

Senate Study Bill 3170 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON KAPUCIAN)

A BILL FOR

1 An Act relating to motor vehicle dealers, franchisers, and
2 franchisees.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321.1, subsection 23, Code 2018, is
2 amended to read as follows:

3 23. *“Established place of business”* means the place actually
4 occupied either continuously or at regular periods by a
5 dealer or manufacturer where the dealer’s or manufacturer’s
6 books and records are kept and a large share of the dealer’s
7 or manufacturer’s business is transacted. If a dealer has
8 designated one established place of business for purposes of
9 keeping all the dealer’s books and records pursuant to section
10 321.63, “established place of business” also includes any place
11 actually occupied either continuously or at regular periods
12 by the dealer where a large share of the dealer’s business is
13 transacted but not where the dealer’s books and records are
14 kept.

15 Sec. 2. Section 321.63, Code 2018, is amended to read as
16 follows:

17 **321.63 Different places of business.**

18 1. If a transporter or dealer has an established place of
19 business in more than one city, the transporter or dealer shall
20 secure a separate and distinct certificate of registration and
21 number plates for each such place of business.

22 2. If a dealer has more than one established place of
23 business, the dealer may designate one such location in this
24 state for purposes of keeping all the dealer’s books and
25 records, regardless of the line-make of motor vehicles to
26 which such books and records pertain, by submitting a written
27 certification to the department in a manner approved by the
28 department.

29 Sec. 3. Section 322.19A, subsection 2, Code 2018, is amended
30 to read as follows:

31 2. A motor vehicle dealer may charge a documentary fee not
32 to exceed one hundred eighty dollars for each motor vehicle
33 sold in a transaction. Beginning January 1, 2019, and each
34 year thereafter, the maximum amount a motor vehicle dealer may
35 charge for a documentary fee as authorized by this section

1 shall be subject to an annual percentage adjustment equal to
2 the percentage change in the consumer price index for all urban
3 consumers published in the federal register by the United
4 States department of labor, bureau of labor statistics. On or
5 before December 15 of each year, the department shall publish
6 the maximum amount a motor vehicle dealer may charge for a
7 documentary fee for the next calendar year calculated based on
8 the percentage change in the consumer price index for all urban
9 consumers for the most recent available twelve-month period,
10 rounded to the nearest whole cent.

11 Sec. 4. Section 322A.5, Code 2018, is amended to read as
12 follows:

13 **322A.5 Warranties and recalls.**

14 1. Every franchiser and franchisee shall fulfill the
15 terms of any express or implied warranty concerning the sale
16 of a motor vehicle to the public of the line-make which is
17 the subject of a contract or franchise agreement between the
18 parties. If it is determined by the district court that either
19 the franchiser or franchisee, or both, have violated an express
20 or implied warranty, the court shall add to any award or relief
21 granted an additional award for reasonable attorney fees and
22 other necessary expenses for maintaining the litigation.

23 2. a. A franchiser shall specify in writing to each of
24 the franchiser's franchisees operating in this state the
25 franchisee's obligations for preparation, delivery, and
26 warranty services related to the franchiser's products.
27 The franchiser shall compensate the franchisee for the
28 warranty services the franchiser requires the franchisee to
29 provide, including but not limited to warranty and recall
30 obligations related to repairing and servicing motor vehicles
31 of the franchiser and all parts and components authorized
32 by the manufacturer to be installed in or manufactured for
33 installation in such motor vehicles.

34 b. The franchiser shall provide to the franchisee a
35 schedule of compensation that specifies reasonable amounts

1 the franchiser will pay to the franchisee for such warranty
2 services, including for parts, labor, diagnostics, and other
3 related services. The schedule of compensation shall also
4 specify reasonable time periods under which the franchisee is
5 required to perform such warranty services.

6 (1) In determining reasonable amounts for parts, the
7 franchiser may add one to the franchisee's average percentage
8 markup, which is the percentage difference calculated as a
9 decimal between the price paid by the franchisee for parts and
10 the price at which parts are sold by the franchisee at retail,
11 and multiply the result by the price paid by the franchisee for
12 the parts, including shipping and other charges.

13 (2) In determining reasonable amounts for labor-related
14 warranty services, the franchiser shall consider the prevailing
15 wage rates paid by other franchisees in the franchisee's
16 community, not including wage rates paid for the performance
17 of routine maintenance such as tire service or oil service.
18 The franchiser may calculate the franchisee's labor rate by
19 dividing the total amount of retail sales attributable to labor
20 for warranty services by the number of hours of labor spent to
21 generate the retail sales.

