, argument, persuasion or attempts at
14 persuasion **without unreasonable conditions;**

15 (b) Notice given in good faith to any franchisee of such franchisee's violation of terms
16 or provisions of such franchise or contractual agreement; **or**

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

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

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

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

25 (b) **Who shares directors or officers or partners with a franchisor;**

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

30 (6) **"Dealer-operator"**, the individual who works at the established place of
31 **business of a dealer and who is responsible for and in charge of day-to-day operations of**
32 **that place of business;**

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

35 (8) **"Franchise" or "franchise agreement"**, a written arrangement or contract for a definite
36 or indefinite period, in which a person grants to another person a license to use, or the right to
37 grant to others a license to use, a trade name, trademark, service mark, or related characteristics,
38 in which there is a community of interest in the marketing of goods or services, or both, at
39 wholesale or retail, by agreement, lease or otherwise, and in which the operation of the
40 franchisee's business with respect to such franchise is substantially reliant on the franchisor for
41 the continued supply of franchised new motor vehicles, parts and accessories for sale at
42 wholesale or retail. **The franchise includes all portions of all agreements between a**
43 **franchisor and a franchisee, including but not limited to, a contract, new motor vehicle**
44 **franchise, sales and service agreement, or dealer agreement, regardless of the terminology**
45 **used to describe the agreement or relationship between the franchisor and franchisee, and**
46 **also includes all provisions, schedules, attachments, exhibits, parts and service manuals,**
47 **and agreements incorporated by reference therein;**

48 [(5)] (9) **"Franchisee"**, a person to whom a franchise is granted;

49 [(6)] (10) **"Franchisor"**, a person who grants a franchise to another person;

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

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

57 (13) **"Line-make"**, a collection of models, series, or groups of motor vehicles
58 **manufactured by or for a particular manufacturer, distributor or importer offered for sale,**
59 **lease or distribution pursuant to a common brand name or mark; provided, however:**

60 (a) **Multiple brand names or marks may constitute a single line-make, but only**
61 **when included in a common dealer agreement and the manufacturer, distributor or**

62 **importer offers such vehicles bearing the multiple names or marks together only, and not**
63 **separately, to its authorized dealers; and**

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

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

74 ~~[(7)]~~ **(15) "Motor vehicle", for the purposes of sections 407.810 to 407.835, any**
75 **motor-driven vehicle required to be registered pursuant to the provisions of chapter 301, RSMo,**
76 **except that, motorcycles and all-terrain vehicles as defined in section 301.010, RSMo, shall not**
77 **be included. The term "motor vehicle" shall also include any engine, transmission, or rear axle,**
78 **regardless of whether attached to a vehicle chassis, that is manufactured for the installation in**
79 **any motor-driven vehicle with a gross vehicle weight rating of more than sixteen thousand**
80 **pounds that is registered for the operations on the highways of this state under chapter 301,**
81 **RSMo;**

82 ~~[(8)]~~ **(16) "New", when referring to motor vehicles or parts, means those motor vehicles**
83 **or parts which have not been held except as inventory, as that term is defined in subdivision (4)**
84 **of section 400.9-109, RSMo;**

85 ~~[(9)]~~ **(17) "Person", a natural person, sole proprietor, partnership, corporation, or any**
86 **other form of business entity or organization;**

87 **(18) "Principal investor", the owner of the majority interest of any franchisee;**

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

90 **(20) "Require", to impose upon a franchisee a provision not required by law or**
91 **previously agreed to by a franchisee in a franchise agreement;**

92 **(21) "Successor manufacturer", any manufacturer that succeeds, or assumes any**
93 **part of the business of, another manufacturer, referred to as the "predecessor**
94 **manufacturer", as the result of:**

95 **(a) A change in ownership, operation, or control of the predecessor manufacturer**
96 **by sale or transfer of assets, corporate stock, or other equity interest, assignment, merger,**

97 **consolidation, combination, joint venture, redemption, court-approved sale, operation of**
98 **law, or otherwise;**

99 (b) **The termination, suspension or cessation of a part or all of the business**
100 **operations of the predecessor manufacturer;**

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

102 (d) **A change in distribution system by the predecessor manufacturer, whether**
103 **through a change in distributor or the predecessor manufacturer's decision to cease**
104 **conducting business through a distributor altogether.**

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

3 (1) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans
4 to **locate or** relocate his or her place of business in a county having a population which is greater
5 than one hundred thousand, the area within a radius of [six] **eight** miles of the intended site of
6 the proposed or relocated dealer. The [six-mile] **eight-mile** distance shall be determined by
7 measuring the distance between the nearest surveyed boundary of the existing new motor vehicle
8 dealer's principal place of business and the nearest surveyed boundary line of the proposed or
9 relocated new motor vehicle dealer's principal place of business; or

10 (2) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans
11 to **locate or** relocate his or her place of business in a county having a population which is not
12 greater than one hundred thousand, the area within a radius of [ten] **fifteen** miles of the intended
13 site of the proposed or relocated dealer[, or the county line, whichever is closer to the intended
14 site]. The [ten-mile] **fifteen-mile** distance shall be determined by measuring the distance
15 between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal
16 place of business and the nearest surveyed boundary line of the proposed or relocated new motor
17 vehicle dealer's principal place of business.

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

20 3. Before a franchisor enters into a franchise establishing **an additional franchise,**
21 **reopening a previously existing franchise,** or relocating [a new motor vehicle dealer] **an**
22 **existing franchise** within a relevant market area where the same line-make is represented, the
23 franchisor shall give written notice to each [new motor vehicle dealer] **franchisee** of the same
24 line-make in the relevant market area of its intention to establish an additional [dealer]
25 **franchise, reopen a previously existing franchise,** or [to] relocate an existing [dealer]
26 **franchise** within that relevant market area. **Such notice shall state:**

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

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

31 4. Within thirty days after receiving the notice provided for in subsection 3 of this
32 section, or within thirty days after the end of any appeal procedure provided by the franchisor,
33 a [new motor vehicle dealer] **franchisee to whom notice was required in subsection 3 of this**
34 **section** may bring an action pursuant to section 407.822 to determine whether good cause exists
35 for [the] establishing **an additional franchise, reopening a previously existing franchise,** or
36 relocating [of a proposed new motor vehicle dealer] **an existing franchise.**

37 5. This section shall not apply to the reopening or replacement in a relevant market area
38 of a closed [dealership] **franchise** that has been closed within the preceding year, if the
39 established place of business of the reopened or replacement [dealer] **franchise** is within two
40 miles of the established place of business of the closed [dealership] **franchise and only if the**
41 **reopened or replaced franchise is offered to the franchisee who had previously operated**
42 **the closed franchise within the preceding year if that franchise had not been terminated**
43 **under the provisions of the MVFP act or had not voluntarily closed the franchise.**

44 6. In determining whether good cause exists for establishing **an additional franchise,**
45 **reopening a previously existing franchise,** or relocating [an additional new motor vehicle
46 dealer] **a franchise** for the same line-make, the [court] **administrative hearing commission**
47 shall take into consideration [the existing] **all relevant** circumstances, including, but not limited
48 to, the following:

49 (1) **The size and permanency of the investment and obligations incurred by the**
50 **existing franchisees of the same line-make in the relevant market area; and any damage**
51 **that such existing franchisees may suffer from the establishment, reopening, or relocation**
52 **of a franchise into the relevant market area;**

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

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

56 (4) Whether the [new motor vehicle dealers] **existing franchisees** of the same line-make
57 in that relevant market area are providing adequate competition and convenient consumer care
58 for the motor vehicles of that line-make in the **relevant** market area, including the adequacy of
59 motor vehicle sales and qualified service personnel;

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

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

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

68 7. The remedies and relief available pursuant to **this** section [407.835 shall apply to this
69 section] **are not exclusive and are in addition to those provided in section 407.835 or**
70 **otherwise permitted by law or equity.**

407.818. No franchisor shall engage in business in this state without a license
2 **therefor as provided in sections 301.550 to 301.573. No motor vehicle, foreign or domestic,**
3 **may be sold, leased, or offered for sale or lease in this state unless the franchisor, which**
4 **issues a franchise to a franchisee in this state, is licensed under sections 301.550 to 301.573.**
5 **No franchisor shall modify the area of responsibility to avoid the requirements of section**
6 **407.817 or 407.833, or any other section of the MVFP act. Each franchisor shall renew its**
7 **license annually by the date specified by the department of revenue.**

