

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 477**  
Final Reading

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, except that no application  
3 needs to be filed to change a franchisee's community if an agreement  
4 has been entered into as provided in subsection (3) of section  
5 60-1420.

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

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

1 she receives notice, but a party not receiving notice shall be  
2 limited to participation at the hearing on the question of the public  
3 interest in the termination or continuation of the franchise, the  
4 change in community, or ~~in~~ the establishment of an additional motor  
5 vehicle dealership.

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

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

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

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

22           60-1429 Notwithstanding the terms, provisions, or  
23 conditions of any agreement or franchise, the following shall not  
24 constitute good cause, as used in sections 60-1420 and 60-1422, for  
25 the termination or noncontinuation of a franchise, for changing the

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

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

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

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

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

23 60-1436 A manufacturer or distributor shall not require  
24 or coerce any new motor vehicle dealer in this state to do any of the  
25 following:

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

25           (2) Offer or accept delivery of any new motor vehicle

1 with special features, accessories, or equipment not included in the  
2 list price of the new motor vehicle as publicly advertised by the  
3 manufacturer or distributor;

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

8 (4) Join, contribute to, or affiliate with an advertising  
9 association;

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

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

23 (7) Refrain from participation in the management of,  
24 investment in, or the acquisition of any other line of new motor  
25 vehicle or related products as long as the dealer maintains a



1 reasonable line of credit for each make or line of vehicle, remains  
2 in compliance with reasonable facilities requirements, and makes no  
3 change in the principal management of the dealer;

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

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

23 (10) Release, convey, or otherwise provide customer  
24 information if to do so is unlawful or if the customer objects in  
25 writing to doing so, unless the information is necessary for the

1 manufacturer, factory branch, or distributor to meet its obligations  
2 to consumers or the new motor vehicle dealer including vehicle  
3 recalls or other requirements imposed by state or federal law;

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

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

21 (13) Underutilize the dealer's facilities by requiring or  
22 coercing a dealer to exclude or remove from the dealer's facilities  
23 operations for selling or servicing a line-make of motor vehicles for  
24 which the dealer has a franchise agreement to utilize the facilities,  
25 except that this subdivision does not prohibit a manufacturer from

1 requiring an exclusive sales area within the facilities that are in  
2 compliance with reasonable requirements for the facilities if the  
3 dealer complies with subdivision (9) of this section; or -

4 (14)(a) Enter into any agreement with a manufacturer,  
5 factory branch, distributor, distributor branch, or one of its  
6 affiliates which gives site control of the premises of the dealer  
7 that does not terminate upon the occurrence of any of the following  
8 events:

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

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

21 (b) For purposes of this subdivision, site control means  
22 the contractual right to control in any way the commercial use and  
23 development of the premises upon which a dealer's business operations  
24 are located, including the right to approve of additional or  
25 different uses for the property beyond those of its franchise, the

1 right to lease or sublease the dealer's property, or the right or  
2 option to purchase the dealer's property.

3 Any action prohibited for a manufacturer or distributor  
4 under the Motor Vehicle Industry Regulation Act is also prohibited  
5 for a subsidiary which is wholly owned or controlled by contract by a  
6 manufacturer or distributor or in which a manufacturer or distributor  
7 has more than a ten percent ownership interest, including a financing  
8 division.

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

11 60-1437 In addition to the restrictions imposed by  
12 section 60-1436, a manufacturer or distributor shall not:

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

21 (2) Refuse to disclose to a new motor vehicle dealer the  
22 method and manner of distribution of new motor vehicles by the  
23 manufacturer or distributor or, if a line-make is allocated among new  
24 motor vehicle dealers, refuse to disclose to any new motor vehicle  
25 dealer that handles the same line-make the system of allocation,

1 including, but not limited to, a complete breakdown by model, and a  
2 concise listing of dealerships with an explanation of the derivation  
3 of the allocation system, including its mathematical formula in a  
4 clear and comprehensible form;

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

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

25 (a) The addition to a motor vehicle of required or

1 optional equipment pursuant to state or federal law;