22 (3) (a) The franchisee may establish its average percentage
23 markup for parts or its labor rate by submitting to the
24 franchiser copies of one hundred sequential retail service
25 orders paid by the franchisee's customers, or all of the
26 franchisee's retail service orders paid by the franchisee's
27 customers in a ninety-day period, whichever is less, for
28 services provided within the previous one-hundred-eighty-day
29 period. The franchiser shall not consider retail service
30 orders or portions of retail service orders attributable to
31 routine maintenance such as tire service or oil service.

32 (b) Within thirty days of receiving the franchisee's
33 submission, the franchiser may choose to audit the submitted
34 orders. The franchiser shall then approve or deny the
35 establishment of the franchisee's average percentage markup or

1 labor rate. If the franchiser approves the establishment of
2 the franchisee's average percentage markup or labor rate, the
3 amounts calculated under this subparagraph shall go into effect
4 forty-five days after the date of the franchiser's approval.
5 If the franchiser denies the establishment of the franchisee's
6 average percentage markup or labor rate, the franchisee may
7 file a complaint with the department and a hearing shall be
8 held before the department of inspections and appeals. The
9 franchiser shall have the burden of proof to establish that
10 the franchiser's denial was reasonable. If the department of
11 inspections and appeals finds the denial was not reasonable,
12 the denial shall be deemed a violation of this chapter and
13 the department of inspections and appeals shall determine
14 the franchisee's average percentage markup or labor rate for
15 purposes of calculating reasonable amounts for the schedule of
16 compensation. In making such a determination, the department
17 of inspections and appeals shall not consider retail service
18 orders or portions of retail service orders attributable to
19 routine maintenance such as tire service or oil service.

20 (c) A franchiser shall not require a franchisee to
21 establish an average percentage markup or labor rate by a
22 methodology, or by requiring the submission of information,
23 that is unduly burdensome or time-consuming to the franchisee,
24 including but not limited to requiring part-by-part or
25 transaction-by-transaction calculations.

26 (d) A franchisee shall not request a change in the
27 franchisee's average percentage markup more than once in any
28 one-year period.

29 (4) The amounts in the schedule of compensation shall
30 not be less than the amounts charged by the franchisee to
31 retail customers for such services, provided the amounts are
32 reasonable.

33 3. A franchiser shall not do any of the following:

34 a. Fail to perform any warranty obligation.

35 b. Fail to include in written notices of factory recalls to

1 new motor vehicle owners and franchisees the expected date by
2 which the necessary parts and equipment will be available to
3 franchisees for the correction of the defects.

4 c. Fail to compensate any of the franchiser's franchisees
5 operating in this state for repairs relating to a recall.

6 4. a. A claim made by a franchisee for warranty services
7 pursuant to this section shall be paid within thirty days after
8 the claim's approval. A franchiser shall either approve or
9 deny a claim within thirty days after the franchiser receives
10 a claim if the claim is submitted on a form generally used by
11 the franchiser and the claim contains the information required
12 by the franchiser. If a franchiser does not deny a claim in
13 writing within thirty days after the receipt of the claim, the
14 claim shall be deemed to be approved by the franchiser and
15 payment shall be made to the franchisee within thirty days.

16 b. A franchiser may deny a franchisee's claim for
17 compensation for warranty or recall services if the
18 franchisee's claim is based on a repair not related to warranty
19 or recall services, the repair was not properly performed,
20 the franchisee lacks the required documentation for the
21 claim, the franchisee fails to comply with the terms and
22 conditions of the franchiser's warranty or recall compensation
23 program, or the franchiser has a bona fide belief based on
24 factual evidence that the franchisee's claim was submitted
25 containing an intentionally false or fraudulent statement or
26 misrepresentation. A franchiser may reject, but shall not
27 deny, a claim based solely on a franchisee's unintentional
28 failure to comply with a specific claim processing requirement,
29 such as a clerical error, that does not otherwise affect the
30 legitimacy of the claim. If a claim is rejected for such a
31 failure, the franchisee may resubmit a corrected claim in a
32 timely manner to the franchiser.

33 c. The requirement to approve a claim within thirty days
34 or to pay an approved claim within thirty days as provided in
35 this subsection shall not be construed to preclude denials,

1 reductions, or chargebacks not otherwise prohibited under
2 section 322.2, subsection 13.