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

9 (1) **Within sixty days of the former franchisee's cancellation, termination,**
10 **noncontinuance, or nonrenewal, the predecessor manufacturer had consolidated the line-**
11 **make with another of its line-makes for which the predecessor manufacturer had a**
12 **franchisee with a then-existing franchise facility in that relevant market area;**

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

15 (3) **The predecessor manufacturer successfully terminated the former franchisee**
16 **under subdivision (5) of section 407.825.**

17 2. **For purposes of this section, the fair market value of a former franchisee's motor**
18 **vehicle dealership shall be calculated as of the date of the following that yields the highest**
19 **fair market value: the date the predecessor manufacturer announced the action that**
20 **resulted in the cancellation, termination, noncontinuance, or nonrenewal; the date the**
21 **action that resulted in cancellation, termination, noncontinuance, or nonrenewal became**
22 **final; or the date twelve months prior to the date that the predecessor manufacturer**

23 **announced the action that resulted in the cancellation, termination, noncontinuance, or**
24 **nonrenewal.**

407.822. 1. Any party seeking relief pursuant to the provisions of sections 407.810 to
2 407.835 may file [an application for a hearing] **a complaint** with the administrative hearing
3 commission within the time periods specified in this section. The [application for a hearing]
4 **complaint** shall comply with the requirements for a request for agency action set forth in chapter
5 536, RSMo. Simultaneously, with the filing of the [application for a hearing] **complaint** with
6 the administrative hearing commission, the [applicant] **petitioner** shall send by certified mail,
7 return receipt requested, a copy of the [application] **complaint** to the party or parties against
8 whom relief is sought. Upon receiving a timely [application for a hearing] **complaint**, the
9 administrative hearing commission shall enter an order fixing a date, time and place for a hearing
10 on the record. The administrative hearing commission shall send by certified mail, return receipt
11 requested, a copy of the order to the party seeking relief and **a copy of the order and complaint**
12 to the party or parties against whom relief is sought. The order shall also state that the party
13 against whom relief is sought shall not proceed with the initiation of its activity or activities until
14 the administrative hearing commission issues its final decision or order, and the party against
15 whom relief is sought shall, within thirty days of such order, file an answer or other responsive
16 pleading directed to each claim for relief set forth in the [application for hearing] **complaint**.
17 Failure to answer or otherwise respond within such time frame may be deemed by the
18 administrative hearing commission as an admission of the grounds for relief set forth in the
19 [application for hearing] **complaint**.

2. Unless otherwise expressly provided in sections 407.810 to 407.835, the provisions
21 of chapter 536, RSMo, shall govern hearings and prehearing procedures conducted pursuant to
22 the authority of this section. Any party may obtain discovery in the same manner, and under the
23 same conditions and requirements, as is or may hereafter be provided for with respect to
24 discovery in civil actions by rule of the supreme court of Missouri for use in the circuit courts,
25 and the administrative hearing commission may enforce discovery by the same methods as
26 provided by supreme court rule for use in civil cases. The administrative hearing commission
27 shall issue a final decision or order, in proceedings arising pursuant to the provisions of sections
28 407.810 to 407.835, within ninety days from the conclusion of the hearing. In any proceeding
29 initiated pursuant to sections 407.810 to 407.835 involving a matter requiring a franchisor to
30 show good cause for any intended action being protested by a franchisee, the franchisor shall
31 refrain from taking the protested action if, after a hearing on the matter before the administrative
32 hearing commission, the administrative hearing commission determines that good cause does not
33 exist for the franchisor to take such action. The franchisee may, if necessary, seek enforcement
34 of the decision of the administrative hearing commission pursuant to the provisions of section

35 407.835. Venue for such proceedings shall be in the circuit court of Cole County, Missouri, or
36 in the circuit court of the county in which the franchisee resides or operates the franchise
37 business. In determining any relief necessary for enforcement of the decision of the
38 administrative hearing commission, the court shall defer to the commission's factual findings,
39 and review shall be limited to a determination of whether the commission's decision was
40 authorized by law and whether the commission abused its discretion. Any final decisions of the
41 administrative hearing commission shall be subject to review pursuant to a petition for review
42 to be filed in the court of appeals in the district in which the hearing, or any part of the hearing,
43 is held and by delivery of copies of the petition to each party of record, within thirty days after
44 the mailing or delivery of the final decision and notice of the final decision in such a case.
45 Appeal of the administrative hearing commission's decision pursuant to this section shall not
46 preclude any action authorized by section 407.835, brought in a court of competent jurisdiction,
47 requesting an award of legal or equitable relief, provided that if such an action is brought solely
48 for the purpose of enforcing a decision of the administrative hearing commission which is on
49 appeal pursuant to this subsection, the court in which such action is pending may hold in
50 abeyance its judgment pending issuance of a decision by the court of appeals. Review pursuant
51 to this section shall be exclusive and decisions of the administrative hearing commission
52 reviewable pursuant to this section shall not be reviewable in any other proceeding, and no other
53 official or court shall have power to review any such decision by an action in the nature of
54 mandamus or otherwise, except pursuant to the provisions of this section. The party seeking
55 review shall be responsible for the filing of the transcript and record of all proceedings before
56 the administrative hearing commission with the appropriate court of appeals.

57 3. Any franchisee receiving a notice from a franchisor pursuant to the provisions of
58 sections 407.810 to 407.835, or any franchisee adversely affected by a franchisor's acts or
59 proposed acts described in the provisions of sections 407.810 to 407.835, shall be entitled to file
60 [an application for a hearing] **a complaint** before the administrative hearing commission for a
61 determination as to whether the franchisor has good cause for its acts or proposed acts.

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

66 (1) Upon the initiation of an act pursuant to subdivision (5) of [subsection 1 of] section
67 407.825, such notice shall be given not less than fifteen days before the effective date of such
68 act only if the grounds for the notice include the following:

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

71 (b) Material misrepresentation by the motor vehicle franchisee in applying for the
72 franchise **that substantially and adversely affects the franchisor;**

73 (c) Insolvency of the motor vehicle franchisee or the filing of any petition by or against
74 the motor vehicle franchisee under any bankruptcy or receivership law **that is not vacated**
75 **within twenty days from the institution thereof;**

76 (d) Any unfair business practice by the motor vehicle franchisee after the motor vehicle
77 franchisor has issued a written **thirty-day** warning to the motor vehicle franchisee to desist from
78 such practice **and the franchisee has failed to desist from the practice after having received**
79 **the written thirty-day warning;**

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

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

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

86 (2) Upon initiation of an act pursuant to subdivision (7) of [subsection 1 of] section
87 407.825, such notice shall be given within sixty days of the franchisor's receipt of a written
88 proposal to consummate such sale or transfer and the receipt of all necessary information and
89 documents generally used by the franchisor to conduct its review. The franchisor shall
90 acknowledge in writing to the applicant the receipt of the information and documents and if the
91 franchisor requires additional information or documents to complete its review, the franchisor
92 shall notify the applicant within fifteen days of the receipt of the information and documents.
93 If the franchisor fails to request additional information and documents from the applicant within
94 fifteen days after receipt of the initial forms, the sixty-day time period for approval shall be
95 deemed to run from the initial receipt date. Otherwise, the sixty-day time period for approval
96 shall run from receipt of the supplemental requested information. In no event shall the total time
97 period for approval exceed [seventy-five] **ninety** days from the date of the receipt of [all
98 necessary information and documents generally used by the franchisor to conduct its review] **the**
99 **written proposal.** The franchisor's notice of disapproval shall also specify the reasonable
100 standard which the franchisor contends is not satisfied and the reason the franchisor contends
101 such standard is not satisfied. Failure on the part of the franchisor to provide such notice shall
102 be conclusively deemed an approval by the franchisor of the proposed sale or transfer to the
103 proposed transferee. A franchisee's application for a hearing shall be filed with the
104 administrative hearing commission within twenty days from receipt of such franchisor's notice;

105 (3) Pursuant to paragraphs (a) and (b) of subdivision (14) of [subsection 1 of] section
106 407.825, such notice shall be given within sixty days of the franchisor's receipt of a deceased or

107 incapacitated franchisee's designated family member's intention to succeed to the franchise or
108 franchises or of the franchisor's receipt of the personal and financial data of the designated family
109 member, whichever is later.

