

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 477

Introduced by Fischer, 43.

Read first time January 18, 2011

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to
2 amend sections 60-1401, 60-1420, 60-1424, 60-1425,
3 60-1427, 60-1429, 60-1436, 60-1437, 60-1438, and
4 60-1438.01, Reissue Revised Statutes of Nebraska; to
5 change provisions relating to manufacturers,
6 distributors, and motor vehicle dealers; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1401, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 60-1401 Sections 60-1401 to 60-1440 shall be known and
4 may be cited as the Motor Vehicle Industry Regulation Act.

5 Any amendments to the act shall apply to franchises
6 subject to the act which are entered into, amended, altered,
7 modified, renewed, or extended after the date of the amendments to
8 the act except as otherwise specifically provided in the act.

9 All amendments to the act shall apply upon the issuance
10 or renewal of a dealer's or manufacturer's license.

11 Sec. 2. Section 60-1420, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 60-1420 (1) Except as provided in subsection (2) or (3)
14 of this section, no franchisor shall terminate or refuse to continue
15 any franchise or change a franchisee's community unless the
16 franchisor has first established, in a hearing held pursuant to
17 section 60-1425, that:

18 (a) The franchisor has good cause for termination, ~~or~~
19 noncontinuance, or change;

20 (b) Upon termination or noncontinuance, another franchise
21 in the same line-make will become effective in the same community,
22 without diminution of the franchisee's service formerly provided, or
23 that the community cannot be reasonably expected to support such a
24 dealership; and

25 (c) ~~The~~ Upon termination or noncontinuance, the

1 franchisor is willing and able to comply with section 60-1430.02.

2 (2) Upon providing good and sufficient evidence to the
3 board, a franchisor may terminate a franchise without such hearing
4 (a) for a particular line-make if the franchisor discontinues that
5 line-make, (b) if the franchisee's license as a motor vehicle,
6 combination motor vehicle and trailer, motorcycle, or trailer dealer
7 is revoked pursuant to the Motor Vehicle Industry Regulation Act, or
8 (c) upon a mutual written agreement of the franchisor and franchisee.

9 (3) A franchisor may change a franchisee's community
10 without a hearing if the franchisor notifies the franchisee of the
11 proposed change at least thirty days before the change, provides the
12 franchisee an opportunity to object, and enters into an agreement
13 with the franchisee regarding the change of the franchisee's
14 community. If no agreement is reached, the franchisor shall comply
15 with sections 60-1420 to 60-1435 prior to changing the franchisee's
16 community.

17 Sec. 3. Section 60-1424, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 60-1424 If a franchisor seeks to terminate or not
20 continue any franchise or change a franchisee's community, or seeks
21 to enter into a franchise establishing an additional motor vehicle,
22 combination motor vehicle and trailer, motorcycle or trailer
23 dealership of the same line-make, the franchisor shall file an
24 application with the board for permission to terminate or not
25 continue the franchise, to change a franchisee's community, or ~~for~~

1 ~~permission~~ to enter into a franchise for additional representation of
2 the same line-make in that community.

3 Sec. 4. Section 60-1425, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 60-1425 Upon receiving an application under ~~the~~
6 ~~provisions of~~ section 60-1424, the board shall enter an order fixing
7 a time, which shall be within ninety days of the date of such order,
8 and place of hearing, and shall send by certified or registered mail,
9 with return receipt requested, a copy of the order to the franchisee
10 whose franchise the franchisor seeks to terminate, ~~or~~ not continue,
11 or change. If the application requests permission to change a
12 franchisee's community or establish an additional motor vehicle,
13 combination motor vehicle and trailer, motorcycle, or trailer
14 dealership, a copy of the order shall be sent to all franchisees in
15 the community who are then engaged in the business of offering to
16 sell or selling the same line-make. Copies of orders shall be
17 addressed to the franchisee at the place where the business is
18 conducted. The board may also give notice of franchisor's application
19 to any other parties whom the board may deem interested persons, such
20 notice to be in the form and substance and given in the manner the
21 board deems appropriate. Any person who can show an interest in the
22 application may become a party to the hearing, whether or not he or
23 she receives notice, but a party not receiving notice shall be
24 limited to participation at the hearing on the question of the public
25 interest in the termination or continuation of the franchise, change

1 in community, or ~~in~~ the establishment of an additional motor vehicle
2 dealership.