3 5. The obligations set forth in this section shall apply to
4 any franchiser as defined in this chapter and any franchiser of
5 new motor vehicle transmissions, engines, or rear axles that
6 separately warrants such components to customers.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with
9 the explanation's substance by the members of the general assembly.

10 This bill relates to motor vehicle dealers, franchisers, and
11 franchisees.

12 Under current law, a motor vehicle dealer's or
13 manufacturer's established place of business is the place
14 actually occupied either continuously or at regular periods by
15 the dealer or manufacturer where the dealer's or manufacturer's
16 books and records are kept and a large share of the dealer's
17 or manufacturer's business is transacted. If a dealer has an
18 established place of business in more than one city, the dealer
19 must secure a separate and distinct certificate of registration
20 and number plates for each such place of business. The bill
21 permits a dealer with more than one established place of
22 business to designate one such location for purposes of keeping
23 all the dealer's books and records, regardless of the line-make
24 of motor vehicles to which the books and records pertain,
25 by submitting a written certification to the department of
26 transportation (DOT). The bill provides that if a dealer has
27 designated one established place of business for purposes of
28 keeping all the dealer's books and records, "established place
29 of business" also includes any place actually occupied either
30 continuously or at regular periods by the dealer where a large
31 share of the dealer's business is transacted but not where the
32 dealer's books and records are kept.

33 Under current law, a motor vehicle dealer may charge a
34 documentary fee not to exceed \$180 for each motor vehicle
35 sold in a transaction. A "documentary fee" is a fee that may

1 be charged to a customer by a motor vehicle dealer for the
2 preparation of documents related to an application for motor
3 vehicle registration and an application for issuance of a
4 certificate of title, and the performance of other related
5 services for the customer. The bill provides that beginning
6 January 1, 2019, and each year thereafter, the maximum amount
7 a motor vehicle dealer may charge for a documentary fee shall
8 be subject to an annual percentage adjustment equal to the
9 percentage change in the consumer price index for all urban
10 consumers published in the federal register by the United
11 States department of labor, bureau of labor statistics. On or
12 before December 15 of each year, the bill requires the DOT to
13 publish the maximum amount a motor vehicle dealer may charge
14 for a documentary fee for the next calendar year calculated
15 based on the percentage change in the consumer price index for
16 all urban consumers for the most recent available 12-month
17 period, rounded to the nearest whole cent. By operation of
18 law, the maximum documentary fee permitted will be reduced
19 by \$25 after the DOT has implemented a program allowing for
20 electronic applications, titling, registering, and funds
21 transfers for motor vehicles.

22 The bill requires a motor vehicle franchiser to specify
23 in writing to each of the franchiser's franchisees operating
24 in this state the franchisee's obligations for preparation,
25 delivery, and warranty services related to the franchiser's
26 products. The franchiser must compensate the franchisee for
27 the warranty services the franchiser requires the franchisee
28 to provide, including but not limited to warranty and recall
29 obligations related to repairing and servicing motor vehicles
30 of the franchiser and all parts and components authorized
31 by the manufacturer to be installed in or manufactured for
32 installation in such motor vehicles.

33 The bill requires the franchiser to provide to the
34 franchisee a schedule of compensation that specifies reasonable
35 amounts the franchiser will pay to the franchisee for such

1 warranty services, including for parts, labor, diagnostics, and
2 other related services. The schedule of compensation must also
3 specify reasonable time periods under which the franchisee is
4 required to perform such warranty services.

5 The bill specifies that in determining reasonable amounts
6 for parts, the franchiser may add one to the franchisee's
7 average percentage markup, which is the percentage difference
8 calculated as a decimal between the price paid by the
9 franchisee for parts and the price at which parts are sold by
10 the franchisee at retail, and multiply the result by the price
11 paid by the franchisee for the parts, including shipping and
12 other charges.

13 The bill specifies that in determining reasonable amounts
14 for labor-related warranty services, the franchiser must
15 consider the prevailing wage rates paid by other franchisees in
16 the franchisee's community, not including wage rates paid for
17 the performance of routine maintenance such as tire service or
18 oil service. Under current law, a franchisee's community is
19 the franchisee's area of responsibility as stipulated in the
20 franchise. The franchiser may calculate the franchisee's labor
21 rate by dividing the total amount of retail sales attributable
22 to labor for warranty services by the number of hours of labor
23 spent to generate the retail sales.

