

As Introduced

**131st General Assembly
Regular Session
2015-2016**

S. B. No. 242

Senators Uecker, Coley

A BILL

To amend sections 4517.01, 4517.52, 4517.55, and 1
4517.59 of the Revised Code to revise the law 2
governing new motor vehicle franchise 3
agreements. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4517.01, 4517.52, 4517.55, and 5
4517.59 of the Revised Code be amended to read as follows: 6

Sec. 4517.01. As used in sections 4517.01 to 4517.65 of 7
the Revised Code: 8

(A) "Persons" includes individuals, firms, partnerships, 9
associations, joint stock companies, corporations, and any 10
combinations of individuals. 11

(B) "Motor vehicle" means motor vehicle as defined in 12
section 4501.01 of the Revised Code and also includes "all- 13
purpose vehicle" and "off-highway motorcycle" as those terms are 14
defined in section 4519.01 of the Revised Code. "Motor vehicle" 15
does not include a snowmobile as defined in section 4519.01 of 16
the Revised Code or manufactured and mobile homes. 17

(C) "New motor vehicle" means a motor vehicle, the legal 18

title to which has never been transferred by a manufacturer, 19
remanufacturer, distributor, or dealer to an ultimate purchaser. 20

(D) "Ultimate purchaser" means, with respect to any new 21
motor vehicle, the first person, other than a dealer purchasing 22
in the capacity of a dealer, who in good faith purchases such 23
new motor vehicle for purposes other than resale. 24

(E) "Business" includes any activities engaged in by any 25
person for the object of gain, benefit, or advantage either 26
direct or indirect. 27

(F) "Engaging in business" means commencing, conducting, 28
or continuing in business, or liquidating a business when the 29
liquidator thereof holds self out to be conducting such 30
business; making a casual sale or otherwise making transfers in 31
the ordinary course of business when the transfers are made in 32
connection with the disposition of all or substantially all of 33
the transferor's assets is not engaging in business. 34

(G) "Retail sale" or "sale at retail" means the act or 35
attempted act of selling, bartering, exchanging, or otherwise 36
disposing of a motor vehicle to an ultimate purchaser for use as 37
a consumer. 38

(H) "Retail installment contract" includes any contract in 39
the form of a note, chattel mortgage, conditional sales 40
contract, lease, agreement, or other instrument payable in one 41
or more installments over a period of time and arising out of 42
the retail sale of a motor vehicle. 43

(I) "Farm machinery" means all machines and tools used in 44
the production, harvesting, and care of farm products. 45

(J) "Dealer" or "motor vehicle dealer" means any new motor 46
vehicle dealer, any motor vehicle leasing dealer, and any used 47

motor vehicle dealer. 48

(K) "New motor vehicle dealer" means any person engaged in 49
the business of selling at retail, displaying, offering for 50
sale, or dealing in new motor vehicles pursuant to a contract or 51
agreement entered into with the manufacturer, remanufacturer, or 52
distributor of the motor vehicles. 53

(L) "Used motor vehicle dealer" means any person engaged 54
in the business of selling, displaying, offering for sale, or 55
dealing in used motor vehicles, at retail or wholesale, but does 56
not mean any new motor vehicle dealer selling, displaying, 57
offering for sale, or dealing in used motor vehicles 58
incidentally to engaging in the business of selling, displaying, 59
offering for sale, or dealing in new motor vehicles, any person 60
engaged in the business of dismantling, salvaging, or rebuilding 61
motor vehicles by means of using used parts, or any public 62
officer performing official duties. 63

(M) "Motor vehicle leasing dealer" means any person 64
engaged in the business of regularly making available, offering 65
to make available, or arranging for another person to use a 66
motor vehicle pursuant to a bailment, lease, sublease, or other 67
contractual arrangement under which a charge is made for its use 68
at a periodic rate for a term of thirty days or more, and title 69
to the motor vehicle is in and remains in the motor vehicle 70
leasing dealer who originally leases it, irrespective of whether 71
or not the motor vehicle is the subject of a later sublease, and 72
not in the user, but does not mean a manufacturer or its 73
affiliate leasing to its employees or to dealers. 74

(N) "Salesperson" means any person employed by a dealer to 75
sell, display, and offer for sale, or deal in motor vehicles for 76
a commission, compensation, or other valuable consideration, but 77

does not mean any public officer performing official duties. 78

(O) "Casual sale" means any transfer of a motor vehicle by 79
a person other than a new motor vehicle dealer, used motor 80
vehicle dealer, motor vehicle salvage dealer, as defined in 81
division (A) of section 4738.01 of the Revised Code, 82
salesperson, motor vehicle auction owner, manufacturer, or 83
distributor acting in the capacity of a dealer, salesperson, 84
auction owner, manufacturer, or distributor, to a person who 85
purchases the motor vehicle for use as a consumer. 86