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

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

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

1 programs which are reasonably necessary for those dealers to sell or  
2 service any model or series of new motor vehicles. This subdivision  
3 shall not apply to manufacturers of recreational vehicles;

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

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

1 outside the United States. Except as otherwise permitted by  
2 subdivision (7) of this section, a franchise provision that allows a  
3 manufacturer or distributor to take adverse action against a dealer  
4 because the dealer sells or leases a motor vehicle that is later  
5 exported to a location outside the United States is void and  
6 unenforceable;

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

10 (a) Selling or offering to sell a new motor vehicle to a  
11 dealer at a lower actual price, including the price for vehicle  
12 transportation, than the actual price at which the same model  
13 similarly equipped is offered to or is available to another dealer in  
14 this state during a similar time period; or

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

25 (9) Make any express or implied statement or



1 representation directly or indirectly that the dealer is under any  
2 obligation whatsoever to offer to sell or sell any extended service  
3 contract, ~~or~~ extended maintenance plan, gap policy, gap waiver, or  
4 other aftermarket product or service offered, sold, backed by, or  
5 sponsored by the manufacturer or distributor or to sell, assign, or  
6 transfer any of the dealer's retail sales contracts or leases in this  
7 state on motor vehicles manufactured or sold by the manufacturer or  
8 distributor to a finance company or class of finance companies,  
9 leasing company or class of leasing companies, or other specified  
10 person, because of any relationship or affiliation between the  
11 manufacturer or distributor and the finance company or companies,  
12 leasing company or leasing companies, or the specified person or  
13 persons; or -

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

17 Any such statements, threats, promises, acts, contracts,  
18 or offers of contracts, when their effect may be to lessen or  
19 eliminate competition or tend to create a monopoly, are declared  
20 unfair trade practices and unfair methods of competition and are  
21 prohibited.

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

24 60-1438 (1) Each new motor vehicle manufacturer or  
25 distributor shall specify in writing to each of its new motor vehicle

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

13 ~~(2)~~(2)(a) The schedule of compensation shall include  
14 reasonable compensation for diagnostic work, as well as repair  
15 service, parts, and labor. Time allowances for the diagnosis and  
16 performance of warranty work and service shall be reasonable and  
17 adequate for the work to be performed. In the determination of what  
18 constitutes reasonable compensation under this section, the principal  
19 factors to be given consideration shall be the prevailing wage rates  
20 being paid by dealers in the community in which the dealer is doing  
21 business, and in no event shall the compensation of the dealer for  
22 warranty parts and labor be less than the rates charged by the dealer  
23 for like parts and service to retail or fleet customers, as long as  
24 such rates are reasonable. In determining prevailing wage rates, the  
25 rate of compensation for labor for that portion of repair orders for

1 routine maintenance, such as oil and fluid changes, shall not be  
2 used.

3 (b) For purposes of this section, compensation for parts  
4 may be determined by calculating the price paid by the dealer for  
5 parts, including all shipping and other charges, multiplied by the  
6 sum of one and the dealer's average percentage markup over the price  
7 paid by the dealer for parts purchased by the dealer from the  
8 manufacturer and sold at retail. The dealer may establish average  
9 percentage markup by submitting to the manufacturer one hundred  
10 sequential customer-paid service repair orders or ninety days of  
11 customer-paid service repair orders, whichever is less, covering  
12 repairs made no more than one hundred eighty days before the  
13 submission and declaring what the average percentage markup is.  
14 Within thirty days after receipt of the repair orders, the  
15 manufacturer may audit the submitted repair orders and approve or  
16 deny approval of the average percentage markup based on the audit.  
17 The average percentage markup shall go into effect forty-five days  
18 after the approval based on that audit. If the manufacturer denies  
19 approval of the average percentage markup declared by the dealer, the  
20 dealer may file a complaint with the board. The manufacturer shall  
21 have the burden to establish that the denial was reasonable. If the  
22 board determines that the denial was not reasonable, the denial shall  
23 be deemed a violation of the Motor Vehicle Industry Regulation Act  
24 subject to the enforcement procedures of the act. Only retail sales  
25 not involving warranty repairs or parts supplied for routine vehicle

1 maintenance shall be considered in calculating average percentage  
2 markup. No manufacturer shall require a dealer to establish average  
3 percentage markup by a methodology, or by requiring information, that  
4 is unduly burdensome or time consuming to provide, including, but not  
5 limited to, part-by-part or transaction-by-transaction calculations.  
6 A dealer shall not request a change in the average percentage markup  
7 more than twice in one calendar year.