3 Sec. 5. Section 60-1427, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 60-1427 Upon hearing, the franchisor shall have the
6 burden of proof to establish that under the Motor Vehicle Industry
7 Regulation Act the franchisor should be granted permission to
8 terminate or not continue the franchise, to change the franchisee's
9 community, or to enter into a franchise establishing an additional
10 motor vehicle, combination motor vehicle and trailer, motorcycle, or
11 trailer dealership.

12 Nothing contained in the act shall be construed to
13 require or authorize any investigation by the board of any matter
14 before the board under the provisions of sections 60-1420 to 60-1435.
15 Upon hearing, the board shall hear the evidence introduced by the
16 parties and shall make its decision solely upon the record so made.

17 Sec. 6. Section 60-1429, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 60-1429 Notwithstanding the terms, provisions, or
20 conditions of any agreement or franchise, the following shall not
21 constitute good cause, as used in sections 60-1420 and 60-1422, for
22 the termination or noncontinuation of a franchise, for changing the
23 franchisee's community, or for entering into a franchise for the
24 establishment of an additional dealership in a community for the same
25 line-make:

1 (1) The sole fact that the franchisor desires further
2 penetration of the market;

3 (2) The change of ownership of the franchisee's
4 dealership or the change of executive management of the franchisee's
5 dealership unless the franchisor, having the burden of proof, proves
6 that such change of ownership or executive management will be
7 substantially detrimental to the distribution of the franchisor's
8 motor vehicles, combination motor vehicles and trailers, motorcycles,
9 or trailer products or to competition in the community. Substantially
10 detrimental may include, but is not limited to, the failure of any
11 proposed transferee or individual to meet the current criteria
12 generally applied by the franchisor in qualifying new motor vehicle
13 dealers; or

14 (3) The fact that the franchisee refused to purchase or
15 accept delivery of any motor vehicle, combination motor vehicle and
16 trailer, motorcycle, trailer, vehicle parts or accessories, or other
17 commodity or service not ordered by the franchisee.

18 Sec. 7. Section 60-1436, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-1436 A manufacturer or distributor shall not require
21 or coerce any new motor vehicle dealer in this state to do any of the
22 following:

23 (1) Order or accept delivery of any new motor vehicle,
24 part or accessory, equipment, or other commodity not required by law
25 which was not voluntarily ordered by the new motor vehicle dealer or

1 retain any part or accessory that the dealer has not sold within
2 twelve months if the part or accessory was not obtained through a
3 specific order initiated by the dealer but was specified for, sold
4 to, and shipped to the dealer pursuant to an automatic ordering
5 system, if the part or accessory is in the condition required for
6 return, and if the part or accessory is returned within thirty days
7 after such twelve-month period. For purposes of this subdivision,
8 automatic ordering system means a computerized system required by the
9 franchisor, manufacturer, or distributor that automatically specifies
10 parts and accessories for sale and shipment to the dealer without
11 specific order thereof initiated by the dealer. The manufacturer,
12 factory branch, distributor, or distributor branch shall not charge a
13 restocking or handling fee for any part or accessory returned under
14 this subdivision. In determining whether parts or accessories in the
15 dealer's inventory were specified and sold under an automated
16 ordering system, the parts and accessories in the dealer's inventory
17 are presumed to be the most recent parts and accessories that were
18 sold to the dealer. This section shall not be construed to prevent
19 the manufacturer or distributor from requiring that new motor vehicle
20 dealers carry a reasonable inventory of models offered for sale by
21 the manufacturer or distributor;

22 (2) Offer or accept delivery of any new motor vehicle
23 with special features, accessories, or equipment not included in the
24 list price of the new motor vehicle as publicly advertised by the
25 manufacturer or distributor;

1 (3) Participate monetarily in any advertising campaign or
2 contest or purchase any promotional materials, display devices, or
3 display decorations or materials at the expense of the new motor
4 vehicle dealer;

5 (4) Join, contribute to, or affiliate with an advertising
6 association;