(P) "Motor vehicle auction owner" means any person who is 87
engaged wholly or in part in the business of auctioning motor 88
vehicles, but does not mean a construction equipment auctioneer 89
or a construction equipment auction licensee. 90

(Q) "Manufacturer" means a person who manufactures, 91
assembles, or imports motor vehicles, including motor homes, but 92
does not mean a person who only assembles or installs a body, 93
special equipment unit, finishing trim, or accessories on a 94
motor vehicle chassis supplied by a manufacturer or distributor. 95

(R) "Tent-type fold-out camping trailer" means any vehicle 96
intended to be used, when stationary, as a temporary shelter 97
with living and sleeping facilities, and that is subject to the 98
following properties and limitations: 99

(1) A minimum of twenty-five per cent of the fold-out 100
portion of the top and sidewalls combined must be constructed of 101
canvas, vinyl, or other fabric, and form an integral part of the 102
shelter. 103

(2) When folded, the unit must not exceed: 104

(a) Fifteen feet in length, exclusive of bumper and 105
tongue; 106

(b) Sixty inches in height from the point of contact with the ground;	107 108
(c) Eight feet in width;	109
(d) One ton gross weight at time of sale.	110
(S) "Distributor" means any person authorized by a motor vehicle manufacturer to distribute new motor vehicles to licensed new motor vehicle dealers, but does not mean a person who only assembles or installs a body, special equipment unit, finishing trim, or accessories on a motor vehicle chassis supplied by a manufacturer or distributor.	111 112 113 114 115 116
(T) "Flea market" means a market place, other than a dealer's location licensed under this chapter, where a space or location is provided for a fee or compensation to a seller to exhibit and offer for sale or trade, motor vehicles to the general public.	117 118 119 120 121
(U) "Franchise" means any written agreement, contract, or understanding between any motor vehicle manufacturer or remanufacturer engaged in commerce and any motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to such agreement, contract, or understanding.	122 123 124 125 126
(V) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise agreement and who offers, sells, and provides service for such new motor vehicles to the general public.	127 128 129 130
(W) "Franchisor" means a new motor vehicle manufacturer, remanufacturer, or distributor who supplies new motor vehicles under a franchise agreement to a franchisee.	131 132 133
(X) "Dealer organization" means a state or local trade	134

association the membership of which is comprised predominantly 135
of new motor vehicle dealers. 136

(Y) "Factory representative" means a representative 137
employed by a manufacturer, remanufacturer, or by a factory 138
branch primarily for the purpose of promoting the sale of its 139
motor vehicles, parts, or accessories to dealers or for 140
supervising or contacting its dealers or prospective dealers. 141

(Z) "Administrative or executive management" means those 142
individuals who are not subject to federal wage and hour laws. 143

(AA) "Good faith" means honesty in the conduct or 144
transaction concerned and the observance of reasonable 145
commercial standards of fair dealing in the trade as is defined 146
in section 1301.201 of the Revised Code, including, but not 147
limited to, the duty to act in a fair and equitable manner so as 148
to guarantee freedom from coercion, intimidation, or threats of 149
coercion or intimidation; provided however, that recommendation, 150
endorsement, exposition, persuasion, urging, or argument shall 151
not be considered to constitute a lack of good faith. 152

(BB) "Coerce" means to compel or attempt to compel by 153
failing to act in good faith or by threat of economic harm, 154
breach of contract, or other adverse consequences. Coerce does 155
not mean to argue, urge, recommend, or persuade. 156

(CC) "Relevant market area" means any area within a radius 157
of ten miles from the site of a potential new dealership, except 158
that for manufactured home or recreational vehicle dealerships 159
the radius shall be twenty-five miles. The ten-mile radius shall 160
be measured from the dealer's established place of business that 161
is used exclusively for the purpose of selling, displaying, 162
offering for sale, or dealing in motor vehicles. 163

(DD) "Wholesale" or "at wholesale" means the act or 164
attempted act of selling, bartering, exchanging, or otherwise 165
disposing of a motor vehicle to a transferee for the purpose of 166
resale and not for ultimate consumption by that transferee. 167

(EE) "Motor vehicle wholesaler" means any person licensed 168
as a dealer under the laws of another state and engaged in the 169
business of selling, displaying, or offering for sale used motor 170
vehicles, at wholesale, but does not mean any motor vehicle 171
dealer as defined in this section. 172