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

10 (a) Fail to perform any warranty obligation;

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

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

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

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

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

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

24 (d) The manufacturer has a bona fide belief based on  
25 competent evidence that the dealer's claim is intentionally false,

1 fraudulent, or misrepresented.

2           ~~(4)~~(5) All claims made by a new motor vehicle dealer  
3 pursuant to this section for labor and parts shall be made within six  
4 months after completing the work and shall be paid within thirty days  
5 after their approval. All claims shall be either approved or  
6 disapproved by the manufacturer or distributor within thirty days  
7 after their receipt on a proper form generally used by the  
8 manufacturer or distributor and containing the usually required  
9 information therein. Any claim not specifically disapproved in  
10 writing within thirty days after the receipt of the form shall be  
11 considered to be approved and payment shall be made within thirty  
12 days. The manufacturer has the right to audit the claims for ~~two~~  
13 years~~one year~~ after payment, except that if the manufacturer has  
14 reasonable cause to believe that a claim submitted by a dealer is  
15 intentionally false or fraudulent, the manufacturer has the right to  
16 audit the claims for four years after payment. For purposes of this  
17 subsection, reasonable cause means a bona fide belief based upon  
18 evidence that the issues of fact are such that a person of ordinary  
19 caution, prudence, and judgment could believe that a claim was  
20 intentionally false or fraudulent. As a result of an audit authorized  
21 under this subsection, the manufacturer has the right ~~and~~ to charge  
22 back to the new motor vehicle dealer the amount of any ~~false or~~  
23 ~~fraudulent~~ previously paid claim after the new motor vehicle dealer  
24 has had notice and an opportunity to participate in all franchisor  
25 internal appeal processes as well as all available legal processes.

1 The requirement to approve and pay the claim within thirty days after  
2 receipt of the claim does not preclude chargebacks for any fraudulent  
3 claim previously paid. A manufacturer may not deny a claim based  
4 solely on a dealer's incidental failure to comply with a specific  
5 claim processing requirement, such as a clerical error that does not  
6 put into question the legitimacy of the claim. If a claim is rejected  
7 for a clerical error, the dealer may resubmit a corrected claim in a  
8 timely manner.

9 ~~(5)~~—(6) The warranty obligations set forth in this  
10 section shall also apply to any manufacturer of a new motor vehicle  
11 transmission, engine, or rear axle that separately warrants its  
12 components to customers.

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

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

16 60-1438.01 (1) For purposes of this section, manufacturer  
17 or distributor includes (a) a factory representative or a distributor  
18 representative or (b) a person who is affiliated with a manufacturer  
19 or distributor or who, directly or indirectly through an  
20 intermediary, is controlled by, or is under common control with, the  
21 manufacturer or distributor. A person is controlled by a manufacturer  
22 or distributor if the manufacturer or distributor has the authority  
23 directly or indirectly, by law or by agreement of the parties, to  
24 direct or influence the management and policies of the person. A  
25 franchise agreement with a Nebraska-licensed dealer which conforms to

1 and is subject to the Motor Vehicle Industry Regulation Act is not  
2 control for purposes of this section.

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

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

12 (b) Operate or control a franchise, franchisee, or  
13 consumer care or service facility; or

14 (c) Act in the capacity of a franchisee or motor vehicle  
15 dealer.

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

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

22 (b) The franchise is for sale by the manufacturer or  
23 distributor.

24 (4) For purposes of broadening the diversity of its  
25 franchisees and enhancing opportunities for qualified persons who

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

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

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

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

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

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

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