24 The bill provides that a franchisee may establish its
25 average percentage markup for parts or its labor rate by
26 submitting to the franchiser copies of 100 sequential retail
27 service orders paid by the franchisee's customers, or all of
28 the franchisee's retail service orders paid by the franchisee's
29 customers in a 90-day period, whichever is less, for services
30 provided within the previous 180-day period. The franchiser is
31 prohibited from considering retail service orders or portions
32 of retail service orders attributable to routine maintenance
33 such as tire service or oil service.

34 Within 30 days of receiving the franchisee's submission,
35 the franchiser may choose to audit the submitted orders. The

1 franchiser must then approve or deny the establishment of the
2 franchisee's average percentage markup or labor rate. If the
3 franchiser approves the establishment of the franchisee's
4 average percentage markup or labor rate, the amounts calculated
5 shall go into effect 45 days after the date of the franchiser's
6 approval. If the franchiser denies the establishment of the
7 franchisee's average percentage markup or labor rate, the
8 franchisee may file a complaint with the DOT and a hearing
9 shall be held before the department of inspections and appeals
10 (DIA). The bill provides that the franchiser shall have the
11 burden of proof to establish that the franchiser's denial was
12 reasonable. If the DIA finds the denial was not reasonable,
13 the denial is deemed a violation of Code chapter 322A and
14 the DIA is required to determine the franchisee's average
15 percentage markup or labor rate for purposes of calculating
16 reasonable amounts for the schedule of compensation. In making
17 the determination, the DIA is prohibited from considering
18 retail service orders or portions of retail service orders
19 attributable to routine maintenance such as tire service or oil
20 service.

21 The bill prohibits a franchiser from requiring a franchisee
22 to establish an average percentage markup or labor rate by a
23 methodology, or by requiring the submission of information,
24 that is unduly burdensome or time-consuming to the franchisee,
25 including but not limited to requiring part-by-part or
26 transaction-by-transaction calculations. The bill prohibits a
27 franchisee from requesting a change in the franchisee's average
28 percentage markup more than once in any one-year period.

29 The bill provides that the amounts in the schedule of
30 compensation shall not be less than the amounts charged by the
31 franchisee to retail customers for such services, provided the
32 amounts are reasonable.

33 The bill prohibits a franchiser from failing to perform any
34 warranty obligation, failing to include in written notices of
35 factory recalls to new motor vehicle owners and franchisees the

1 expected date by which the necessary parts and equipment will
2 be available to franchisees for the correction of the defects,
3 and failing to compensate any of the franchiser's franchisees
4 operating in this state for repairs relating to a recall.

5 The bill provides that a claim made by a franchisee for
6 warranty services must be paid within 30 days after the claim's
7 approval. A franchiser must either approve or deny a claim
8 within 30 days after the franchiser receives a claim if the
9 claim is submitted on a form generally used by the franchiser
10 and the claim contains the information required by the
11 franchiser. If a franchiser does not deny a claim in writing
12 within 30 days after the receipt of the claim, the claim shall
13 be deemed to be approved by the franchiser and payment shall be
14 made to the franchisee within 30 days.

15 The bill states that a franchiser may deny a franchisee's
16 claim for compensation for warranty or recall services if
17 the franchisee's claim is based on a repair not related to
18 warranty or recall services, the repair was not properly
19 performed, the franchisee lacks the required documentation for
20 the claim, the franchisee fails to comply with the terms and
21 conditions of the franchiser's warranty or recall compensation
22 program, or the franchiser has a bona fide belief based on
23 factual evidence that the franchisee's claim was intentionally
24 submitted containing a false or fraudulent statement or
25 misrepresentation. A franchiser may reject, but shall not
26 deny, a claim based solely on a franchisee's unintentional
27 failure to comply with a specific claim processing requirement,
28 such as a clerical error, that does not otherwise affect the
29 legitimacy of the claim. If a claim is rejected for such a
30 failure, the franchisee may resubmit a corrected claim in a
31 timely manner to the franchiser.

32 The bill provides that the requirement to approve a claim
33 within 30 days, or to pay an approved claim within 30 days,
34 shall not be construed to preclude denials, reductions,
35 or chargebacks not otherwise prohibited under Code section

1 322.2, subsection 13. Under current law, Code section
2 322.2, subsection 13, prohibits a manufacturer, distributor,
3 or importer of motor vehicles from reducing the amount of
4 compensation, or disallowing a claim, for warranty parts,
5 repairs, or services if 12 months or more have passed since the
6 claim was submitted.

7 The bill provides that the obligations set forth in the bill
8 apply to any franchiser who manufactures or distributes motor
9 vehicles and any franchiser of new motor vehicle transmissions,
10 engines, or rear axles that separately warrants such components
11 to customers.