(FF) (1) "Remanufacturer" means a person who assembles or 173
installs passenger seating, walls, a roof elevation, or a body 174
extension on a conversion van with the motor vehicle chassis 175
supplied by a manufacturer or distributor, a person who modifies 176
a truck chassis supplied by a manufacturer or distributor for 177
use as a public safety or public service vehicle, a person who 178
modifies a motor vehicle chassis supplied by a manufacturer or 179
distributor for use as a limousine or hearse, or a person who 180
modifies an incomplete motor vehicle cab and chassis supplied by 181
a new motor vehicle dealer or distributor for use as a tow 182
truck, but does not mean either of the following: 183

(a) A person who assembles or installs passenger seating, 184
a roof elevation, or a body extension on a recreational vehicle 185
as defined in division (Q) and referred to in division (B) of 186
section 4501.01 of the Revised Code; 187

(b) A person who assembles or installs special equipment 188
or accessories for handicapped persons, as defined in section 189
4503.44 of the Revised Code, upon a motor vehicle chassis 190
supplied by a manufacturer or distributor. 191

(2) For the purposes of division (FF) (1) of this section, 192

"public safety vehicle or public service vehicle" means a fire truck, ambulance, school bus, street sweeper, garbage packing truck, or cement mixer, or a mobile self-contained facility vehicle. 193
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(3) For the purposes of division (FF)(1) of this section, 197
"limousine" means a motor vehicle, designed only for the purpose 198
of carrying nine or fewer passengers, that a person modifies by 199
cutting the original chassis, lengthening the wheelbase by forty 200
inches or more, and reinforcing the chassis in such a way that 201
all modifications comply with all applicable federal motor 202
vehicle safety standards. No person shall qualify as or be 203
deemed to be a remanufacturer who produces limousines unless the 204
person has a written agreement with the manufacturer of the 205
chassis the person utilizes to produce the limousines to 206
complete properly the remanufacture of the chassis into 207
limousines. 208

(4) For the purposes of division (FF)(1) of this section, 209
"hearse" means a motor vehicle, designed only for the purpose of 210
transporting a single casket, that is equipped with a 211
compartment designed specifically to carry a single casket that 212
a person modifies by cutting the original chassis, lengthening 213
the wheelbase by ten inches or more, and reinforcing the chassis 214
in such a way that all modifications comply with all applicable 215
federal motor vehicle safety standards. No person shall qualify 216
as or be deemed to be a remanufacturer who produces hearses 217
unless the person has a written agreement with the manufacturer 218
of the chassis the person utilizes to produce the hearses to 219
complete properly the remanufacture of the chassis into hearses. 220

(5) For the purposes of division (FF)(1) of this section, 221
"mobile self-contained facility vehicle" means a mobile 222

classroom vehicle, mobile laboratory vehicle, bookmobile, 223
bloodmobile, testing laboratory, and mobile display vehicle, 224
each of which is designed for purposes other than for passenger 225
transportation and other than the transportation or displacement 226
of cargo, freight, materials, or merchandise. A vehicle is 227
remanufactured into a mobile self-contained facility vehicle in 228
part by the addition of insulation to the body shell, and 229
installation of all of the following: a generator, electrical 230
wiring, plumbing, holding tanks, doors, windows, cabinets, 231
shelving, and heating, ventilating, and air conditioning 232
systems. 233

(6) For the purposes of division (FF)(1) of this section, 234
"tow truck" means both of the following: 235

(a) An incomplete cab and chassis that are purchased by a 236
remanufacturer from a new motor vehicle dealer or distributor of 237
the cab and chassis and on which the remanufacturer then 238
installs in a permanent manner a wrecker body it purchases from 239
a manufacturer or distributor of wrecker bodies, installs an 240
emergency flashing light pylon and emergency lights upon the 241
mast of the wrecker body or rooftop, and installs such other 242
related accessories and equipment, including push bumpers, front 243
grille guards with pads and other custom-ordered items such as 244
painting, special lettering, and safety striping so as to create 245
a complete motor vehicle capable of lifting and towing another 246
motor vehicle. 247

(b) An incomplete cab and chassis that are purchased by a 248
remanufacturer from a new motor vehicle dealer or distributor of 249
the cab and chassis and on which the remanufacturer then 250
installs in a permanent manner a car carrier body it purchases 251
from a manufacturer or distributor of car carrier bodies, 252

installs an emergency flashing light pylon and emergency lights 253
upon the rooftop, and installs such other related accessories 254
and equipment, including push bumpers, front grille guards with 255
pads and other custom-ordered items such as painting, special 256
lettering, and safety striping. 257