7 (5) Enter into any agreement with the manufacturer or
8 distributor or do any other act prejudicial to the new motor vehicle
9 dealer by threatening to terminate a dealer agreement or any
10 contractual agreement or understanding existing between the dealer
11 and the manufacturer or distributor. Notice in good faith to any
12 dealer of the dealer's violation of any terms or provisions of the
13 dealer agreement shall not constitute a violation of the Motor
14 Vehicle Industry Regulation Act;

15 (6) Change the capital structure of the new motor vehicle
16 dealership or the means by or through which the dealer finances the
17 operation of the dealership, if the dealership at all times meets any
18 reasonable capital standards determined by the manufacturer in
19 accordance with uniformly applied criteria;

20 (7) Refrain from participation in the management of,
21 investment in, or the acquisition of any other line of new motor
22 vehicle or related products as long as the dealer maintains a
23 reasonable line of credit for each make or line of vehicle, remains
24 in compliance with reasonable facilities requirements, and makes no
25 change in the principal management of the dealer;

1 (8) Prospectively assent to a release, assignment,
2 novation, waiver, or estoppel which would relieve any person from
3 liability imposed by the act or require any controversy between the
4 new motor vehicle dealer and a manufacturer or distributor to be
5 referred to a person other than the duly constituted courts of the
6 state or the United States, if the referral would be binding upon the
7 new motor vehicle dealer;

8 (9) Change the location of the new motor vehicle
9 dealership or make any substantial alterations to the dealership
10 premises, if such changes or alterations would be unreasonable,
11 including unreasonably requiring a franchisee to establish, maintain,
12 or continue exclusive sales facilities, sales display space,
13 personnel, service, parts, or administrative facilities for a line-
14 make, unless such exclusivity is reasonable and otherwise justified
15 by reasonable business considerations. In making that determination,
16 the franchisor shall take into consideration the franchisee's
17 compliance with facility requirements as required by the franchise
18 agreement. The franchisor shall have the burden of proving that
19 business considerations justify exclusivity;

20 (10) Release, convey, or otherwise provide customer
21 information if to do so is unlawful or if the customer objects in
22 writing to doing so, unless the information is necessary for the
23 manufacturer, factory branch, or distributor to meet its obligations
24 to consumers or the new motor vehicle dealer including vehicle
25 recalls or other requirements imposed by state or federal law. No

1 manufacturer or distributor may require a dealer to disclose in a
2 retail delivery report, or other report on the delivery of a vehicle,
3 any information about a consumer that gives the consumer the right to
4 opt-out of the disclosure of that information under 16 C.F.R. part
5 313;

6 (11) Release to any unaffiliated third party any customer
7 information which has been provided by the new motor vehicle dealer
8 to the manufacturer except as provided in subdivision (10) of this
9 section. No manufacturer or distributor may require a dealer to
10 disclose in a retail delivery report, or other report on the delivery
11 of a vehicle, any information about a consumer that gives the
12 consumer the right to opt-out of the disclosure of that information
13 under 16 C.F.R. part 313;

14 (12) Establish in connection with the sale of a motor
15 vehicle prices at which the dealer must sell products or services not
16 manufactured or distributed by the manufacturer or distributor,
17 whether by agreement, program, incentive provision, or otherwise; ~~or~~

18 (13) Underutilize the dealer's facilities by requiring or
19 coercing a dealer to exclude or remove from the dealer's facilities
20 operations for selling or servicing a line-make of motor vehicles for
21 which the dealer has a franchise agreement to utilize the facilities,
22 except that this subdivision does not prohibit a manufacturer from
23 requiring an exclusive sales area within the facilities that are in
24 compliance with reasonable requirements for the facilities; or -

25 (14)(a) Enter into any agreement with a manufacturer,

1 factory branch, distributor, distributor branch, or one of its
2 affiliates which gives site control of the premises of the dealer
3 that does not terminate upon the occurrence of any of the following
4 events:

5 (i) The right of the franchisor to manufacture or
6 distribute the line-make of vehicles covered by the dealer's
7 franchise is sold, assigned, or otherwise transferred by the
8 manufacturer, factory branch, distributor, or distributor branch to
9 another; or

10 (ii) The final termination of the dealer's franchise for
11 any reason unless an agreement for site control is voluntarily
12 negotiated separately and apart from the franchise agreement and
13 consideration has been offered by the manufacturer and accepted by
14 the dealer.

