

**§1176. Warranty**

If a motor vehicle franchisor requires or permits a motor vehicle franchisee to perform labor or provide parts in satisfaction of a warranty created by the franchisor, the franchisor shall properly and promptly fulfill its warranty obligations, in the case of motor vehicles over 10,000 pounds gross vehicle weight rating, shall adequately and fairly compensate the franchisee for any parts so provided and, in the case of all other motor vehicles, shall reimburse the franchisee for any parts so provided at the retail rate customarily charged by that franchisee for the same parts when not provided in satisfaction of a warranty. A franchisor may not otherwise recover its costs for reimbursing a franchisee for parts and labor pursuant to this section. For purposes of this section, the retail rate customarily charged by the franchisee for parts may be established by submitting to the franchisor 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less in terms of total cost, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average percentage markup so declared is the retail rate, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, not involving state inspection, not involving routine maintenance such as changing the oil and oil filter and not involving accessories may be considered in calculating the average percentage markup. A franchisor may not require a franchisee to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A franchisee may not change the average percentage markup more than 2 times in one calendar year. Further, the franchisor shall reimburse the franchisee for any labor so performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty; as long as the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer. A franchisor is not required to pay the price charged by the dealer to retail customers for parts of systems, appliances, furnishings, accessories and fixtures of a motor home as defined in Title 29-A, section 101, subsection 40 that are designed, used and maintained primarily for nonvehicular residential purposes. Any claim made by a franchisee for compensation for parts provided or for reimbursement for labor performed in satisfaction of a warranty must be paid within 60 days of its approval. All the claims must be either approved or disapproved within 60 days of their receipt. A claim may be submitted within 90 days after the performance of services. When a claim is disapproved, the franchisee that submitted the claim must be notified in writing of the claim's disapproval within that period, together with the specific reasons for its disapproval. A franchisor may not, by agreement, by restriction upon reimbursement, or otherwise, restrict the nature or extent of labor performed or parts provided so that such restriction impairs the franchisee's ability to satisfy a warranty created by the franchisor by performing labor in a professional manner or by providing parts required in accordance with generally accepted standards. [PL 2003, c. 356, §10 (AMD).]

In any claim that is disapproved by the manufacturer, and the dealer brings legal action to collect the disapproved claim and is successful in the action, the court shall award the dealer the cost of the action together with reasonable attorney fees. Reasonable attorney fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the dealer. [PL 1979, c. 498, §3 (NEW).]

It is unlawful for a franchisor, manufacturer, factory branch, distributor branch or subsidiary to own, operate or control, either directly or indirectly, a motor vehicle warranty or service facility located in the State except on an emergency or interim basis or if no qualified applicant has applied for appointment as a dealer in a market previously served by a new motor vehicle dealer of that manufacturer, factory branch, distributor branch or subsidiary's line make. [PL 1997, c. 521, §25 (NEW).]

A franchisor may not deny those elements of a warranty claim that are based on a dealer's incidental failure to comply with a claim requirement or a clerical error or other technicality, regardless of whether the franchisor contests any other element of that warranty claim, as long as the dealer corrects any such clerical error or other technicality according to licensee guidelines. [PL 2013, c. 534, §7 (NEW).]

#### SECTION HISTORY

PL 1975, c. 573 (NEW). PL 1979, c. 498, §3 (AMD). PL 1979, c. 698, §1 (AMD). PL 1991, c. 328 (AMD). PL 1995, c. 65, §A16 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1997, c. 521, §25 (AMD). PL 2003, c. 356, §10 (AMD). PL 2013, c. 534, §7 (AMD).

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