As used in division (FF) (6) (b) of this section, "car 258
carrier body" means a mechanical or hydraulic apparatus capable 259
of lifting and holding a motor vehicle on a flat level surface 260
so that one or more motor vehicles can be transported, once the 261
car carrier is permanently installed upon an incomplete cab and 262
chassis. 263

(GG) "Operating as a new motor vehicle dealership" means 264
engaging in activities such as displaying, offering for sale, 265
and selling new motor vehicles at retail, operating a service 266
facility to perform repairs and maintenance on motor vehicles, 267
offering for sale and selling motor vehicle parts at retail, and 268
conducting all other acts that are usual and customary to the 269
operation of a new motor vehicle dealership. For the purposes of 270
this chapter only, possession of either a valid new motor 271
vehicle dealer franchise agreement or a new motor vehicle 272
dealers license, or both of these items, is not evidence that a 273
person is operating as a new motor vehicle dealership. 274

(HH) "Outdoor power equipment" means garden and small 275
utility tractors, walk-behind and riding mowers, chainsaws, and 276
tillers. 277

(II) "Remote service facility" means premises that are 278
separate from a licensed new motor vehicle dealer's sales 279
facility by not more than one mile and that are used by the 280
dealer to perform repairs, warranty work, recall work, and 281
maintenance on motor vehicles pursuant to a franchise agreement 282

entered into with a manufacturer of motor vehicles. A remote 283
service facility shall be deemed to be part of the franchise 284
agreement and is subject to all the rights, duties, obligations, 285
and requirements of Chapter 4517. of the Revised Code that 286
relate to the performance of motor vehicle repairs, warranty 287
work, recall work, and maintenance work by new motor vehicle 288
dealers. 289

(JJ) "Recreational vehicle" has the same meaning as in 290
section 4501.01 of the Revised Code. 291

(KK) "Construction equipment auctioneer" means a person 292
who holds both a valid auction firm license issued under Chapter 293
4707. of the Revised Code and a valid construction equipment 294
auction license issued under this chapter. 295

(LL) "Large construction or transportation equipment" 296
means vehicles having a gross vehicle weight rating of more than 297
ten thousand pounds and includes road rollers, traction engines, 298
power shovels, power cranes, commercial cars and trucks, or farm 299
trucks, and other similar vehicles obtained primarily from the 300
construction, mining, transportation or farming industries. 301

(MM) "Local market conditions" includes, but is not 302
limited to, factors beyond the control of the franchisee, such 303
as: 304

(1) The proximity of other motor vehicle dealers and the 305
brands sold by such dealers; 306

(2) The proximity of manufacturing facilities for motor 307
vehicles, parts, and accessories; 308

(3) The buying patterns of motor vehicle purchasers; 309

(4) Traffic patterns and customer drive time and drive 310

<u>distance;</u>	311
<u>(5) The population, demographics, geography, topography,</u>	312
<u>and employment and unemployment rate of the relevant market</u>	313
<u>area;</u>	314
<u>(6) Changes in any of the factors listed in divisions (MM)</u>	315
<u>(1) to (5) of this section.</u>	316
Sec. 4517.52. (A) Each franchisor shall fulfill warranty	317
and recall obligations of repairing and servicing motor	318
vehicles, including all parts and components manufactured for	319
installation in any motor vehicle.	320
(B) Each franchisor shall compensate each of its	321
franchisees for labor and parts used to fulfill warranty and	322
recall obligations of repair and servicing at <u>the following</u>	323
<u>rates; not less than the rates charged by-</u>	324
<u>(1) For labor, the franchisee to its franchisee's retail</u>	325
<u>customers for like service and parts for nonwarranty work hourly</u>	326
<u>rate, multiplied by the time allotted for the work as published</u>	327
<u>in the same nationally recognized labor time study guide used by</u>	328
<u>the franchisee to calculate its retail labor times.</u>	329
<u>(2) For parts, the manufacturer's suggested retail price</u>	330
<u>as published in the most recent edition of the franchisor's</u>	331
<u>price guide.</u>	332
(C) <u>A franchisor shall not assess penalties, surcharges,</u>	333
<u>or similar costs to a franchisee, transfer or shift any costs to</u>	334
<u>a franchisee, limit allocation of vehicles or parts to a</u>	335
<u>franchisee, or otherwise directly or indirectly take retaliatory</u>	336
<u>action against a franchisee based on any franchisee's exercise</u>	337
<u>of its rights under this section. Nothing in this section</u>	338
<u>prohibits a franchisor from increasing the price of a vehicle or</u>	339

part in the normal course of business. 340

(D) Division (A) of this section shall not apply to 341
franchisors or franchisees who deal in recreational vehicles. 342

