



Ohio Revised Code

Section 4517.52 Fulfillment and compensation for warranty and recall obligations.

Effective: September 14, 2016

Legislation: Senate Bill 242 - 131st General Assembly

(A) Each franchisor shall fulfill warranty and recall obligations of repairing and servicing motor vehicles, including all parts and components manufactured for installation in any motor vehicle.

(B) Each franchisor shall compensate each of its franchisees for labor and parts used to fulfill warranty and recall obligations of repair and servicing at rates not less than the rates charged by the franchisee to its retail customers for warranty-like labor and parts for nonwarranty work. A franchisee, other than a franchisee that deals in recreational vehicles, may establish rates of compensation for labor performed and parts used by the franchisee for purposes of this section if all of the following apply:

(1) The franchisee submits to the franchisor either of the following :

(a) One hundred sequential nonwarranty service repair orders for warranty-like repairs that have been paid by a customer and closed by the time of submission;

(b) All service repair orders for warranty-like repairs, that have been paid by a customer and closed by the time of submission, for a period of ninety consecutive days.

A franchisee either may submit a set of repair orders for purposes of calculating both its retail labor rate and its retail parts markup percentage, or may submit separate sets of repair orders for purposes of calculating its retail labor rate and its retail parts markup percentage separately. The repair orders submitted under division (B)(1)(a) or (b) of this section must be from a period occurring not more than one hundred eighty days before the submission.

Subject to division (C)(3) of this section, if a franchisor determines from any set of repair orders submitted under this section that the retail labor rate or parts markup percentage calculated under division (B)(2) or (3) of this section is substantially higher or lower than the rate currently on record



with the franchisor for labor or parts, the franchisor may request additional documentation for a period of either ninety days prior to or ninety days subsequent to the time period for which the repair orders were submitted for purposes of an alteration.

(2) The franchisee calculates its retail labor rate by determining the franchisee's total labor sales from the service repair orders submitted under division (B)(1) of this section and dividing that amount by the total number of labor hours that generated those sales.

(3) The franchisee calculates its retail parts markup percentage by determining the franchisee's total parts sales from the service repair orders submitted under division (B)(1) of this section and dividing that amount by the franchisee's total cost for the purchase of those parts, subtracting one from that amount, and then multiplying the amount by one hundred.

(4) In calculating the retail labor rate in division (B) (2) of this section and the retail parts markup percentage in division (B)(3) of this section, the franchisee omits charges for any of the following from the calculation:

- (a) Manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
- (b) Parts sold, or repairs performed, at wholesale;
- (c) Routine maintenance that is not covered under a retail customer warranty, including the replacement of fluids, filters, and belts that are not provided in the course of other repairs;
- (d) Items that do not have individual part numbers, such as nuts, bolts, and fasteners;
- (e) Vehicle reconditioning;
- (f) Accessories;
- (g) Repairs of damage caused by a collision, a road hazard, the force of the elements, vandalism, theft, or operator negligence;



(h) Parts sold or repairs performed for insurance carriers ;

(i) Vehicle emission or safety inspections required by law;

(j) Goodwill or policy repairs or replacements;

(k) Repairs for which volume discounts have been negotiated with government agencies or insurance carriers;

(l) Repairs performed on vehicles from a different line- make;

(m) Replacement of tires or related elements.

(5) The franchisee provides notice of its retail labor rate and retail parts markup percentage calculated in accordance with this section to the franchisor.

(C) (1) A franchisor may contest the retail labor rate or retail parts markup percentage that was calculated by the franchisee under division (B) of this section within thirty days after receiving notice from the franchisee. If the franchisor seeks to contest the retail labor rate or retail parts markup percentage, the franchisor shall notify the franchisee that the franchisor believes the rate or markup percentage is materially inaccurate or substantially different than that of other similarly situated, same line-make new motor vehicle dealers in the vicinity, provide a full explanation of the reasons the franchisor disagrees with the rate or markup percentage, provide evidence substantiating the franchisor's position, and propose an adjustment of the contested rate or markup percentage. The franchisor shall not modify its notice to the franchisee or its grounds for contesting the rate or markup percentage after submitting a notice to the franchisee under division (C)(1) of this section.

(2) If the franchisor does not contest the rate or markup percentage that was calculated by the franchisee under division (B) of this section within thirty days after receiving notice of the rate or markup percentage from the franchisee, the uncontested rate or markup percentage takes effect. The franchisor then shall use the rate and markup percentage to determine compensation for any warranty and recall work and service performed by the franchisee until the rate or markup percentage is



modified.

(3) If the franchisor contests a rate or markup percentage established by the franchisee under division (B) of this section, the franchisor and franchisee shall resolve the disagreement through the franchisor's internal dispute resolution process. However, the franchisee may appeal a determination made as part of the dispute resolution process to a court of competent jurisdiction. Any rate or markup percentage established either through an internal dispute resolution process or by a court as part of an appeal under this section shall be applied retroactively to govern reimbursement for labor or parts, as applicable, beginning thirty days after the date the franchisee submitted the disputed rate or markup percentage under division (B) of this section.

(4) A franchisee shall not establish or modify a retail labor rate or retail parts markup percentage more frequently than once per calendar year.

(D) When calculating the compensation that must be provided to a franchisee for labor and parts used to fulfill warranty and recall obligations under this section, all of the following apply:

(1) The franchisor shall use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician.

(2) The franchisor shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation.

(3) If the franchisor provided a part or component to the franchisee at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the franchisor shall provide to the franchisee an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the franchisor's price schedule by the retail parts markup percentage.

(4) A franchisor shall not assess penalties, surcharges, or similar costs to a franchisee, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a franchisee, or otherwise take retaliatory action against a franchisee based on any franchisee's exercise of its rights under this



section. It is the burden of the franchisee to prove any claims under division (D)(4) of this section by a preponderance of the evidence. Nothing in this section prohibits a franchisor from increasing the price of a vehicle or part in the normal course of business.

(E) A franchisor shall not require a franchisee to establish a retail labor rate or retail parts markup percentage using any method that is unduly burdensome or time consuming, or require the use of information that is unduly burdensome or time consuming to obtain, including part-by-part or transaction-by- transaction calculations or utilization of the franchisee's financial statement. Further, no franchisor shall unilaterally calculate a retail labor rate or retail parts markup percentage for a franchisee.

Divisions (A), (C), (D), and (E) of this section do not apply to franchisors or franchisees who deal in recreational vehicles.