110 5. A franchisor's notice to a franchisee or franchisees pursuant to subdivisions (5), (6),
111 (7) and (14) of [subsection 1 of] section 407.825 shall contain a statement of the particular
112 grounds supporting the intended action or activity which shall include any reasonable standards
113 which were not satisfied. The notice [shall also contain at a minimum] **is not effective unless**
114 **it also contains**, on the first page thereof, a conspicuous statement which reads as follows:
115 "NOTICE TO FRANCHISEE: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE
116 MISSOURI ADMINISTRATIVE HEARING COMMISSION IN JEFFERSON CITY,
117 MISSOURI, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE CONTENTS
118 OF THIS NOTICE. ANY ACTION MUST BE FILED WITHIN [TWENTY] **THIRTY** DAYS
119 FROM RECEIPT OF THIS NOTICE. **YOU ALSO HAVE THE RIGHT TO DEMAND**
120 **NONBINDING MEDIATION. YOUR DEMAND FOR MEDIATION MAY BE MAILED**
121 **TO THE ADDRESS SHOWN ON THIS NOTICE. FOR FURTHER INFORMATION,**
122 **CONTACT YOUR ATTORNEY AND REFER TO SECTIONS 407.810 TO 407.835,**
123 **RSMO."**

124 6. When more than one [application for a hearing] **complaint** is filed with the
125 administrative hearing commission, the administrative hearing commission may consolidate the
126 applications into one proceeding to expedite the disposition of all relevant issues.

127 7. **Unless otherwise specifically required by another provision of the MVFP act**, in
128 all proceedings [before the administrative hearing commission] pursuant to [this section, section
129 407.825 and section 621.053, RSMo, where the franchisor is required to give notice pursuant to
130 subsection 4 of this section] **sections 407.810 to 407.835**, the franchisor shall have the burden
131 of proving by a preponderance of the evidence that **it has acted in good faith, that all required**
132 **notices were given, and that** good cause exists for its actions. [In all other actions, the
133 franchisee shall have the burden of proof.]

134 8. **If a franchisee prevails in an action against a franchisor under any provision of**
135 **sections 407.810 to 407.835, then the franchisee shall also have a cause of action against the**
136 **franchisor for damages and reasonable expenses of litigation, including, but not limited to,**
137 **depositions, transcripts, expert witnesses, and attorney fees.**

138 9. **A franchisee may mail a demand for mediation to its franchisor at any time after**
139 **it receives any notice from a franchisor as required by any provision of the MVFP act. In**
140 **addition, prior to, contemporaneous with, or after the filing of a complaint with the**
141 **administrative hearing commission, a franchisee may mail a demand for mediation to its**
142 **franchisor for any violation by the franchisor of any provision of the MVFP act. The**

143 mailing of the demand for mediation is effective when mailed to the address shown on the
144 notice from the franchisor, the address shown on the franchise agreement, the address of
145 the franchisor shown on its license with the department of revenue, the address of the
146 franchisor's registered agent in this state, or the address of its attorney in a proceeding
147 pending at the administrative hearing commission concerning the subject of the demand
148 for mediation. The demand for mediation shall contain a short statement of the dispute
149 and the relief sought by the franchisee; however, the contents of the demand are not
150 jurisdictional.

151 **10.** The mailing of a demand for mediation stays any time period for the franchisee
152 to initiate any action under the MVFP act that is the subject of the dispute described in the
153 demand for mediation. If the parties fail to resolve the matter in dispute after meeting with
154 the mediator, then the time period for filing any action with the administrative hearing
155 commission shall start on the first business day after the date of the last date of any
156 meeting with the mediator.

157 **11.** If a proceeding is pending before the administrative hearing commission
158 concerning the subject of the demand for mediation, the franchisee shall also file a copy of
159 the demand for mediation with the administrative hearing commission. The filing of a
160 copy of the demand for mediation with the administrative hearing commission shall stay
161 any further action by the administrative hearing commission, other than the issuance of
162 the order required of the administrative hearing commission under subsection 1 of this
163 section informing the franchisor that it shall not proceed with the initiation of its activity
164 or activities until the administrative hearing commission issues its final decision or order.
165 If the matter is not resolved after the meeting with the mediator, then either party may
166 inform the administrative hearing commission that the matter is not resolved and the
167 administrative hearing commission shall issue its order terminating the stay of its
168 proceeding.

169 **12.** Within five business days after the date of receipt of the demand for mediation,
170 the franchisor shall contact the franchisee or its legal representative reflected in the
171 demand for mediation to exchange suggested lists of mediators. The parties shall mutually
172 accept a mediator within two business days after the date of exchanging suggested lists of
173 mediators. If the parties cannot agree on a mediator, then the presiding judge in Cole
174 County or in the circuit court for the county in which the franchisee does business shall
175 appoint the mediator. Within twenty days after the receipt of the demand for mediation,
176 the parties shall meet with the mediator for the purpose of attempting to resolve the
177 dispute. The meeting shall take place in this state at a location designated by the mediator.

178 **The mediator may extend the date of the meeting upon the agreement of the parties or**
179 **upon good cause shown by either party.**

180 **13. The director of revenue shall require each franchisor to establish and maintain**
181 **a panel of mediators who may serve as mediators for disputes that may arise in this state**
182 **with its franchisees.**

407.825. Notwithstanding the terms of any franchise agreement **to the contrary**, the
2 performance, whether by act or omission, by a motor vehicle franchisor, **whether directly or**
3 **indirectly through an agent, employee, affiliate, common entity, or representative, or**
4 **through an entity controlled by a franchisor**, of any or all of the following acts enumerated
5 in this section are hereby defined as unlawful practices, the remedies for which are set forth in
6 section 407.835:

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

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

24 (3) To [unreasonably] **withhold, reduce, delay, or** refuse to deliver in reasonable
25 quantities and within a reasonable time after receipt of orders for new motor vehicles, such motor
26 vehicles as are so ordered and as are covered by such franchise and as are specifically publicly
27 advertised by such motor vehicle franchisor to be available for immediate delivery; provided,
28 however, the failure to deliver any motor vehicle shall not be considered a violation of sections
29 407.810 to 407.835 if such failure is due to an act of God, work stoppage, or delay due to a strike
30 or labor difficulty, shortage of products or materials, freight delays, embargo or other [cause]
31 **causes** of which such motor vehicle franchisor shall have no control;

32 (4) To coerce, **attempt to coerce, require or attempt to require** any motor vehicle
33 franchisee to enter into any agreement with such motor vehicle franchisor **or its agent,**
34 **employee, affiliate, or representative, or a person controlled by the franchisor** or to do any
35 other act prejudicial to such motor vehicle franchisee[, by threatening to cancel any franchise or
36 any contractual agreement existing between such motor vehicle franchisor and motor vehicle
37 franchisee; provided, however, that notice in good faith to any motor vehicle franchisee of such
38 motor vehicle franchisee's violation of any provisions of such franchise or contractual agreement
39 shall not constitute a violation of sections 407.810 to 407.835];

40 (5) To terminate, cancel [or] , refuse to continue, **or refuse to renew** any franchise
41 without good cause, [directly or indirectly through the actions of the franchisor,] unless such new
42 motor vehicle franchisee, **without good cause,** substantially defaults in the performance of such
43 franchisee's reasonable [and] , lawful, **and material** obligations under such franchisee's
44 franchise[, or such new motor vehicle franchisor discontinues the sale in the state of Missouri
45 of such franchisor's products which are the subject of the franchise]. In determining whether
46 good cause exists, the administrative hearing commission shall take into consideration [the
47 existing] **all relevant** circumstances, including, but not limited to, the following factors:

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

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

50 (c) Injury to the public welfare;

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

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

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

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

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

58 **(b) The investments necessarily made and obligations incurred by the franchisee,**
59 **including but not limited to goodwill, in the performance of its duties under the franchise**
60 **agreement, together with the duration and permanency of such investments and**
61 **obligations;**

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

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

66 **(e) The franchisee's failure to perform warranty work on behalf of the**
67 **manufacturer, subject to reimbursement by the manufacturer;**

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

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

71 (h) **The potential harm to the area that the franchisee serves;**

72 (i) **The demographic and geographic characteristics of the area the franchisee**
73 **serves; and**

74 (j) **The harm to the franchisor;**

75 (6) To prevent by contract or otherwise, any motor vehicle franchisee from changing the
76 capital structure of the franchisee's franchise [of such motor vehicle franchisee] or the means by
77 or through which the franchisee finances the operation of the franchisee's franchise, provided the
78 motor vehicle franchisee at all times meets any reasonable capital standards agreed to between
79 the motor vehicle franchisee and the motor vehicle franchisor and grants to the motor vehicle
80 franchisor a purchase money security interest in the new motor vehicles, new parts and
81 accessories purchased from the motor vehicle franchisor;