Sec. 4517.55. (A) In determining whether good cause has 343
been established by the franchisor for terminating, cancelling, 344
or failing to continue or renew a franchise, the motor vehicle 345
dealers board shall take into consideration the existing 346
circumstances, including, but not limited to: 347

(1) The amount of retail sales transacted by the 348
franchisee during a five-year period immediately preceding such 349
notice as compared to the business available to the franchisee; 350

(2) The investment necessarily made and obligations 351
incurred by the franchisee to perform its part of the franchise; 352

(3) The permanency of the franchisee's investment; 353

(4) Whether it is injurious or beneficial to the public 354
interest for the franchise to be modified or replaced, or the 355
business of the franchisee disrupted; 356

(5) Whether the franchisee has adequate motor vehicle 357
sales and service facilities, equipment, vehicle parts, and 358
qualified service personnel to reasonably provide for the needs 359
of the consumers for the motor vehicles handled by the 360
franchisee, and is rendering adequate service to the public; 361

(6) Whether the franchisee fails to fulfill the warranty 362
obligations of the franchisor required to be performed by the 363
franchisee; 364

(7) The extent and materiality of the franchisee's failure 365
to comply with the terms of the franchise and the reasonableness 366
and fairness of the franchise terms; 367

(8) Whether the owners of the new motor vehicle dealer had actual knowledge of the facts and circumstances upon which termination, cancellation, discontinuance, or nonrenewal is based;	368 369 370 371
(9) Whether the proposed termination, cancellation, discontinuance, or nonrenewal constitutes discriminatory enforcement of the franchise agreement.	372 373 374
(B) Notwithstanding the terms, conditions, or provisions of any franchise or waiver, the following do not constitute sufficient good cause for terminating, cancelling, or failing to continue or renew a franchise:	375 376 377 378
(1) Refusal by the franchisee to purchase or accept delivery of any new motor vehicle, parts, accessories, or any other commodity or service not ordered by the franchisee;	379 380 381
(2) The fact that the franchisee or the owner of any interest therein, owns, has an investment in, participates in the management of, or holds a license for the sale of the same or any other line-make of new motor vehicle;	382 383 384 385
(3) The sale, transfer, or issuance of any equity or debenture issue, or the transfer or issuance of any security or shares of stock in a new motor vehicle dealer to any person, whenever the sale, issuance, or transfer does not result in a change in the controlling ownership of the dealership;	386 387 388 389 390
(4) A change by the franchisee in the administrative or executive management of the dealership;	391 392
(5) Failure of the franchisee to achieve any unreasonable or discriminatory performance criteria 7 . <u>Performance criteria that do not take into account local market conditions are deemed unreasonable.</u>	393 394 395 396

(6) A loss of trust by the franchisor absent circumstances 397
or facts that would be a material breach of the franchise 398
agreement and that material breach is known and ratified by the 399
owners of the new motor vehicle dealer; 400

(7) The failure of a franchisee to maintain a motor 401
vehicle floor plan line of credit, unless the franchisee fails 402
to maintain a floor plan line of credit for one hundred twenty 403
days or longer; 404

(8) The export of new motor vehicles to a foreign country, 405
absent evidence that the new motor vehicle dealer knew or should 406
have known that the vehicle was purchased for export. There 407
shall be a rebuttable presumption that a new motor vehicle 408
dealer did not know, or should not have known, that a vehicle 409
was purchased for export if the vehicle is titled in the United 410
States. 411

(C) Divisions (B) (6) to (8) of this section shall not 412
apply to franchisors or franchisees who deal in recreational 413
vehicles. 414

Sec. 4517.59. (A) Notwithstanding the terms, provisions, 415
or conditions of any agreement, franchise, or waiver, no 416
franchisor shall: 417

(1) In acting or purporting to act under the terms, 418
provisions, or conditions of a franchise or in terminating, 419
canceling, or failing to renew a franchise, fail to act in good 420
faith; 421

(2) Prevent a franchisee from changing administrative or 422
executive management, provided such personnel satisfy reasonable 423
and objective standards formulated and objectively applied by 424
the franchisor; 425

(3) Restrict the sale of any equity or debenture issue or 426
the transfer of any securities in a dealership, or in any way 427
prevent or attempt to prevent the transfer, sale, or issuance of 428
shares of stock or debentures to any person, if the basic 429
financial requirements of the franchisor have been equalled at 430
the time of the execution of the franchise agreement and 431
continued in effect, and if the sale, transfer, or issuance does 432
not have the effect of accomplishing a sale of a controlling 433
interest in the dealership; 434