15 (b) For purposes of this subdivision, site control means
16 the contractual right to control in any way the commercial use and
17 development of the premises upon which a dealer's business operations
18 are located, including the right to approve of additional or
19 different uses for the property beyond those of its franchise, the
20 right to lease or sublease the dealer's property, or the right or
21 option to purchase the dealer's property.

22 Any action prohibited for a manufacturer or distributor
23 under the Motor Vehicle Industry Regulation Act is also prohibited
24 for a subsidiary which is wholly owned or controlled by contract by a
25 manufacturer or distributor or in which a manufacturer or distributor

1 has more than a ten percent ownership interest, including a financing
2 division.

3 Sec. 8. Section 60-1437, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 60-1437 In addition to the restrictions imposed by
6 section 60-1436, a manufacturer or distributor shall not:

7 (1) Fail to deliver new motor vehicles or new motor
8 vehicle parts or accessories within a reasonable time and in
9 reasonable quantities relative to the new motor vehicle dealer's
10 market area and facilities, unless the failure is caused by acts or
11 occurrences beyond the control of the manufacturer or distributor or
12 unless the failure results from an order by the new motor vehicle
13 dealer in excess of quantities reasonably and fairly allocated by the
14 manufacturer or distributor;

15 (2) Refuse to disclose to a new motor vehicle dealer the
16 method and manner of distribution of new motor vehicles by the
17 manufacturer or distributor or, if a line-make is allocated among new
18 motor vehicle dealers, refuse to disclose to any new motor vehicle
19 dealer that handles the same line-make the system of allocation,
20 including, but not limited to, a complete breakdown by model, and a
21 concise listing of dealerships with an explanation of the derivation
22 of the allocation system, including its mathematical formula in a
23 clear and comprehensible form;

24 (3) Refuse to disclose to a new motor vehicle dealer the
25 total number of new motor vehicles of a given model which the

1 manufacturer or distributor has sold during the current model year
2 within the dealer's marketing district, zone, or region, whichever
3 geographical area is the smallest;

4 (4) Increase the price of any new motor vehicle which the
5 new motor vehicle dealer had ordered and delivered to the same retail
6 consumer for whom the vehicle was ordered, if the order was made
7 prior to the dealer's receipt of the written official price increase
8 notification. A sales contract signed by a private retail consumer
9 and binding on the dealer shall constitute evidence of such order. In
10 the event of manufacturer or distributor price reduction or cash
11 rebate, the amount of any reduction or rebate received by a dealer
12 shall be passed on to the private retail consumer by the dealer. Any
13 price reduction in excess of five dollars shall apply to all vehicles
14 in the dealer's inventory which were subject to the price reduction.
15 A price difference applicable to a new model or series of motor
16 vehicles at the time of the introduction of the new model or series
17 shall not be considered a price increase or price decrease. This
18 subdivision shall not apply to price changes caused by the following:

19 (a) The addition to a motor vehicle of required or
20 optional equipment pursuant to state or federal law;

21 (b) In the case of foreign-made vehicles or components,
22 revaluation of the United States dollar; or

23 (c) Any increase in transportation charges due to an
24 increase in rates charged by a common carrier or other transporter;

25 (5) Fail or refuse to sell or offer to sell to all

1 franchised new motor vehicle dealers in a line-make every new motor
2 vehicle sold or offered for sale to any franchised new motor vehicle
3 dealer of the same line-make. However, the failure to deliver any
4 such new motor vehicle shall not be considered a violation of this
5 section if the failure is due to a lack of manufacturing capacity or
6 to a strike or labor difficulty, a shortage of materials, a freight
7 embargo, or any other cause over which the franchisor has no control.
8 A manufacturer or distributor shall not require that any of its new
9 motor vehicle dealers located in this state pay any extra fee,
10 purchase unreasonable or unnecessary quantities of advertising
11 displays or other materials, or remodel, renovate, or recondition the
12 new motor vehicle dealer's existing facilities in order to receive
13 any particular model or series of vehicles manufactured or
14 distributed by the manufacturer for which the dealers have a valid
15 franchise. Notwithstanding the provisions of this subdivision,
16 nothing contained in this section shall be deemed to prohibit or
17 prevent a manufacturer from requiring that its franchised dealers
18 located in this state purchase special tools or equipment, stock
19 reasonable quantities of certain parts, or participate in training
20 programs which are reasonably necessary for those dealers to sell or
21 service any model or series of new motor vehicles. This subdivision
22 shall not apply to manufacturers of recreational vehicles;