82 (7) (a) To prevent, by contract or otherwise, any sale or transfer of a franchisee's
83 franchise or [franchises or] interest or management thereof; provided, if the franchise specifically
84 permits the franchisor to approve or disapprove any such proposed sale or transfer, a franchisor
85 shall only be allowed to disapprove a proposed sale or transfer if the interest being sold or
86 transferred when added to any other interest owned by the transferee constitutes fifty percent or
87 more of the ownership interest in the franchise and if the proposed transferee fails to satisfy any
88 standards of the franchisor which are in fact normally relied upon by the franchisor prior to its
89 entering into a franchise, and which relate to the [proposed management or ownership of the
90 franchise operations or to the] qualification, capitalization, integrity or character of the proposed
91 transferee and which are reasonable. A franchisee **or proposed franchisee** may request, at any
92 time, that the franchisor provide a copy of the standards which are normally relied upon by the
93 franchisor to evaluate a proposed sale or transfer and a proposed transferee. **In order for the**
94 **franchisor to claim that any such standards are normally relied upon, it shall have**
95 **provided a copy to the franchisee and the proposed transferee within ten days after**
96 **receiving the request to sell or transfer;**

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

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

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

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

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

109 d. The sale or transfer does not involve the sale or transfer to an immediate member or
110 members of the family of one or more franchisee owners, defined as a spouse, child, grandchild,
111 spouse of a child or grandchild, brother, sister or parent of the franchisee owner, or to the
112 qualified manager, defined as an individual who has been employed by the franchisee for at least
113 two years and who otherwise qualifies as a franchisee operator, or a partnership or corporation
114 controlled by such persons; and

115 e. The franchisor agrees to pay the reasonable expenses, including attorney's fees which
116 do not exceed the usual, customary and reasonable fees charged for similar work done for other
117 clients, incurred by the proposed transferee prior to the franchisor's exercise of its right of first
118 refusal in negotiating and implementing the contract for the proposed sale or transfer of the
119 franchise or the franchisee's assets. Notwithstanding the foregoing, no payment of such expenses
120 and attorney's fees shall be required if the franchisee has not submitted or caused to be submitted
121 an accounting of those expenses within fourteen days of the franchisee's receipt of the
122 franchisor's written request for such an accounting. Such accounting may be requested by a
123 franchisor before exercising its right of first refusal;

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

127 a. Whether the franchise agreement specifically permits the franchisor to approve or
128 disapprove any proposed sale or transfer;

129 b. Whether the interest to be sold or transferred when added to any other interest owned
130 by the proposed transferee constitutes fifty percent or more of the ownership interest in the
131 franchise;

132 c. Whether the proposed transferee fails to satisfy [any] **the** standards of the franchisor
133 which are in fact normally relied upon by the franchisor prior to its entering into a franchise, and
134 which related to the [proposed management or ownership of the franchise operations or to the]
135 qualification, capitalization, integrity or character of the proposed transferee **and** which are
136 **lawful and** reasonable;

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

138 e. The [harm to the franchisor] **investments and obligations incurred by the**
139 **franchisee, including but not limited to goodwill, in the performance of its duties under the**

140 **franchise agreement, together with the duration and permanency of such investments and**
141 **obligations;**

142 **f. The investments and obligations that the proposed transferee is prepared to make**
143 **in the business;**

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

146 **h. The franchisor's failure to honor its requirements under the franchise;**

147 **i. The potential harm to the area that the franchisee serves;**

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

150 **k. The demographic and geographic characteristics of the area the franchisee**
151 **serves; and**

152 **l. The harm to the franchisor;**

153 (8) To prevent by contract or otherwise any motor vehicle franchisee from changing the
154 executive management of the motor vehicle franchisee's business, [except that any attempt by
155 a] **unless the** motor vehicle franchisor [to demonstrate by giving reasons] **demonstrates** that
156 such change in executive management will be detrimental to the distribution of the motor vehicle
157 franchisor's motor vehicles [shall not constitute a violation of this subdivision];

158 (9) To impose unreasonable standards of performance upon a motor vehicle franchisee
159 **or to require, attempt to require, coerce or attempt to coerce a franchisee to adhere to**
160 **performance standards that are not applied uniformly to other similarly situated**
161 **franchisees;**

162 (10) To require, **attempt to require, coerce, or attempt to coerce** a motor vehicle
163 franchisee at the time of entering into a franchise **or any other** arrangement to assent to a
164 release, assignment, novation, waiver or estoppel which would relieve any person from liability
165 imposed by sections 407.810 to 407.835;

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

168 (12) To provide any term or condition in any lease or other agreement ancillary or
169 collateral to a franchise, **including, but not limited to, any agreement with a common entity**
170 **or any person required by the franchisor or controlled by or affiliated with the franchisor,**
171 which term or condition directly or indirectly violates the provisions of sections 407.810 to
172 407.835;

173 (13) Upon any termination, cancellation [or] , refusal to continue, **or refusal to renew**
174 any franchise or any discontinuation of any line-make or parts or products related to such

175 line-make [by a franchisor, fail] , **failing** to pay reasonable compensation to a franchisee as
176 follows:

177 (a) **The franchisee's net acquisition cost for** any new, undamaged and unsold vehicle
178 in the franchisee's inventory of either the current model year or **one year-prior model year**
179 **purchased from the franchisor [within one hundred twenty days] or another franchisee of the**
180 **same line-make in the ordinary course of business** prior to receipt of a notice of termination
181 or nonrenewal, provided the vehicle has less than [five hundred] **seven hundred fifty** miles
182 registered on the odometer, including mileage incurred in delivery from the franchisor or in
183 transporting the vehicle between dealers for sale[, at the dealer's net acquisition cost, plus any
184 cost to the dealer for returning the vehicle inventory to the franchisor];

185 (b) The franchisee's cost of each new, unused, undamaged and unsold part or accessory
186 if the part or accessory is in the current parts catalog, less applicable allowances[, plus five
187 percent of the catalog price of the part for the cost of packing and returning the part to the
188 franchisor]. In the case of sheet metal, a comparable substitute for the original package may be
189 used. Reconditioned or core parts shall be valued at their core value, the price listed in the
190 current parts catalog or the amount paid for expedited return of core parts, whichever is higher.
191 If the part or accessory was purchased by the franchisee from an outgoing authorized franchisee,
192 the franchisor shall purchase the part **or accessory** for [either] the price in the current parts
193 catalog [or the franchisee's actual purchase price of the part, whichever is less]. In the case of
194 parts **or accessories** which no longer appear in the current parts catalog, the franchisor [may]
195 **shall** purchase the [part] **parts or accessories** for [either] the price in the last version of the parts
196 catalog in which the part **or accessory** appeared [or the franchisee's actual purchase price of the
197 part, whichever is less. The franchisee shall maintain accurate records regarding the actual
198 purchase price of parts bought from an outgoing authorized franchisee. In the absence of such
199 records, the franchisor is not required to purchase parts which are not in the current parts
200 catalog];

201 (c) The [depreciated] **fair market** value [determined pursuant to generally accepted
202 accounting principles] of each undamaged sign owned by the franchisee which bears a trademark
203 or trade name used or claimed by the franchisor if the sign was purchased from, or purchased at
204 the request of, the franchisor. **During the first seven years after its purchase, the fair market**
205 **value of each sign shall be the franchisee's costs of purchasing the sign, less depreciation,**
206 **using straight-line depreciation and a seven-year life of the asset;**

207 (d) The fair market value of all [special] **equipment**, tools, data processing **programs**
208 **and** equipment and automotive service equipment owned by the franchisee which were
209 recommended in writing and designated as [special] **equipment**, tools, **data processing**
210 **programs** and equipment, **and automotive service equipment** and purchased from, or

211 purchased at the request of, the franchisor [within three years of the termination of the franchise],
212 if the **equipment, tools, programs** and equipment are in usable and good condition, except for
213 reasonable wear and tear. **During the first seven years after their purchase, the fair market**
214 **value of each item of equipment, tools, and automotive service equipment shall be the**
215 **franchisee's costs of purchasing the item, less depreciation, using straight-line depreciation**
216 **and a seven-year life of the asset. During the first three years after its purchase, the fair**
217 **market value of each item of data processing programs and equipment shall be the**
218 **franchisee's cost of purchasing the item, less depreciation, using straight-line depreciation**
219 **and a three-year life of the asset;**

