

AMENDMENTS TO LB667

Introduced by Transportation and Telecommunications.

1           1. Strike the original sections and insert the following new  
2 sections:

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

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

18           (2)(a) The schedule of compensation shall include ~~reasonable~~  
19 compensation for diagnostic work, as well as repair service, parts, and  
20 labor. Time allowances for the diagnosis and performance of warranty work  
21 and service shall be adequate for a qualified technician to perform the  
22 work or service. A franchisor shall not unreasonably deny a written  
23 request submitted by a franchisee for modification of a franchisor's  
24 uniform time allowance for a specific warranty repair or unreasonably  
25 deny a request submitted by a franchisee for an additional time allowance  
26 for diagnostic or repair work on a specific vehicle covered under  
27 warranty. Any such request shall include information and documentation

1 reasonably necessary for the franchisor to assess the merits of the  
2 franchisee's request reasonable and adequate for the work to be  
3 performed. In the determination of ~~what constitutes reasonable~~  
4 compensation under this section, the principal factors to be given  
5 consideration shall be the prevailing wage rates being paid by dealers in  
6 the community in which the dealer is doing business, and in no event  
7 shall the compensation of the dealer for warranty parts and labor be less  
8 than the rates charged by the dealer for like parts and service to retail  
9 or fleet customers ~~, as long as such rates are reasonable.~~ In determining  
10 prevailing wage rates, the rate of compensation for labor for that  
11 portion of repair orders for all recommended maintenance services shall  
12 not be used, including maintenance services relating to the following:  
13 Oil, filters, any fluids, brake pads, brake discs, brake drums, spark  
14 plugs, wiper blades, tire repair, or tire replacement for routine  
15 maintenance, such as tire repair or replacement and oil and fluid  
16 changes, shall not be used.

17 (b)(i) ~~(b)~~ For purposes of this section, compensation for parts may  
18 be determined by calculating the price paid by the dealer for parts,  
19 including all shipping and other charges, multiplied by the sum of one  
20 and the dealer's average percentage markup over the price paid by the  
21 dealer for parts purchased by the dealer from the manufacturer and sold  
22 at retail. The dealer may establish average percentage markup by  
23 submitting to the manufacturer one hundred sequential customer-paid  
24 service repair orders or ninety days of customer-paid service repair  
25 orders, whichever is less, covering repairs made no more than one hundred  
26 eighty days before the submission and declaring what the average  
27 percentage markup is. Within thirty days after receipt of the repair  
28 orders, the manufacturer may audit the submitted repair orders and  
29 approve or deny approval of the average percentage markup based on the  
30 audit. The average percentage markup shall go into effect forty-five days  
31 after the approval based on that audit. If the manufacturer denies

1 approval of the average percentage markup declared by the dealer, the  
2 dealer may file a complaint with the board. The manufacturer shall have  
3 the burden to prove that the denial was made pursuant to the Motor  
4 Vehicle Industry Regulation Act ~~establish that the denial was reasonable.~~  
5 If the board determines that the denial was not reasonable, the denial  
6 shall be deemed a violation of the Motor Vehicle Industry Regulation Act  
7 subject to the enforcement procedures of the act. When determining  
8 compensation for parts, only retail sales that do not involve warranty  
9 repairs shall be used and the rate of markup for all parts supplied on  
10 repair orders for recommended maintenance services shall not be used,  
11 including maintenance services relating to the following: Oil, filters,  
12 any fluids, brake pads, brake discs, brake drums, spark plugs, wiper  
13 blades, tire repair, or tire replacement ~~Only retail sales not involving~~  
14 ~~warranty repairs or parts supplied for routine vehicle maintenance shall~~  
15 ~~be considered in calculating average percentage markup.~~ No manufacturer  
16 shall require a dealer to establish average percentage markup by a  
17 methodology, or by requiring information, that is unduly burdensome or  
18 time consuming to provide, including, but not limited to, part-by-part or  
19 transaction-by-transaction calculations. A dealer shall not request a  
20 change in the average percentage markup more than twice in one calendar  
21 year.

22 (ii)(A) If a franchisor furnishes, or causes to be furnished, a part  
23 to a dealer at no cost or at a reduced cost for use in performing  
24 warranty work, the franchisor shall compensate the dealer for the  
25 dealer's cost of the part, if any, plus an amount equal to the markup on  
26 the dealer's part. Such amount shall be multiplied by the fair wholesale  
27 value of the part.

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

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

31 (II) The cost of the part, at the time the part was furnished, in a

1 price schedule of the franchisor; and

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

4 (c)(i) A manufacturer or distributor may request up to one hundred  
5 additional repair orders different from those provided under subdivision  
6 (2)(b) of this section from a dealer of the manufacturer or distributor  
7 to determine if such dealer's average percentage markup rate, retail  
8 labor rate, or both are materially different than the rates such dealer  
9 has declared with the manufacturer or distributor.

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

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

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

22 (B) Repair orders selected by the dealer.

23 (iv) A request for repair orders under this subdivision (c) shall  
24 not be made within twelve months after any prior request under this  
25 subdivision (c).

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

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

30 (a) Fail to perform any warranty obligation;

31 (b) Fail to include in written notices of factory recalls to new

1 motor vehicle owners and dealers the expected date by which necessary  
2 parts and equipment will be available to dealers for the correction of  
3 the defects; or

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

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

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

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

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

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

15 (5) All claims made by a new motor vehicle dealer pursuant to this  
16 section for labor and parts shall be made within six months after  
17 completing the work and shall be paid within thirty days after their  
18 approval. All claims shall be either approved or disapproved by the  
19 manufacturer or distributor within thirty days after their receipt on a  
20 proper form generally used by the manufacturer or distributor and  
21 containing the usually required information therein. Any claim not  
22 specifically disapproved in writing within thirty days after the receipt  
23 of the form shall be considered to be approved and payment shall be made  
24 within thirty days. The manufacturer has the right to audit the claims  
25 for one year after payment, except that if the manufacturer has  
26 reasonable cause to believe that a claim submitted by a dealer is  
27 intentionally false or fraudulent, the manufacturer has the right to  
28 audit the claims for four years after payment. For purposes of this  
29 subsection, reasonable cause means a bona fide belief based upon evidence  
30 that the issues of fact are such that a person of ordinary caution,  
31 prudence, and judgment could believe that a claim was intentionally false

1 or fraudulent. As a result of an audit authorized under this subsection,  
2 the manufacturer has the right to charge back to the new motor vehicle  
3 dealer the amount of any previously paid claim after the new motor  
4 vehicle dealer has had notice and an opportunity to participate in all  
5 franchisor internal appeal processes as well as all available legal  
6 processes. The requirement to approve and pay the claim within thirty  
7 days after receipt of the claim does not preclude chargebacks for any  
8 fraudulent claim previously paid. A manufacturer may not deny a claim  
9 based solely on a dealer's incidental failure to comply with a specific  
10 claim processing requirement, such as a clerical error that does not put  
11 into question the legitimacy of the claim. If a claim is rejected for a  
12 clerical error, the dealer may resubmit a corrected claim in a timely  
13 manner.

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

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

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