(4) Coerce or threaten any franchisee by refusing or 435
failing to renew or extend a lease of premises where the fee or 436
right of possession is in the absolute control of the franchisor 437
and the franchisee upon request or demand of the franchisor 438
fails to expand its facilities, increase sales personnel, 439
purchase more parts or accept programs for sales and operation 440
of the franchisee's business, when such demand is not 441
reasonable, fair, and equitable under all circumstances, or 442
tends to depreciate the franchisee's equity; 443

(5) Sell, lease, or rent goods or motor vehicles, or 444
render any service normally performed and required of 445
franchisees under the franchise agreement with the franchisor, 446
in unfair competition with the franchisee, except that this 447
division does not apply to a sale, lease, or rental to, or 448
service performed for, an agency of federal, state, or local 449
government; 450

(6) Coerce, or attempt to coerce, any franchisee to accept 451
delivery of any motor vehicle, parts, accessories, or any other 452
commodities connected therewith which are not ordered by said 453
franchisee; nor withhold or delay delivery of motor vehicles out 454
of the ordinary course of business; nor discriminate against any 455

franchisee in the allocation or through the withholding from 456
delivery of certain models of motor vehicles ordered by a 457
franchisee out of the ordinary course of business; nor unfairly 458
change or amend unilaterally a franchisee's allotment of motor 459
vehicles or quota, sales expectancy, ~~or~~ sales penetration, or 460
geographic area of responsibility without reasonable cause and 461
consideration of local market conditions; nor coerce a 462
franchisee by any means to participate or contribute to any 463
local or national advertising fund; nor employ any coercive 464
techniques for any other purposes such as obtaining franchisee 465
participation in contests, "giveaways," or ~~other~~ sales devices; 466

(7) Coerce, or attempt to coerce, a franchisee by 467
threatening to award an additional franchise or agreement to 468
another person for the sale of its same product in the same area 469
of influence for the purposes of compelling such franchisee to 470
yield to demands of the franchisor for increased sales of the 471
franchisor's products, parts, expansion of facilities and 472
improvement of operations inconsistent with good business 473
practices of the franchisee; 474

(8) Fail or refuse to make equally available to its same 475
line-make franchisees all motor vehicles, motor vehicle parts, 476
or other products manufactured for that line-make at the same 477
actual price, or to utilize any device including, but not 478
limited to, sales promotion plans or programs that result in 479
such lesser actual price. Division (A) (8) of this section shall 480
not apply to sales to a franchisee for resale to any unit of 481
government or donation or use by a franchisee in a driver 482
education program. Division (A) (8) of this section shall not 483
prohibit the offering of incentive programs or other discounts 484
so long as such incentives or discounts are reasonably available 485
to all franchisees in this state on a proportionately equal 486

basis and are based on the sale of individual vehicles and not 487
increased for meeting a performance standard unless the standard 488
is reasonable considering all existing circumstances. 489

A franchisor has not made a motor vehicle, motor vehicle 490
part, or other product available to all line-make franchisees if 491
the franchisor does any of the following: 492

(a) Requires a franchisee to remodel, renovate, or 493
recondition the new motor vehicle dealer's existing dealership 494
facilities as a prerequisite to receiving the model, part, or 495
product, unless reasonably necessary to accommodate the adequate 496
sale and service of a vehicle based on the technology of that 497
vehicle. As used in division (A) (8) of this section, "remodel, 498
renovate, and recondition" includes the requirement that a 499
franchisee purchase or lease unreasonably expensive advertising 500
or promotional displays or other similar materials. 501

(b) Requires a franchisee to pay an additional fee to 502
receive any model, part, or product within a franchisor's line- 503
make; 504

(c) Requires a franchisee to accept additional inventory 505
to receive any model, part, or product within a franchisor's 506
line-make. 507

(9) Fail to either return a part to the franchisee, at the 508
franchisor's expense, or reimburse the franchisee for the 509
franchisee's cost of the part where a franchisor does not 510
approve a franchisee's claim for a defective part; 511

(10) Fail to approve or disapprove any warranty or recall 512
claim submitted by a franchisee within forty-five days after 513
receipt from the franchisee. If a claim is not approved, the 514
franchisor shall immediately so notify in writing the franchisee 515

who submitted the claim and shall include in the notice the 516
specific grounds upon which the disapproval is based. 517

(11) Fail to pay a franchisee within thirty days after 518
approval by the franchisor of any claim by a franchisee for 519
labor and parts made under division (B) of section 4517.52 and 520
section 4517.53 of the Revised Code. Any failure of a franchisor 521
to act on or pay a claim within the time limits specified by 522
this section that results from causes beyond the franchisor's 523
reasonable control does not constitute a violation of this 524
section. 525

