

E AND R AMENDMENTS TO LB 477

Introduced by Larson, 40, Chairperson Enrollment and Review

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

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

5 60-1401 Sections 60-1401 to 60-1440 shall be known and
6 may be cited as the Motor Vehicle Industry Regulation Act.

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

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

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

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

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

22 (b) Upon termination or noncontinuance, another franchise
23 in the same line-make will become effective in the same community,

1 without diminution of the franchisee's service formerly provided,
2 or that the community cannot be reasonably expected to support such
3 a dealership; and

4 (c) The Upon termination or noncontinuance, the
5 franchisor is willing and able to comply with section 60-1430.02.

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

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

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

24 60-1424 If a franchisor seeks to terminate or not
25 continue any franchise or change a franchisee's community, or
26 seeks to enter into a franchise establishing an additional motor
27 vehicle, combination motor vehicle and trailer, motorcycle or

1 trailer dealership of the same line-make, the franchisor shall file
2 an application with the board for permission to terminate or not
3 continue the franchise, to change a franchisee's community, or ~~for~~
4 ~~permission~~ to enter into a franchise for additional representation
5 of the same line-make in that community, except that no application
6 needs to be filed to change a franchisee's community if an
7 agreement has been entered into as provided in subsection (3) of
8 section 60-1420.

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

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

1 person who can show an interest in the application may become a
2 party to the hearing, whether or not he or she receives notice,
3 but a party not receiving notice shall be limited to participation
4 at the hearing on the question of the public interest in the
5 termination or continuation of the franchise, the change in
6 community, or ~~in~~ the establishment of an additional motor vehicle
7 dealership.

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

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

17 Nothing contained in the act shall be construed to
18 require or authorize any investigation by the board of any matter
19 before the board under the provisions of sections 60-1420 to
20 60-1435. Upon hearing, the board shall hear the evidence introduced
21 by the parties and shall make its decision solely upon the record
22 so made.

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

25 60-1429 Notwithstanding the terms, provisions, or
26 conditions of any agreement or franchise, the following shall not
27 constitute good cause, as used in sections 60-1420 and 60-1422, for

1 the termination or noncontinuation of a franchise, for changing the
2 franchisee's community, or for entering into a franchise for the
3 establishment of an additional dealership in a community for the
4 same line-make:

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

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

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

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

24 60-1436 A manufacturer or distributor shall not require
25 or coerce any new motor vehicle dealer in this state to do any of
26 the following:

27 (1) Order or accept delivery of any new motor vehicle,

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

25 (2) Offer or accept delivery of any new motor vehicle
26 with special features, accessories, or equipment not included in
27 the list price of the new motor vehicle as publicly advertised by

1 the manufacturer or distributor;

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

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

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

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

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

27 (8) Prospectively assent to a release, assignment,

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

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

19 (10) Release, convey, or otherwise provide customer
20 information if to do so is unlawful or if the customer objects
21 in writing to doing so, unless the information is necessary for
22 the manufacturer, factory branch, or distributor to meet its
23 obligations to consumers or the new motor vehicle dealer including
24 vehicle recalls or other requirements imposed by state or federal
25 law;

26 (11) Release to any unaffiliated third party any customer
27 information which has been provided by the new motor vehicle dealer

1 to the manufacturer except as provided in subdivision (10) of this
2 section. A manufacturer, importer, or distributor may not share,
3 sell, or transfer customer information, obtained from a dealer and
4 not otherwise publicly available, to other dealers franchised by
5 the manufacturer while the originating dealer is still a franchised
6 dealer of the manufacturer unless otherwise agreed to by the
7 originating dealer. A manufacturer, importer, or distributor may
8 not use any nonpublic personal information, as that term is used in
9 16 C.F.R. part 313, which is obtained from a dealer unless such use
10 falls within one or more of the exceptions to opt out requirements
11 under 16 C.F.R. 313.14 or 313.15;

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

17 (13) Underutilize the dealer's facilities by requiring
18 or coercing a dealer to exclude or remove from the dealer's
19 facilities operations for selling or servicing a line-make of motor
20 vehicles for which the dealer has a franchise agreement to utilize
21 the facilities, except that this subdivision does not prohibit
22 a manufacturer from requiring an exclusive sales area within the
23 facilities that are in compliance with reasonable requirements for
24 the facilities if the dealer complies with subdivision (9) of this
25 section; or-

26 (14) (a) Enter into any agreement with a manufacturer,
27 factory branch, distributor, distributor branch, or one of its

1 affiliates which gives site control of the premises of the dealer
2 that does not terminate upon the occurrence of any of the following
3 events:

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

9 (ii) The final termination of the dealer's franchise for
10 any reason unless an agreement for site control is voluntarily
11 negotiated separately and apart from the franchise agreement and
12 consideration has been offered by the manufacturer and accepted by
13 the dealer. If a dealer voluntarily terminates and has entered into
14 a separately negotiated site control agreement, the agreement may
15 survive the termination if the agreement clearly states that fact.