220 (e) [Except as provided in paragraph (a) of this subdivision, the cost of transporting,] **In**
221 **addition to the costs referenced in paragraphs (a) to (d) of this subdivision, the franchisor**
222 **shall pay the franchisee an additional five percent for handling, packing, storing and loading**
223 of any property subject to repurchase pursuant to this section [shall not exceed reasonable and
224 customary charges; and] , **and the franchisor shall pay the shipper for shipping the property**
225 **subject to repurchase from the location of the franchisee to the location directed by the**
226 **franchisor;**

227 (f) [The franchisor shall pay the franchisee the amounts specified in this subdivision
228 within ninety days after the tender of the property subject to the franchisee providing evidence
229 of good and clear title upon return of the property to the franchisor. The franchisor shall remove
230 the property within one hundred eighty days after the tender of the property from the franchisee's
231 property. Unless previous arrangements have been made and agreed upon, the franchisee is
232 under no obligation to provide insurance for the property left after one hundred eighty days] **The**
233 **amount remaining to be paid on any equipment or service contracts required by or leased**
234 **from the franchisor or a subsidiary or company affiliated with or controlled or**
235 **recommended by the franchisor;**

236 (g) **If the dealer leases the dealership facilities, then the franchisor shall be liable**
237 **for eighteen months' payment of the gross rent or the remainder of the term of the lease,**
238 **whichever is less. If the dealership facilities are not leased, then the franchisor shall be**
239 **liable for the equivalent of twelve months' payment of gross rent. This paragraph shall not**
240 **apply when the termination, cancellation, or nonrenewed line was under good cause related**
241 **to a conviction and imprisonment for a felony involving moral turpitude that is**
242 **substantially related to the qualifications, function, or duties of a franchisee as well as**
243 **fraud and voluntary terminations of a franchise. Gross rent is the monthly rent plus the**
244 **monthly cost of insurance and taxes. Such reasonable rent shall be paid only to the extent**
245 **that the dealership premises are recognized in the franchise and only if they are used solely**
246 **for performance in accordance with the franchise and not substantially in excess of those**

247 facilities recommended by the manufacturer or distributor. If the facility is used for the
248 operations of more than one franchise, the gross rent compensation shall be adjusted based
249 on the planning volume and facility requirements of the manufacturers, distributors, or
250 branch or division thereof;

251 (h) The franchisor shall pay to the franchisee the amount remaining to be paid on
252 any leases of computer hardware or software that is used to manage and report data to the
253 manufacturer or distributor for financial reporting requirements and the amount
254 remaining to be paid on any manufacturer or distributor required equipment leases,
255 service contracts, and sign leases. The franchisor's obligation shall not exceed one year on
256 any such lease;

257 (i) In addition to the other payments set forth in this section, if a termination,
258 cancellation, or nonrenewal is premised upon the franchisor discontinuing the sale in this
259 state of a line-make that was the subject of the franchise, then the franchisor shall also be
260 liable to the franchisee for an amount at least equivalent to the fair market value of the
261 franchisee's goodwill for the discontinued line-makes of the motor vehicle franchise on the
262 date immediately preceding the date the franchisor announces the action which results in
263 termination, cancellation, or nonrenewal, whichever amount is higher. At the franchisee's
264 option, the franchisor may avoid paying fair market value of the motor vehicle franchise
265 to the franchisee under this paragraph if the franchisor, or another motor vehicle
266 franchisor under an agreement with the franchisor, offers the franchisee a replacement
267 motor vehicle franchise with terms substantially similar to that offered to other same line-
268 make dealers;

269 (j) The franchisor shall pay the franchisee all amounts incurred by the franchisee
270 to upgrade its facilities that were required by the franchisor within twelve months prior
271 to receipt of a notice of termination or nonrenewal; however, a franchisee shall not receive
272 any benefits under this subdivision if it was terminated for the grounds set forth in
273 subdivision (1) of subsection 4 of section 407.822; and

274 (k) The franchisor shall pay the franchisee the amounts specified in this subdivision
275 along with any other amounts that may be due to the franchisee under the franchise
276 agreement within sixty days after the tender of the property subject to the franchisee
277 providing evidence of good and clear title upon return of the property to the franchisor.
278 The franchisor shall remove the property within sixty days after the tender of the property
279 from the franchisee's property. Unless previous arrangements have been made and agreed
280 upon, the franchisee is under no obligation to provide insurance for the property left after
281 sixty days;

282 **(l) This subdivision shall not apply to a termination, cancellation or nonrenewal**
283 **due to a sale of the assets or stock of the motor vehicle dealership;**

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

288 (a) Any designated family member of a deceased or incapacitated franchisee shall
289 become the succeeding franchisee of such deceased or incapacitated franchisee if such designated
290 family member gives the franchisor written notice of such family member's intention to succeed
291 to the franchise or franchises within one hundred twenty days after the death or incapacity of the
292 franchisee, and agrees to be bound by all of the **lawful** terms and conditions of the current
293 franchise agreement, and the designated family member meets the current **lawful and** reasonable
294 criteria generally applied by the franchisor in qualifying franchisees. **In order for the**
295 **franchisor to claim that any such reasonable criteria are generally applied by the**
296 **franchisor in qualifying franchisees, it shall have previously provided a copy to the**
297 **proposed successor franchisee within ten days after receiving the proposed successor**
298 **franchisee's notice.** A franchisee may request, at any time, that the franchisor provide a copy
299 of such criteria generally applied by the franchisor in qualifying franchisees. **Failure of the**
300 **franchisor to provide a copy of those criteria to the franchisee within fourteen days after**
301 **receiving the request shall prohibit the franchisor from using such criteria to deny the**
302 **request by the proposed successor franchisee;**

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

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

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

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

- 318 a. Whether the franchise agreement specifically permits the franchisor to approve or
319 disapprove any successor;
- 320 b. Whether the proposed successor **substantially** fails to satisfy [any] **the material**
321 standards of the franchisor which are in fact normally relied upon by the franchisor prior to the
322 successor entering into a franchise, and which relate to the proposed management or ownership
323 of the franchise operation or to the qualification, capitalization, integrity or character of the
324 proposed successor and which are **lawful and** reasonable;
- 325 c. [Injury to the public welfare] **The amount of the business transacted by the**
326 **franchisee;**
- 327 d. The [harm to the franchisor] **investments in and the obligations incurred by the**
328 **franchisee, including but not limited to goodwill in the performance of its duties under the**
329 **franchise agreement, together with the duration and permanency of such investments and**
330 **obligations;**
- 331 e. **The investments and obligations that the proposed successor franchisee is**
332 **prepared to make in the business;**
- 333 f. **The potential for harm and inconvenience to consumers as a result of the**
334 **franchisor's decision;**
- 335 g. **The franchisor's failure to honor its requirements under the franchise;**
- 336 h. **The potential harm and injury to the public welfare in the area that the**
337 **franchisee serves;**
- 338 i. **The ability or willingness of the franchisee to continue in the business if the**
339 **proposed transfer is not permitted;**
- 340 j. **The demographic and geographic characteristics of the area the franchisee**
341 **serves; and**
- 342 k. **The harm to the franchisor;**
- 343 (15) To coerce, [threaten, intimidate or] **attempt to coerce, require, or attempt to**
344 **require a franchisee under any condition affecting or related to a franchise agreement, [or] to**
345 **waive, limit or disclaim a right that the franchisee may have pursuant to the provisions of**
346 **sections 407.810 to 407.835. Any contracts or agreements which contain such provisions shall**
347 **be deemed against the public policy of the state of Missouri and are void and unenforceable.**
348 **Nothing in this section shall prohibit voluntary settlement agreements that specifically identifies**
349 **the provisions of sections 407.810 to 407.835 that the franchisee is waiving, limiting, or**
350 **disclaiming;**
- 351 (16) To initiate any act enumerated in this [subsection] **section** on grounds that it has
352 advised a franchisee of its intention to discontinue representation at the time of a franchisee
353 change or require any franchisee to enter into a site control agreement as a condition to initiating

354 any act enumerated in this [subsection] **section**. Such condition shall not be construed to nullify
355 an existing site control agreement for a franchisee's property;