23 (6) Fail to offer dealers of a specific line-make a new
24 franchise agreement containing substantially similar terms and
25 conditions for sales of the line-make if the ownership of the

1 manufacturer or distributor changes or there is a change in the plan
2 or system of distribution;

3 (7) Take an adverse action against a dealer because the
4 dealer sells or leases a motor vehicle that is later exported to a
5 location outside the United States. A franchise provision that allows
6 a manufacturer or distributor to take adverse action against a dealer
7 because the dealer sells or leases a motor vehicle that is later
8 exported to a location outside the United States is enforceable only
9 if, at the time of the original sale or lease, the dealer knew or
10 reasonably should have known that the motor vehicle would be exported
11 to a location outside the United States. A dealer is presumed to have
12 no knowledge that a motor vehicle the dealer sells or leases will be
13 exported to a location outside the United States if, under the laws
14 of a state of the United States (a) the motor vehicle is titled, (b)
15 the motor vehicle is registered, and (c) applicable state and local
16 taxes are paid for the motor vehicle. Such presumption may be
17 rebutted by direct, clear, and convincing evidence that the dealer
18 knew or reasonably should have known at the time of the original sale
19 or lease that the motor vehicle would be exported to a location
20 outside the United States. Except as otherwise permitted by
21 subdivision (7) of this section, a franchise provision that allows a
22 manufacturer or distributor to take adverse action against a dealer
23 because the dealer sells or leases a motor vehicle that is later
24 exported to a location outside the United States is void and
25 unenforceable;

1 (8) Discriminate against a dealer holding a franchise for
2 a line-make of the manufacturer or distributor in favor of other
3 dealers of the same line-make in this state by:

4 (a) Selling or offering to sell a new motor vehicle to a
5 dealer at a lower actual price, including the price for vehicle
6 transportation, than the actual price at which the same model
7 similarly equipped is offered to or is available to another dealer in
8 this state during a similar time period; or

9 (b) Using a promotional program or device or an
10 incentive, payment, or other benefit, whether paid at the time of the
11 sale of the new motor vehicle to the dealer or later, that results in
12 the sale or offer to sell a new motor vehicle to a dealer at a lower
13 price, including the price for vehicle transportation, than the price
14 at which the same model similarly equipped is offered or is available
15 to another dealer in this state during a similar time period. This
16 subdivision shall not prohibit a promotional or incentive program
17 that is functionally available to competing dealers of the same line-
18 make in this state on substantially comparable terms; ~~or~~

19 (9) Make any express or implied statement or
20 representation directly or indirectly that the dealer is under any
21 obligation whatsoever to offer to sell or sell any extended service
22 contract, ~~or~~ extended maintenance plan, gap policy, gap waiver, or
23 other aftermarket product or service offered, sold, backed by, or
24 sponsored by the manufacturer or distributor or to sell, assign, or
25 transfer any of the dealer's retail sales contracts or leases in this

1 state on motor vehicles manufactured or sold by the manufacturer or
2 distributor to a finance company or class of finance companies,
3 leasing company or class of leasing companies, or other specified
4 person, because of any relationship or affiliation between the
5 manufacturer or distributor and the finance company or companies,
6 leasing company or leasing companies, or the specified person or
7 persons; or -

8 (10) Prohibit a franchisee from acquiring a line-make of
9 new motor vehicles solely because the franchisee owns or operates a
10 franchise of the same line-make in a contiguous market.

11 Any such statements, threats, promises, acts, contracts,
12 or offers of contracts, when their effect may be to lessen or
13 eliminate competition or tend to create a monopoly, are declared
14 unfair trade practices and unfair methods of competition and are
15 prohibited.