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

23 Any action prohibited for a manufacturer or distributor
24 under the Motor Vehicle Industry Regulation Act is also prohibited
25 for a subsidiary which is wholly owned or controlled by contract
26 by a manufacturer or distributor or in which a manufacturer
27 or distributor has more than a ten percent ownership interest,

1 including a financing division.

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

4 60-1437 In addition to the restrictions imposed by
5 section 60-1436, a manufacturer or distributor shall not:

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

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

23 (3) Refuse to disclose to a new motor vehicle dealer
24 the total number of new motor vehicles of a given model which the
25 manufacturer or distributor has sold during the current model year
26 within the dealer's marketing district, zone, or region, whichever
27 geographical area is the smallest;

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

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

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

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

23 (5) Fail or refuse to sell or offer to sell to all
24 franchised new motor vehicle dealers in a line-make every new
25 motor vehicle sold or offered for sale to any franchised new
26 motor vehicle dealer of the same line-make. However, the failure
27 to deliver any such new motor vehicle shall not be considered

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

20 (6) Fail to offer dealers of a specific line-make a
21 new franchise agreement containing substantially similar terms and
22 conditions for sales of the line-make if the ownership of the
23 manufacturer or distributor changes or there is a change in the
24 plan or system of distribution;

25 (7) Take an adverse action against a dealer because the
26 dealer sells or leases a motor vehicle that is later exported
27 to a location outside the United States. A franchise provision

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

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

24 (a) Selling or offering to sell a new motor vehicle to
25 a dealer at a lower actual price, including the price for vehicle
26 transportation, than the actual price at which the same model
27 similarly equipped is offered to or is available to another dealer

1 in this state during a similar time period; or

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

13 (9) Make any express or implied statement or
14 representation directly or indirectly that the dealer is under
15 any obligation whatsoever to offer to sell or sell any extended
16 service contract, ~~or~~ extended maintenance plan, gap policy, gap
17 waiver, or other aftermarket product or service offered, sold,
18 backed by, or sponsored by the manufacturer or distributor or
19 to sell, assign, or transfer any of the dealer's retail sales
20 contracts or leases in this state on motor vehicles manufactured
21 or sold by the manufacturer or distributor to a finance company
22 or class of finance companies, leasing company or class of leasing
23 companies, or other specified person, because of any relationship
24 or affiliation between the manufacturer or distributor and the
25 finance company or companies, leasing company or leasing companies,
26 or the specified person or persons; or-

27 (10) Prohibit a franchisee from acquiring a line-make of

1 new motor vehicles solely because the franchisee owns or operates a
2 franchise of the same line-make in a contiguous market.

3 Any such statements, threats, promises, acts, contracts,
4 or offers of contracts, when their effect may be to lessen or
5 eliminate competition or tend to create a monopoly, are declared
6 unfair trade practices and unfair methods of competition and are
7 prohibited.

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

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

24 ~~(2)~~ (2)(a) The schedule of compensation shall include
25 reasonable compensation for diagnostic work, as well as repair
26 service, parts, and labor. Time allowances for the diagnosis and
27 performance of warranty work and service shall be reasonable and

1 adequate for the work to be performed. In the determination of
2 what constitutes reasonable compensation under this section, the
3 principal factors to be given consideration shall be the prevailing
4 wage rates being paid by dealers in the community in which the
5 dealer is doing business, and in no event shall the compensation
6 of the dealer for warranty parts and labor be less than the rates
7 charged by the dealer for like parts and service to retail or fleet
8 customers, as long as such rates are reasonable. In determining
9 prevailing wage rates, the rate of compensation for labor for that
10 portion of repair orders for routine maintenance, such as oil and
11 fluid changes, shall not be used.

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

1 approval of the average percentage markup declared by the dealer,
2 the dealer may file a complaint with the board. The manufacturer
3 shall have the burden to establish that the denial was reasonable.
4 If the board determines that the denial was not reasonable,
5 the denial shall be deemed a violation of the Motor Vehicle
6 Industry Regulation Act subject to the enforcement procedures of
7 the act. Only retail sales not involving warranty repairs or
8 parts supplied for routine vehicle maintenance shall be considered
9 in calculating average percentage markup. No manufacturer shall
10 require a dealer to establish average percentage markup by a
11 methodology, or by requiring information, that is unduly burdensome
12 or time consuming to provide, including, but not limited to,
13 part-by-part or transaction-by-transaction calculations. A dealer
14 shall not request a change in the average percentage markup more
15 than twice in one calendar year.