356 (17) To require, **attempt to require**, coerce, or attempt to coerce any franchisee in this
357 state to refrain from, or to terminate, cancel, or refuse to continue any franchise based upon
358 participation by the franchisee in the management of, investment in or the acquisition of a
359 franchise for the sale of any other line of new vehicle or related products in the same or separate
360 facilities as those of the franchisor. This subdivision does not apply unless the franchisee
361 maintains a reasonable line of credit for each make or line of new vehicle, the franchisee remains
362 in compliance with the franchise and any reasonable facilities requirements of the franchisor, and
363 no change is made in the principal management of the franchisee. The reasonable facilities
364 requirement shall not include any requirement that a franchisee establish or maintain exclusive
365 facilities, personnel, or display space, when such requirements [or any of them] would not
366 otherwise be justified by reasonable business considerations. Before the addition of a line-make
367 to the dealership facilities the franchisee [must] **shall** first request consent of the franchisor, if
368 required by the franchise agreement. Any decision of the franchisor with regard to dualing of
369 two or more franchises shall be granted or denied within sixty days of a written request from the
370 [new vehicle dealer] **franchisee**. The [franchisor's] **franchisor's** failure to respond timely to a
371 dualing request shall be deemed to be approval of the franchisee's request;

372 (18) To fail or refuse to offer to sell to all franchisees for a line-make **reasonable**
373 **quantities of** every motor vehicle sold or offered for sale to any franchisee of that line-make[.]
374 ; however, the failure to deliver any such motor vehicle shall not be considered a violation of
375 this section if the failure [is not arbitrary, or] is due to a [lack of manufacturing capacity or to a
376 strike or labor difficulty, a shortage of materials, a freight embargo or other] cause over which
377 the franchisor has no control. A franchisor may impose reasonable requirements on the
378 franchisee including, but not limited to, the purchase of reasonable quantities of advertising
379 materials, the purchase of special tools required to properly service a motor vehicle, the
380 undertaking of sales person or service person training related to the motor vehicle, the meeting
381 of reasonable display and facility requirements as a condition of receiving a motor vehicle, or
382 other reasonable requirements; provided, that if a franchisor requires a franchisee to purchase
383 essential service tools with a purchase price in the aggregate of more than seventy-five hundred
384 dollars in order to receive a particular model of new motor vehicle, the franchisor shall upon
385 written request provide such franchisee with a good faith estimate in writing of the number of
386 vehicles of that particular model that the franchisee will be allocated during that model year in
387 which the tools are required to be purchased;

388 (19) **To directly or indirectly condition the awarding of a franchise to a prospective**
389 **franchisee, the addition of a line-make or franchise to an existing franchisee, the renewal**

390 of a franchise of an existing franchisee, the approval of the relocation of an existing
391 franchisee's facility, or the approval of the sale or transfer of the ownership of a franchise
392 on the willingness of a franchisee, proposed franchisee, or owner of an interest in the
393 dealership facility to enter into a site control agreement or exclusive use agreement. For
394 purposes of this subdivision, the terms "site control agreement" and "exclusive use
395 agreement" include any agreement that has the effect of either requiring that the
396 franchisee establish or maintain exclusive dealership facilities or restricting the ability of
397 the franchisee, or the ability of the franchisee's lessor in the event the dealership facility
398 is being leased, to transfer, sell, lease, or change the use of the dealership premises, whether
399 by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease,
400 option to purchase, option to lease, or other similar agreement, regardless of the parties to
401 such agreement. Any provision contained in any agreement entered into on or after
402 August 28, 2010, that is inconsistent with the provisions of this subdivision shall be
403 voidable at the election of the affected franchisee, prospective franchisee, or owner of an
404 interest in the dealership facility, provided this subdivision shall apply to a voluntary
405 agreement where separate, adequate, and reasonable consideration have been offered and
406 accepted;

407 (20) Except for the grounds listed in subdivision (1) of subsection 4 of section
408 407.822, prior to the issuance of any notice of intent to terminate a franchise agreement
409 under the MVFP act for unsatisfactory sales or service performance, the franchisor shall
410 provide the franchisee with no less than one hundred twenty days written notice of the
411 specific asserted grounds for termination. Thereafter, the franchisee shall have one
412 hundred twenty days to cure the asserted grounds for termination, provided the grounds
413 are both reasonable and of material significance to the franchise relationship. If the
414 franchisee fails to cure the asserted grounds for termination by the end of the cure period,
415 then the franchisor may give the sixty day notice required by subsection 4 of section
416 407.822 if it intends to terminate the franchise;

417 (21) To require, attempt to require, coerce, or attempt to coerce a franchisee, by
418 franchise agreement or otherwise, or as a condition to the renewal or continuation of a
419 franchise agreement, to:

420 (a) Exclude from the use of the franchisee's facilities a line-make for which the
421 franchisee has a franchise agreement to utilize the facilities; or

422 (b) Materially change the franchisee's facilities or method of conducting business
423 if the change would impose substantial or unreasonable financial hardship on the business
424 of the franchisee;

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

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

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

431 (25) To require, attempt to require, coerce, or attempt to coerce any franchisee to
432 close or change the location of the franchisee, or to make any substantial alterations to the
433 franchise premises or facilities when doing so would be unreasonable under the current
434 market and economic conditions. Prior to suggesting the need for any such action, the
435 franchisor shall provide the franchisee with a written good faith estimate of the minimum
436 number of the models of new motor vehicles that the franchisor will supply to the
437 franchisee during a reasonable time period, not less than three years, so the franchisee may
438 determine if it is a sufficient supply of motor vehicles so as to justify such changes, in light
439 of the current market and reasonably foreseeable projected and economic conditions. A
440 franchisor or its common entity or an entity controlled by or affiliated with the franchisor
441 may not take or threaten to take any action that is unfair or adverse to a franchisee who
442 does not enter into an agreement with the franchisor under this subdivision. This
443 subdivision does not affect any contract between a franchisor and any of its franchisees
444 regarding relocation, expansion, improvement, remodeling, renovation, or alteration which
445 exists on August 28, 2010;

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

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

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

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

460 **(30) To condition the sale, transfer, relocation, or renewal of a franchise agreement,**
461 **or to condition sales, services, parts, or finance incentives, upon site control or an**
462 **agreement to renovate or make improvements to a facility; except that voluntary**
463 **acceptance of such conditions by the franchisee shall not constitute a violation;**

464 **(31) Failing to offer to all of its franchisees of the same line-make any consumer**
465 **rebates, dealer incentives, price or interest rate reduction, or finance terms that the**
466 **franchisor offers or advertises, or allows its franchisees of the same line-make to offer or**
467 **advertise;**

468 **(32) Offering rebates, cash incentives, or other promotional items for the sale of a**
469 **vehicle by its franchisees unless: the same rebate, cash incentive, or promotion is offered**
470 **to all of its franchisees of the same line-make; and any rebate, cash incentive, or promotion**
471 **that is based on the sale of an individual vehicle is not increased for meeting a performance**
472 **standard;**

473 **(33) Unreasonably discriminating among its franchisees in any program that**
474 **provides assistance to its franchisees, including internet listings, sales leads, warranty**
475 **policy adjustments, marketing programs, and dealer recognition programs;**

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

482 **(35) To withhold, reduce, or delay unreasonably or without just cause delivery of**
483 **motor vehicle parts and accessories, commodities, or moneys due franchisees;**

484 **(36) To use or consider the performance of a franchisee relating to the sale of the**
485 **franchisor's vehicles or the franchisee's ability to satisfy any minimum sales or market**
486 **share quota or responsibility relating to the sale of the new vehicles in determining:**

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

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

491 **(c) The price of any program, certified, or other used motor vehicle that the**
492 **franchisee purchased from the franchisor; or**

