

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 165
Final Reading

Introduced by Dubas, 34.

Read first time January 14, 2013

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to
2 amend section 60-1438, Revised Statutes Cumulative
3 Supplement, 2012; to change a provision relating to
4 warranty service; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-1438, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 60-1438 (1) Each new motor vehicle manufacturer or
4 distributor shall specify in writing to each of its new motor vehicle
5 dealers licensed in this state the dealer's obligations for
6 preparation, delivery, and warranty service on its products. The
7 manufacturer or distributor shall compensate the new motor vehicle
8 dealer for warranty service which such manufacturer or distributor
9 requires the dealer to provide, including warranty and recall
10 obligations related to repairing and servicing motor vehicles and all
11 parts and components included in or manufactured for installation in
12 the motor vehicles of the manufacturer or distributor. The
13 manufacturer or distributor shall provide the new motor vehicle
14 dealer with the schedule of compensation to be paid to the dealer for
15 parts, work, and service and the time allowance for the performance
16 of the work and service.

17 (2)(a) The schedule of compensation shall include
18 reasonable compensation for diagnostic work, as well as repair
19 service, parts, and labor. Time allowances for the diagnosis and
20 performance of warranty work and service shall be reasonable and
21 adequate for the work to be performed. In the determination of what
22 constitutes reasonable compensation under this section, the principal
23 factors to be given consideration shall be the prevailing wage rates
24 being paid by dealers in the community in which the dealer is doing
25 business, and in no event shall the compensation of the dealer for

1 warranty parts and labor be less than the rates charged by the dealer
2 for like parts and service to retail or fleet customers, as long as
3 such rates are reasonable. In determining prevailing wage rates, the
4 rate of compensation for labor for that portion of repair orders for
5 routine maintenance, such as tire repair or replacement and oil and
6 fluid changes, shall not be used.

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

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

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

14 (a) Fail to perform any warranty obligation;

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

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

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

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

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

25 (c) The dealer fails to comply with specific substantive

1 terms and conditions of the franchisor's warranty compensation
2 program; or

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

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

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

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

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

17 Sec. 2. Original section 60-1438, Revised Statutes
18 Cumulative Supplement, 2012, is repealed.