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

18 (a) Fail to perform any warranty obligation;

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

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

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

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

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

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

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

8 ~~(4)~~ (5) All claims made by a new motor vehicle dealer
9 pursuant to this section for labor and parts shall be made within
10 six months after completing the work and shall be paid within
11 thirty days after their approval. All claims shall be either
12 approved or disapproved by the manufacturer or distributor within
13 thirty days after their receipt on a proper form generally used by
14 the manufacturer or distributor and containing the usually required
15 information therein. Any claim not specifically disapproved in
16 writing within thirty days after the receipt of the form shall be
17 considered to be approved and payment shall be made within thirty
18 days. The manufacturer has the right to audit the claims for ~~two~~
19 years one year after payment, except that if the manufacturer has
20 reasonable cause to believe that a claim submitted by a dealer is
21 intentionally false or fraudulent, the manufacturer has the right
22 to audit the claims for four years after payment. For purposes of
23 this subsection, reasonable cause means a bona fide belief based
24 upon evidence that the issues of fact are such that a person
25 of ordinary caution, prudence, and judgment could believe that a
26 claim was intentionally false or fraudulent. As a result of an
27 audit authorized under this subsection, the manufacturer has the

1 right and to charge back to the new motor vehicle dealer the
2 amount of any false or fraudulent previously paid claim after the
3 new motor vehicle dealer has had notice and an opportunity to
4 participate in all franchisor internal appeal processes as well
5 as all available legal processes. The requirement to approve and
6 pay the claim within thirty days after receipt of the claim does
7 not preclude chargebacks for any fraudulent claim previously paid.

8 A manufacturer may not deny a claim based solely on a dealer's
9 incidental failure to comply with a specific claim processing
10 requirement, such as a clerical error that does not put into
11 question the legitimacy of the claim. If a claim is rejected for
12 a clerical error, the dealer may resubmit a corrected claim in a
13 timely manner.

14 ~~(5)~~ (6) The warranty obligations set forth in this
15 section shall also apply to any manufacturer of a new motor vehicle
16 transmission, engine, or rear axle that separately warrants its
17 components to customers.

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

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

21 60-1438.01 (1) For purposes of this section, manufacturer
22 or distributor includes (a) a factory representative or a
23 distributor representative or (b) a person who is affiliated with a
24 manufacturer or distributor or who, directly or indirectly through
25 an intermediary, is controlled by, or is under common control
26 with, the manufacturer or distributor. A person is controlled by a
27 manufacturer or distributor if the manufacturer or distributor has

1 the authority directly or indirectly, by law or by agreement of the
2 parties, to direct or influence the management and policies of the
3 person. A franchise agreement with a Nebraska-licensed dealer which
4 conforms to and is subject to the Motor Vehicle Industry Regulation
5 Act is not control for purposes of this section.

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

8 (a) Own an interest in a franchise, franchisee, or
9 consumer care or service facility, except that a manufacturer
10 or distributor may hold stock in a publicly held franchise,
11 franchisee, or consumer care or service facility so long as the
12 manufacturer or distributor does not by virtue of holding such
13 stock operate or control the franchise, franchisee, or consumer
14 care or service facility;

15 (b) Operate or control a franchise, franchisee, or
16 consumer care or service facility; or

17 (c) Act in the capacity of a franchisee or motor vehicle
18 dealer.

19 (3) A manufacturer or distributor may own an interest in
20 a franchisee or otherwise control a franchise for a period not to
21 exceed twelve months after the date the manufacturer or distributor
22 acquires the franchise if:

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

25 (b) The franchise is for sale by the manufacturer or
26 distributor.

27 (4) For purposes of broadening the diversity of its

1 franchisees and enhancing opportunities for qualified persons who
2 lack the resources to purchase a franchise outright, but for no
3 other purpose, a manufacturer or distributor may temporarily own
4 an interest in a franchise if the manufacturer's or distributor's
5 participation in the franchise is in a bona fide relationship with
6 a franchisee and the franchisee:

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

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

10 (c) Operates the franchise under a plan to acquire full
11 ownership of the franchise within a reasonable time and under
12 reasonable terms and conditions.

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

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

23 Sec. 11. Original sections 60-1401, 60-1420, 60-1424,
24 60-1425, 60-1427, 60-1429, 60-1436, 60-1437, 60-1438, and
25 60-1438.01, Reissue Revised Statutes of Nebraska, are repealed.