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

496 **(37) To refuse to allocate, sell, or deliver motor vehicles; to charge back or withhold**
497 **payments or other things of value for which the franchisee is otherwise eligible under a**
498 **sales promotion, program, or contest; to prevent a franchisee from participating in any**
499 **promotion, program, or contest; or to take or threaten to take any adverse action against**
500 **a franchisee, including charge-backs, reducing vehicle allocations, or terminating or**
501 **threatening to terminate a franchise because the franchisee sold or leased a motor vehicle**
502 **to a customer who exported the vehicle to a foreign country or who resold the vehicle,**
503 **unless the franchisor proves that the franchisee knew or reasonably should have known**
504 **that the customer intended to export or resell the motor vehicle. There is a rebuttable**
505 **presumption that the franchisee neither knew nor reasonably should have known of its**
506 **customer's intent to export or resell the vehicle if the vehicle is titled or registered in any**
507 **state in this country. A franchisor may not take any action against a franchisee, including**
508 **reducing its allocations or supply of motor vehicles to the franchisee, or charging back a**
509 **franchisee for an incentive payment previously paid, unless the franchisor first meets in**
510 **person, by telephone, or video conference with an officer or other designated employee of**
511 **the franchisee. At such meeting, the franchisor shall provide a detailed explanation, with**
512 **supporting documentation, as to the basis for its claim that the franchisee knew or**
513 **reasonably should have known of the customer's intent to export or resell the motor**
514 **vehicle. Thereafter, the franchisee shall have a reasonable period, commensurate with the**
515 **number of motor vehicles at issue, but not less than fifteen days, to respond to the**
516 **franchisor's claims. If, following the franchisee's response and completion of all internal**
517 **dispute resolution processes provided through the franchisor, the dispute remains**
518 **unresolved, the franchisee may file a complaint with the administrative hearing**
519 **commission within thirty days after receipt of a written notice from the franchisor that it**
520 **still intends to take adverse action against the franchisee with respect to the motor vehicles**
521 **still at issue. If a complaint is timely filed, the administrative hearing commission shall**
522 **notify the franchisor of the filing of the complaint, and the franchisor shall not take any**
523 **action adverse to the franchisee until the administrative hearing commission renders a**
524 **final determination, which is not subject to further appeal, that the franchisor's proposed**
525 **action is in compliance with the provisions of this subdivision. In any hearing under this**
526 **subdivision, the franchisor has the burden of proof on all issues raised by this subdivision;**
527 **(38) To require a franchisee to allow customer information obtained by a franchisee**
528 **to be used by any person other than those required to administer a franchisor's warranty,**
529 **safety, recall, and notice obligations. Such customer information obtained by a franchisee**
530 **is owned by the franchisee;**

531 **(39) To mandate the use by the franchisee, or condition access to any services**
532 **offered by the franchisor on the franchisee's use, or condition the acceptance of an order**
533 **of any product or service offered by the franchisor on the franchisee's use, or condition the**
534 **acceptance of any claim for payment from the franchisee on the franchisee's use, or**
535 **condition the franchisee's participation in any program offered by the franchisor, a**
536 **common entity or an entity controlled by the franchisor on the franchisee's use of any**
537 **form, equipment, part, tool, furniture, fixture, data processing program or equipment,**
538 **automotive service equipment, or sign from the franchisor, a vendor recommended by the**
539 **franchisor, a common entity or an entity controlled by the franchisor if the franchisee is**
540 **able to obtain the identical or reasonably equivalent product from another vendor;**

541 **(40) Establishing any performance standard or program for measuring franchisee**
542 **performance that may have a material impact on a franchisee that is not fair, reasonable,**
543 **and equitable, or applying any such standard or program to a franchisee in a manner that**
544 **is not fair, reasonable, and equitable. Within ten days of a request of a franchisee, a**
545 **franchisor shall disclose in writing to the franchisee a description of how a performance**
546 **standard or program is designed and all relevant information used in the application of the**
547 **performance standard or program to that franchisee unless the information is available**
548 **to the franchisee on the franchisor's website;**

549 **(41) Establishing or implementing a plan or system for the allocation, scheduling,**
550 **or delivery of new motor vehicles, parts, or accessories to its franchisees that is not fair,**
551 **reasonable, and equitable or modifying an existing plan or system so as to cause the plan**
552 **or system to be unreasonable, unfair, or inequitable. Within ten days of any request of a**
553 **franchisee, the franchisor shall disclose in writing to the franchisee the method and mode**
554 **of distribution of that line-make among the franchisor's franchisees of the same line-make**
555 **within the same metro area for franchisees located in a metropolitan area and within the**
556 **county and contiguous counties of any franchisee not located in a metropolitan area; and**

557 **(42) To violate any other provision of the MVFP act that adversely impacts a**
558 **franchisee.**

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

9 2. The schedule of compensation shall include reasonable compensation for diagnostic
10 work, as well as repair service and labor **for the franchisee to meet its obligations for**
11 **preparation, delivery, and warranty service. The schedule shall also include reasonable**
12 **and adequate** time allowances for the diagnosis and performance of **preparation, delivery, and**
13 warranty [work and] service [shall be reasonable and adequate for the work] to be performed **in**
14 **a careful and professional manner.** In the determination of what constitutes reasonable
15 compensation **for labor and service** pursuant to this section, the principal factor to be given
16 consideration shall be the prevailing wage rates being [paid] **charged for similar labor and**
17 **service** by franchisees in the [community] **market** in which the franchisee is doing business, and
18 in no event shall the compensation of a franchisee for [warranty] labor **and service** be less than
19 the rates charged by the franchisee for [like] **similar labor and** service to retail customers for
20 nonwarranty **labor and** service [and repairs], provided that such rates are reasonable. **The**
21 **primary factor in determining a fair and reasonable compensation for parts under this**
22 **section shall be the prevailing amount charged for similar parts by other same line-make**
23 **franchisees in the market in which the franchisee is doing business and the fair and**
24 **reasonable compensation for parts shall not be less than the amount charged by the**
25 **franchisee for similar parts to retail customers for nonwarranty parts, provided that such**
26 **rates are reasonable. If another same line-make franchisee is not available within the**
27 **market, then the prevailing amount charged for similar parts by other franchisees in the**
28 **market shall be used as the primary factor.**

29 3. A franchisor shall [not:

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

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

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

37 4. [All claims made by a franchisee pursuant to this section for labor and parts shall be
38 paid within thirty days after their approval. All claims shall be either approved or disapproved
39 by the franchisor within thirty days after their receipt on a proper form generally used by the
40 franchisor and containing the usually required information therein. Any claims not specifically
41 disapproved in writing within thirty days after the receipt of the form shall be considered to be
42 approved and payment shall be made within thirty days. A claim which has been approved and
43 paid may not be charged back to the franchisee unless the franchisor can show that the claim was
44 fraudulent, false, or unsubstantiated, except that a charge back for false or fraudulent claims shall

45 not be made more than two years after payment, and a charge back for unsubstantiated claims
46 shall not be made more than fifteen months after payment. A franchise shall maintain all records
47 of warranty repairs, including the related time records of its employees, for at least two years
48 following payment of any warranty claim.] **No franchisor shall require a franchisee to submit**
49 **a claim authorized under this section sooner than thirty days after the franchisee completes**
50 **the preparation, delivery, or warranty service authorizing the claim for preparation,**
51 **delivery, or warranty service. All claims made by a franchisee under this section shall be**
52 **paid within thirty days after their approval. All claims shall be either approved or**
53 **disapproved by the franchisor within thirty days after their receipt on a proper form**
54 **generally used by the franchisor and containing the usually required information therein.**
55 **Any claims not specifically disapproved in writing within thirty days after the receipt of**
56 **the form shall be considered to be approved and payment shall be made within fifteen days**
57 **thereafter. A franchisee shall not be required to maintain defective parts for more than**
58 **thirty days after submission of a claim.**

59 5. A franchisor shall compensate the franchisee for franchisor-sponsored sales or service
60 promotion events, **including but not limited to, rebates, programs, or activities in accordance**
61 **with established written guidelines for such events, programs, or activities, which guidelines**
62 **shall be provided to each franchisee.**

63 6. **No franchisor shall require a franchisee to submit a claim authorized under**
64 **subsection 5 of this section sooner than thirty days after the franchisee becomes eligible to**
65 **submit the claim.** All claims made by a franchisee pursuant to subsection 5 of this section for
66 promotion events, **including but not limited to rebates, programs, or activities shall be paid**
67 **within ten days after their approval. All claims shall be either approved or disapproved by the**
68 **franchisor within thirty days after their receipt on a proper form generally used by the franchisor**
69 **and containing the usually required information therein. Any claim not specifically disapproved**
70 **in writing within thirty days after the receipt of this form shall be considered to be approved and**
71 **payment shall be made within [thirty] ten days. [The franchisor has the right to charge back any**
72 **claim for twelve months after the later of either the close of the promotion event, program, or**
73 **activity, or the date of the payment.]**

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

- 76 (1) **Repairs for franchisor, manufacturer, or distributor special events, specials, or**
77 **promotional discounts for retail customer repairs;**
78 (2) **Parts sold at wholesale;**
79 (3) **Engine assemblies and transmission assemblies;**

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

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

84 (6) Tires; and

85 (7) Vehicle reconditioning.

86 8. If a franchisor, manufacturer, importer, or distributor furnishes a part or
87 component to a franchisee, at no cost, to use in performing repairs under a recall,
88 campaign service action, or warranty repair, the franchisor shall compensate the
89 franchisee for the part or component in the same manner as warranty parts compensation
90 under this section by compensating the franchisee at the average markup on the cost for
91 the part or component as listed in the price schedule of the franchisor, manufacturer,
92 importer, or distributor, less the cost for the part or component.