16 Sec. 9. Section 60-1438, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 60-1438 (1) Each new motor vehicle manufacturer or
19 distributor shall specify in writing to each of its new motor vehicle
20 dealers licensed in this state the dealer's obligations for
21 preparation, delivery, and warranty service on its products. The
22 manufacturer or distributor shall compensate the new motor vehicle
23 dealer for warranty service which such manufacturer or distributor
24 requires the dealer to provide, including warranty and recall
25 obligations related to repairing and servicing motor vehicles and all

1 parts and components included in or manufactured for installation in
2 the motor vehicles of the manufacturer or distributor. The
3 manufacturer or distributor shall provide the new motor vehicle
4 dealer with the schedule of compensation to be paid to the dealer for
5 parts, work, and service and the time allowance for the performance
6 of the work and service.

7 ~~(2)~~(2)(a) The schedule of compensation shall include
8 reasonable compensation for diagnostic work, as well as repair
9 service, parts, and labor. Time allowances for the diagnosis and
10 performance of warranty work and service shall be reasonable and
11 adequate for the work to be performed. In the determination of what
12 constitutes reasonable compensation under this section, the principal
13 factors to be given consideration shall be the prevailing wage rates
14 being paid by dealers in the community in which the dealer is doing
15 business, and in no event shall the compensation of the dealer for
16 warranty parts and labor be less than the rates charged by the dealer
17 for like parts and service to retail or fleet customers, as long as
18 such rates are reasonable. In determining prevailing wage rates, the
19 rate of compensation for labor for that portion of repair orders for
20 routine maintenance, such as oil and fluid changes, shall not be
21 used.

22 (b) For purposes of this section, compensation for parts
23 may be determined by calculating the price paid by the dealer for
24 parts, including all shipping and other charges, multiplied by the
25 sum of one and the dealer's average percentage markup over the price

1 paid by the dealer for parts purchased by the dealer from the
2 manufacturer and sold at retail. The dealer may establish average
3 percentage markup by submitting to the manufacturer one hundred
4 sequential customer-paid service repair orders or ninety days of
5 customer-paid service repair orders, whichever is less, covering
6 repairs made no more than one hundred eighty days before the
7 submission and declaring what the average percentage markup is.
8 Within thirty days after receipt of the repair orders, the
9 manufacturer may audit the submitted repair orders and approve or
10 deny approval of the average percentage markup based on the audit.
11 The average percentage markup shall go into effect forty-five days
12 after the approval based on that audit. If the manufacturer denies
13 approval of the average percentage markup declared by the dealer, the
14 dealer may file a complaint with the board. The manufacturer shall
15 have the burden to establish that the denial was reasonable. If the
16 board determines that the denial was not reasonable, the denial shall
17 be deemed a violation of the Motor Vehicle Industry Regulation Act
18 subject to the enforcement procedures of the act. Only retail sales
19 not involving warranty repairs or parts supplied for routine vehicle
20 maintenance shall be considered in calculating average percentage
21 markup. No manufacturer shall require a dealer to establish average
22 percentage markup by a methodology, or by requiring information, that
23 is unduly burdensome or time consuming to provide, including, but not
24 limited to, part-by-part or transaction-by-transaction calculations.
25 A dealer shall not request a change in the average percentage markup

1 more than twice in one calendar year.

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

4 (a) Fail to perform any warranty obligation;

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

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

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

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

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

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

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

21 ~~(4)~~(5) All claims made by a new motor vehicle dealer
22 pursuant to this section for labor and parts shall be made within six
23 months after completing the work and shall be paid within thirty days
24 after their approval. All claims shall be either approved or
25 disapproved by the manufacturer or distributor within thirty days