(12) Disclaim an otherwise valid warranty or recall claim 526
because the franchisee fails to submit or resubmit the claim 527
within a period of less than six months from the date on which 528
the service was rendered or parts supplied; 529

(13) Unless otherwise authorized or required by the 530
"National Traffic and Motor Vehicle Safety Act," 49 U.S.C. 531
30101, et seq. or any regulation adopted thereunder, the 532
"Transportation Recall, Enhancement, Accountability, and 533
Documentation Act," 49 U.S.C. 30123, et seq. or any regulation 534
adopted thereunder, or any other federal law or regulation, 535
provide reimbursement to any individual or entity that is not a 536
franchisee for labor and parts used to fulfill warranty and 537
recall work, unless the work is required for emergency service, 538
or is performed by a service center owned by the manufacturer on 539
employee- or company-owned vehicles only, or the work is 540
warranty service by employees of a fleet operator on its own 541
vehicles. Nothing in division (A) (13) of this section shall 542
prohibit a manufacturer from reimbursing a franchisee of another 543
line-make of the same manufacturer for labor and parts used to 544
fulfill warranty and recall work. 545

(14) Refuse to disclose to any new motor vehicle dealer 546
who handles the same line-make, the manner and mode of 547
distribution of that line-make within the same county, or if a 548
line-make is allocated among new motor vehicle dealers, refuse 549
to disclose to any new motor vehicle dealer that handles the 550
same line-make the system of allocation, including, but not 551
limited to, a complete breakdown by model, color, equipment, 552
other items or terms, and a concise listing of dealerships with 553
an explanation of the derivation of the allocation system 554
including its mathematical formula in a clear and comprehensible 555
form; 556

(15) Engage in any predatory practice or discriminate 557
against any new motor vehicle dealer including discriminating 558
against a franchisee, as compared to a same line-make 559
franchisee, with regard to motor vehicle allocation, motor 560
vehicle sales expectations, motor vehicle market penetration, 561
motor vehicle planning volume requirements, customer service 562
satisfaction requirements, dealership facility requirements, or 563
dealer capitalization requirements; 564

(16) Prohibit a franchisee from acquiring a line-make of 565
new motor vehicles solely because it owns or operates a 566
franchise of the same line-make in a contiguous market; 567

(17) Use any financial services company or leasing company 568
owned in whole or part or controlled by the manufacturer or 569
distributor to accomplish what would otherwise be illegal 570
conduct on the part of the manufacturer or distributor pursuant 571
to this section. This section does not limit the right of the 572
financial services or leasing company to otherwise engage in 573
regular financial services or leasing business practices. 574

(18) Initiate a charge back without an audit or perform an 575

audit to confirm a warranty repair, sales incentive, or rebate 576
more than twelve months after the date of submission by the 577
franchisee, provided that these limitations shall not be 578
effective in the case of a fraudulent claim. Division (A) (18) of 579
this section does not preclude a charge back for any fraudulent 580
claim that was previously paid. 581

(19) Refuse to pay a franchisee for sales incentives, 582
service incentives, rebates, or other forms of incentive 583
compensation within thirty days after their approval by the 584
manufacturer. The franchisor shall either approve or disapprove 585
each claim by the franchisee within thirty days after receipt of 586
the claim in a proper form generally used by the franchisor. Any 587
claims not specifically disapproved in writing within thirty 588
days after receipt shall be considered to be approved. 589

(20) Reduce the amount to be paid to the new motor vehicle 590
dealer or charge a new motor vehicle dealer back subsequent to 591
the payment of the claim unless either of the following applies: 592

(a) The manufacturer shows that the claim lacks material 593
documentation or is false, fraudulent, or a misrepresentation. A 594
franchisor may not deny a claim based solely on a new motor 595
vehicle dealer's incidental failure to comply with a specific 596
claim processing requirement, such as a clerical error, that 597
does not put into question the legitimacy of the claim. 598

(b) The new motor vehicle dealer knew or should have known 599
a new motor vehicle was sold for export to a foreign country. 600
There shall exist a rebuttable presumption that a new motor 601
vehicle dealer did not know, or should not have known, that a 602
vehicle was sold for export to a foreign country if the motor 603
vehicle is titled in the United States. 604

No refusal to pay sales incentives, service incentives, 605
rebates, or other forms of incentive compensation, no reduction 606
in the amount to be paid to the new motor vehicle dealer, and no 607
charge back subsequent to the payment of a claim may be made 608
until the new motor vehicle dealer has had notice and an 609
opportunity to participate in all franchisor internal appeal 610
processes as well as all available legal processes. If a charge 611
back is the subject of adjudication, internal appeal, mediation, 612
or arbitration, no charge back shall be made until, in the case 613
of an adjudication or legal action, a final appealable order has 614
been issued. 615