93 9. A franchisor shall not require a franchisee to establish the retail rate customarily
94 charged by the franchisee for parts, service, or labor by an unduly burdensome or time
95 consuming method or by requiring information that is unduly burdensome or time
96 consuming to provide, including, but not limited to, part-by-part or transaction-by-
97 transaction calculations. A franchisee shall not request a franchisor to approve a different
98 labor rate or parts rate more than twice in one calendar year.

99 10. If a franchisee submits any claim under this section to a franchisor that is
100 incomplete, inaccurate, or lacking any information usually required by the franchisor, then
101 the franchisor shall promptly notify the franchisee, and the time limit to submit the claim
102 shall be extended for a reasonable length of time, not less than five business days following
103 notice by the franchisor to the franchisee, for the franchisee to provide the complete,
104 accurate, or lacking information to the franchisor.

105 11. (1) A franchisor may only audit warranty, sales, or incentive claims and
106 charge-back to the franchisee unsubstantiated claims for a period of twelve months
107 following payment, subject to all of the provisions of this section. Furthermore, if the
108 franchisor has good cause to believe that a franchisee has submitted fraudulent claims,
109 then the franchisor may only audit suspected fraudulent warranty, sales, or incentive
110 claims and charge-back to the franchisee fraudulent claims for a period of two years
111 following payment, subject to all provisions of this section.

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

114 (3) Prior to requiring any charge-back, reimbursement, or credit against a future
115 transaction arising out of an audit, the franchisor shall submit written notice to the

116 franchisee along with a copy of its audit and the detailed reason for each intended charge-
117 back, reimbursement, or credit. A franchisee may file a complaint with the administrative
118 hearing commission within thirty days after receipt of any such written notice challenging
119 such action. If a complaint is filed within the thirty days, then the charge-back,
120 reimbursement, or credit shall be stayed pending a hearing and determination of the
121 matter under section 408.822. If the administrative hearing commission determines that
122 any portion of the charge-back, reimbursement, or credit is improper, then that portion
123 of the charge-back, reimbursement, or credit shall be void and not allowed.

407.831. 1. Notwithstanding the terms of any franchise agreement to the contrary,
2 each franchisor, including any successor manufacturer of that franchisor, shall indemnify
3 and hold harmless each franchisee obtaining a new motor vehicle from the franchisor from
4 and against any liability, including reasonable attorney's fees, expert witness fees, court
5 costs, and other expenses incurred in the litigation, so long as such fees and costs are
6 reasonable, that the franchisee may be subjected to by the purchaser of the vehicle because
7 of damage to the motor vehicle that occurred before delivery of the vehicle to the franchisee
8 and that was not disclosed in writing to the franchisee prior to delivery of the vehicle. This
9 indemnity obligation of the franchisor applies regardless of whether the damage falls below
10 the six percent threshold under subsection 2 of this section. The failure of the franchisor
11 to indemnify and hold harmless the franchisee is a violation of this section.

12 2. If the cost of repairing damage to a new motor vehicle that occurs before delivery
13 to the franchisee's location exceeds six percent of the manufacturer's suggested retail price,
14 as measured by retail repair costs, the franchisee may reject or, if title has passed to the
15 franchisee, require the franchisor who delivered the vehicle to repurchase the vehicle
16 within ten business days after delivery, unless the damage occurred during shipment and
17 the method of transportation, carrier, or transporter of the motor vehicle was designated
18 by the franchisee. Upon repurchase, the franchisor shall be subrogated to all of the
19 franchisee's rights against the carrier or transporter of the motor vehicle regarding
20 damage. The cost of repairing glass, tires, bumpers, moldings, and audio equipment with
21 identical manufacturer's original equipment shall not be included in determining the cost
22 of repairing damage under this subsection.

407.833. 1. Notwithstanding the term of any franchise to the contrary, a franchisor
2 shall not modify a franchise during the term of the franchise or upon its renewal if the
3 modification substantially and adversely affects the franchisee's rights, obligations,
4 investment, or return on investment without giving ninety days written notice of the
5 proposed modification to the franchisee unless the modification is required by law or court
6 order. Within the ninety-day notice period the franchisee may file with the administrative

7 hearing commission and serve upon the franchisor a complaint for a determination of
8 whether there is good cause for permitting the proposed modification and whether the
9 proposed modification violates any provision of the MVFP act. The administrative hearing
10 commission shall promptly schedule a hearing and decide the matter. Multiple complaints
11 pertaining to the same proposed franchise modification shall be consolidated for hearing.
12 The proposed franchise modification shall not take effect pending the determination of the
13 matter.

14 **2. The burden of proof shall be on the franchisor, except that the burden of proof**
15 **with regard to the factor set forth in subdivision (3) of this subsection shall be on the**
16 **franchisee, and the administrative hearing commission may consider any relevant factor**
17 **including:**

18 **(1) The reasons for the proposed modification;**

19 **(2) Whether the proposed modification is applied to or affects all franchisees in a**
20 **nondiscriminating manner;**

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

23 **(4) Whether the proposed modification is in the public interest;**

24 **(5) The degree to which the proposed modification is necessary to the orderly and**
25 **profitable distribution of products by the franchisor;**

26 **(6) Whether the proposed modification is offset by other modifications beneficial**
27 **to the franchisee;**

28 **(7) Whether the proposed modification violates any provision of the MVFP act.**

29 **3. The decision of the administrative hearing commission shall be in writing and**
30 **shall contain findings of fact and a determination of whether there is good cause for**
31 **permitting the proposed modification and whether the proposed modification violates any**
32 **provision of the MVFP act. The administrative hearing commission shall deliver copies**
33 **of the decision to the parties personally or by registered mail. If the administrative hearing**
34 **commission determines that there is not good cause for permitting the proposed**
35 **modification or that the proposed modification violates any provision of the MVFP act,**
36 **then the franchisor shall not proceed with the proposed modification.**

37 **4. For purposes of this section, the term "modification" includes, but is not limited**
38 **to, any change, amendment, supplement, deletion, addition, or replacement of any**
39 **provision of the franchise.**

407.835. 1. Notwithstanding any provision of the franchise to the contrary, in
2 addition to the administrative relief provided in sections 407.810 to 407.835, any [motor vehicle]
3 franchisee may bring an action in any court of competent jurisdiction against a [motor vehicle]

4 franchisor with whom the franchisee has a franchise, **manufacturer, distributor, or importer**
5 for an act or omission which constitutes [an unlawful practice as defined in section 407.825] a
6 **violation of a franchise or the MVFP act** to recover **actual** damages sustained by reason
7 thereof, **plus actual and reasonable expenses of litigation, including, but not limited to,**
8 **depositions, transcripts, expert witnesses, and attorney fees**, and, where appropriate, such
9 [motor vehicle] franchisee shall be entitled to injunctive relief, but the remedies set forth in this
10 section shall not be deemed exclusive and shall be in addition to any other remedies permitted
11 by law **or equity**.

12 **2. In any action wherein a franchisor, manufacturer, distributor, or importer has**
13 **been found liable in damages to any franchisee for a willful violation of a franchise or the**
14 **MVFP act, then any franchisee so damaged shall be entitled to recover actual damages**
15 **sustained thereby, plus actual and reasonable expenses of litigation, including, but not**
16 **limited to, depositions, transcripts, expert witnesses, and attorney fees, and, where**
17 **appropriate, such motor vehicle franchisee shall be entitled to injunctive relief, but the**
18 **remedies set forth in this section shall not be deemed exclusive and shall be in addition to**
19 **any other remedies permitted by law or equity. In addition, a court or jury may award a**
20 **franchisee punitive damages in such amount as it deems appropriate.**

21 **3. In the event of a dispute between a franchisee and a franchisor:**

22 **(1) At the option of the franchisee, venue of any civil action, other than a**
23 **proceeding before the administrative hearing commission, shall be proper in the circuit**
24 **court of Cole County or the circuit court in the judicial circuit where the franchisee resides**
25 **or has its principal place of business;**

26 **(2) Missouri law shall govern the franchise and the dispute, both substantively and**
27 **procedurally;**

28 **(3) No mandatory arbitration provision in any franchise shall be valid;**

29 **(4) No waiver of jury trial in any franchise shall be valid;**

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

32 **(6) No provision in any franchise providing for mediation, arbitration, or litigation**
33 **to occur outside this state shall be valid; and**

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

✓