1 after their receipt on a proper form generally used by the
2 manufacturer or distributor and containing the usually required
3 information therein. Any claim not specifically disapproved in
4 writing within thirty days after the receipt of the form shall be
5 considered to be approved and payment shall be made within thirty
6 days. The manufacturer has the right to audit the claims for ~~two~~
7 years—one year after payment, except that if the manufacturer has
8 reasonable cause to believe that a claim submitted by a dealer is
9 intentionally false or fraudulent, the manufacturer has the right to
10 audit the claims for four years after payment. For purposes of this
11 subsection, reasonable cause means a bona fide belief based upon
12 evidence that the issues of fact are such that a person of ordinary
13 caution, prudence, and judgment could believe that a claim was
14 intentionally false or fraudulent. The manufacturer has the right and
15 to charge back to the new motor vehicle dealer the amount of any
16 false or fraudulent claim after the new motor vehicle dealer has had
17 notice and an opportunity to participate in all franchisor internal
18 appeal processes as well as all available legal processes. The
19 requirement to approve and pay the claim within thirty days after
20 receipt of the claim does not preclude chargebacks for any fraudulent
21 claim previously paid. A manufacturer may not deny a claim based
22 solely on a dealer's incidental failure to comply with a specific
23 claim processing requirement, such as a clerical error that does not
24 put into question the legitimacy of the claim. If a claim is rejected
25 for a clerical error, the dealer may resubmit a corrected claim in a

1 timely manner.

2 ~~(5)~~ (6) The warranty obligations set forth in this
3 section shall also apply to any manufacturer of a new motor vehicle
4 transmission, engine, or rear axle that separately warrants its
5 components to customers.

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

7 Sec. 10. Section 60-1438.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-1438.01 (1) For purposes of this section, manufacturer
10 or distributor includes (a) a factory representative or a distributor
11 representative or (b) a person who is affiliated with a manufacturer
12 or distributor or who, directly or indirectly through an
13 intermediary, is controlled by, or is under common control with, the
14 manufacturer or distributor. A person is controlled by a manufacturer
15 or distributor if the manufacturer or distributor has the authority
16 directly or indirectly, by law or by agreement of the parties, to
17 direct or influence the management and policies of the person. A
18 franchise agreement with a Nebraska-licensed dealer which conforms to
19 and is subject to the Motor Vehicle Industry Regulation Act is not
20 control for purposes of this section.

21 (2) Except as provided in this section, a manufacturer or
22 distributor shall not directly or indirectly:

23 (a) Own an interest in a franchise, franchisee, or
24 consumer care or service facility, except that a manufacturer or
25 distributor may hold stock in a publicly held franchise, franchisee,

1 or consumer care or service facility so long as the manufacturer or
2 distributor does not by virtue of holding such stock operate or
3 control the franchise, franchisee, or consumer care or service
4 facility;

5 (b) Operate or control a franchise, franchisee, or
6 consumer care or service facility; or

7 (c) Act in the capacity of a franchisee or motor vehicle
8 dealer.

9 (3) A manufacturer or distributor may own an interest in
10 a franchisee or otherwise control a franchise for a period not to
11 exceed twelve months after the date the manufacturer or distributor
12 acquires the franchise if:

13 (a) The person from whom the manufacturer or distributor
14 acquired the franchise was a franchisee; and

15 (b) The franchise is for sale by the manufacturer or
16 distributor.

17 (4) For purposes of broadening the diversity of its
18 franchisees and enhancing opportunities for qualified persons who
19 lack the resources to purchase a franchise outright, but for no other
20 purpose, a manufacturer or distributor may temporarily own an
21 interest in a franchise if the manufacturer's or distributor's
22 participation in the franchise is in a bona fide relationship with a
23 franchisee and the franchisee:

24 (a) Has made a significant investment in the franchise,
25 which investment is subject to loss;

1 (b) Has an ownership interest in the franchise; and

2 (c) Operates the franchise under a plan to acquire full
3 ownership of the franchise within a reasonable time and under
4 reasonable terms and conditions.

5 (5) On a showing of good cause by a manufacturer or
6 distributor, the board may extend the time limit set forth in
7 subsection (3) of this section. An extension may not exceed twelve
8 months. An application for an extension after the first extension is
9 granted is subject to protest by a franchisee of the same line-make
10 whose franchise is located in the same community as the franchise
11 owned or controlled by the manufacturer or distributor.

12 (6) The prohibition in subdivision (2)(b) of this section
13 shall not apply to any manufacturer of manufactured housing,
14 recreational vehicles, or trailers.

15 Sec. 11. Original sections 60-1401, 60-1420, 60-1424,
16 60-1425, 60-1427, 60-1429, 60-1436, 60-1437, 60-1438, and 60-1438.01,
17 Reissue Revised Statutes of Nebraska, are repealed.