At the time submitted, the claim shall act as an immediate 616
automatic credit against future billings. Any ambiguity or 617
inconsistency in submission guidelines shall be construed 618
against the drafter. Any failure by a new motor vehicle dealer 619
to exercise its rights to reimbursement under this section does 620
not create a waiver of these rights. Any unreasonable denial, 621
delay, or restriction of a valid reimbursement claim shall 622
subject the manufacturer to interest in accordance with division 623
(A) of section 1343.03 of the Revised Code until paid. 624

(21) Prevent, attempt to prevent, prohibit, coerce, or 625
attempt to coerce, any new motor vehicle dealer from charging 626
any consumer any fee allowed to be charged by the dealer under 627
Ohio law; 628

(22) Require, coerce, or attempt to coerce any new motor 629
vehicle dealer in this state to change the capital structure of 630
the new motor vehicle dealer or the means by or through which 631
the new motor vehicle dealer finances the operation of the 632
dealership provided that: 633

(a) The new motor vehicle dealer at all times shall meet 634

any reasonable capital standards determined by the manufacturer 635
in accordance with uniformly applied criteria. 636

(b) No change in the capital structure shall cause a 637
change in the principal management or have the effect of a sale 638
of the franchise without the consent of the manufacturer or 639
distributor, and further provided that the manufacturer or 640
distributor shall not unreasonably withhold consent. 641

(23) Require, coerce, or attempt to coerce any new motor 642
vehicle dealer in this state to change location of the 643
dealership, or to make any substantial alterations to the 644
dealership premises or facilities, when to do so would be 645
unreasonable, or without written estimation of a sufficient 646
supply of new motor vehicles so as to justify the location 647
change or alterations, in light of the current market and 648
economic conditions; 649

(24) Establish any performance standard or program for 650
measuring franchisee performance that may have a material impact 651
on a franchisee that does not take into account local market 652
conditions or is not fair, reasonable, and equitable; ~~or~~ or apply 653
any such standard or program to a franchisee in a manner that is 654
not fair, reasonable, and equitable; 655

(25) Unreasonably require a franchisee to establish or 656
maintain exclusive sales facilities, sales display space, 657
personnel, service, parts, or administrative facilities for a 658
line-make, unless such exclusivity is reasonable and otherwise 659
justified by reasonable business considerations. In making that 660
determination, the franchisor shall take into consideration the 661
franchisee's satisfaction of facility requirements as required 662
by the franchise agreement. The franchisor shall have the burden 663
of proving that reasonable business considerations justify 664

exclusivity. 665

(26) Require or request a franchisee to waive any 666
requirements of this section. 667

(B) No franchisor shall discriminate among the 668
franchisor's dealers in any program that provides assistance to 669
the franchisor's dealers, including internet listings, sales 670
leads, warranty policy adjustments, marketing programs, and 671
dealer recognition programs. The franchisor shall not require a 672
franchisee to provide its customer lists or service files to the 673
franchisor, unless necessary for the sale and delivery of a new 674
motor vehicle to a consumer, to validate and pay consumer or 675
dealer incentives, or for the submission to the franchisor for 676
any services supplied by the franchisee for any claim for 677
warranty parts or repairs. Nothing in this division shall limit 678
the franchisor's ability to require or use customer information 679
to satisfy any safety or recall notice obligation. 680

(C) No franchise agreement shall require the franchisee to 681
pay the attorney's fees of a franchisor, waive any remedy or 682
defense available to the franchisee, require a motor vehicle 683
dealer to submit to arbitration or mediation to resolve a 684
controversy before the controversy arises, or waive any other 685
provisions of this chapter. Nothing in this division shall 686
preclude the parties from entering into a voluntary agreement to 687
arbitrate or mediate a controversy after it arises unless 688
otherwise precluded by law. Such an agreement shall require that 689
the dispute be heard in this state and that the arbitrator or 690
mediator apply the law of this state in resolving the 691
controversy. Either party may appeal a decision of an arbitrator 692
in the court of common pleas of Franklin county on the grounds 693
that the arbitrator failed to apply the law of this state. 694

(D) This section applies to any franchise whether entered 695
into prior to or after ~~the effective date of this amendment~~ 696
October 22, 1987. Divisions (A) (8), (13), (16) to (25), (B), and 697
(C) of this section shall not apply to franchisors or 698
franchisees who deal in recreational vehicles. 699

Section 2. That existing sections 4517.01, 4517.52, 700
4517.55, and 4517.59 of the Revised Code are hereby repealed. 701