

AN ACT

To amend sections 4517.01, 4517.52, 4517.55, and 4517.59 and to enact section 4517.011 of the Revised Code to revise the law governing new motor vehicle franchise agreements.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4517.01, 4517.52, 4517.55, and 4517.59 be amended and section 4517.011 of the Revised Code be enacted to read as follows:

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

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

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

(C) "New motor vehicle" means a motor vehicle, the legal title to which has never been transferred by a manufacturer, remanufacturer, distributor, or dealer to an ultimate purchaser.

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

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

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

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

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

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

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

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

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

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

(N) "Salesperson" means any person employed by a dealer to sell, display, and offer for sale, or deal in motor vehicles for a commission, compensation, or other valuable consideration, but does not mean any public officer performing official duties.

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

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

(Q) "Manufacturer" means a person who manufactures, assembles, or imports motor vehicles, including motor homes, 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.

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

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

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

- (a) Fifteen feet in length, exclusive of bumper and tongue;
- (b) Sixty inches in height from the point of contact with the ground;
- (c) Eight feet in width;
- (d) One ton gross weight at time of sale.

(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.

(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.

(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.

(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.

(W) "Franchisor" means a new motor vehicle manufacturer, remanufacturer, or distributor who supplies new motor vehicles under a franchise agreement to a franchisee.

(X) "Dealer organization" means a state or local trade association the membership of which is comprised predominantly of new motor vehicle dealers.

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

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

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

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

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

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

(EE) "Motor vehicle wholesaler" means any person licensed as a dealer under the laws of

another state and engaged in the business of selling, displaying, or offering for sale used motor vehicles, at wholesale, but does not mean any motor vehicle dealer as defined in this section.

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

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

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

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

(3) For the purposes of division (FF)(1) of this section, "limousine" means a motor vehicle, designed only for the purpose of carrying nine or fewer passengers, that a person modifies by cutting the original chassis, lengthening the wheelbase by forty inches or more, and reinforcing the chassis in such a way that all modifications comply with all applicable federal motor vehicle safety standards. No person shall qualify as or be deemed to be a remanufacturer who produces limousines unless the person has a written agreement with the manufacturer of the chassis the person utilizes to produce the limousines to complete properly the remanufacture of the chassis into limousines.

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

(5) For the purposes of division (FF)(1) of this section, "mobile self-contained facility vehicle" means a mobile classroom vehicle, mobile laboratory vehicle, bookmobile, bloodmobile, testing laboratory, and mobile display vehicle, each of which is designed for purposes other than for passenger transportation and other than the transportation or displacement of cargo, freight, materials, or merchandise. A vehicle is remanufactured into a mobile self-contained facility vehicle in part by the addition of insulation to the body shell, and installation of all of the following: a generator, electrical wiring, plumbing, holding tanks, doors, windows, cabinets, shelving, and heating, ventilating, and air conditioning systems.

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

following:

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

(b) An incomplete cab and chassis that are purchased by a remanufacturer from a new motor vehicle dealer or distributor of the cab and chassis and on which the remanufacturer then installs in a permanent manner a car carrier body it purchases from a manufacturer or distributor of car carrier bodies, installs an emergency flashing light pylon and emergency lights upon the rooftop, and installs such other related accessories and equipment, including push bumpers, front grille guards with pads and other custom-ordered items such as painting, special lettering, and safety striping.

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

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

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

(II) "Remote service facility" means premises that are separate from a licensed new motor vehicle dealer's sales facility by not more than one mile and that are used by the dealer to perform repairs, warranty work, recall work, and maintenance on motor vehicles pursuant to a franchise agreement entered into with a manufacturer of motor vehicles. A remote service facility shall be deemed to be part of the franchise agreement and is subject to all the rights, duties, obligations, and requirements of Chapter 4517. of the Revised Code that relate to the performance of motor vehicle repairs, warranty work, recall work, and maintenance work by new motor vehicle dealers.

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

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

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

(MM) "Local market conditions" includes, but is not limited to:

- (1) Demographics in the franchisee's area;
- (2) Geographical and market characteristics in the franchisee's area;
- (3) Local economic circumstances;
- (4) The proximity of other motor vehicle dealers of the same line-make;
- (5) The proximity of motor vehicle manufacturing facilities;
- (6) The buying patterns of motor vehicle purchasers;
- (7) Customer drive time and drive distance.

Sec. 4517.011. (A) The distribution and sale of motor vehicles in this state vitally affects commerce, the economy, and the public interest, welfare, and safety. In order to promote the interests of this state, Chapter 4517. of the Revised Code shall be liberally construed in order to ensure a sound system for distributing and selling motor vehicles through all of the following:

- (1) Enforcing the comprehensive and uniform framework for licensing and regulating manufacturers, distributors, wholesalers, and dealers of motor vehicles;
- (2) Promoting the right of the public to post-sale mechanical and operational services between the buyer and seller that are necessary to ensure the safe operating condition of a motor vehicle and are expected and implied at the time of sale;
- (3) Enforcing Chapter 4517. of the Revised Code as to other persons to provide for compliance with the manufacturer's warranties and to prevent fraud, unfair practices, discrimination, or other abuses;
- (4) Maintaining full and fair competition among intra-brand and inter-brand dealers;
- (5) Maintaining strong and sound dealerships in order to provide continuing and necessary reliable services to the citizens of this state and to provide stable employment to the citizens of this state.

(B) The distribution and sale of motor vehicles is a matter of general statewide interest that requires uniform statewide regulation and the provisions of the Revised Code governing such distribution and sale constitute a comprehensive plan with regard to such issues.

Sec. 4517.52. (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 like service-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.

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

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

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

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

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

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

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

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

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

(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;

(9) Whether the proposed termination, cancellation, discontinuance, or nonrenewal constitutes discriminatory enforcement of the franchise agreement.

(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:

(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;

(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;

(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;

(4) A change by the franchisee in the administrative or executive management of the dealership;

(5) Failure of the franchisee to achieve any unreasonable or discriminatory performance

criteria;

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

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

(8) The export of new motor vehicles to a foreign country, ~~absent evidence that the new motor vehicle dealer knew or should have known that the vehicle was purchased for export unless division (A)(20)(b) of section 4517.59 of the Revised Code applies. There shall be a rebuttable presumption that a new motor vehicle dealer did not know, or should not have known, that a vehicle was purchased for export if the vehicle is titled in the United States.~~

(C) Prior to a final determination by a franchisor that a franchisee has failed to achieve any performance criteria for purposes of any action under this section, the franchisor shall give the franchisee a reasonable opportunity to present evidence demonstrating the effect of local market conditions that materially and adversely affected the franchisee's performance. If a franchisor makes a final decision related to performance criteria without allowing the franchisee the reasonable opportunity to present evidence, or does not consider the effect of the local market conditions on the franchisee's performance, the performance criteria is deemed unreasonable under division (B)(5) of this section.

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

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

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

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

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

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

(5) Sell, lease, or rent goods or motor vehicles, or render any service normally performed and required of franchisees under the franchise agreement with the franchisor, in unfair competition with

the franchisee, except that this division does not apply to a sale, lease, or rental to, or service performed for, an agency of federal, state, or local government;

(6) Do any of the following:

(a) Coerce, or attempt to coerce, any franchisee to accept delivery of any motor vehicle, parts, accessories, or any other commodities connected therewith which are not ordered by said franchisee; ~~nor withhold~~

(b) Withhold or delay delivery of motor vehicles out of the ordinary course of business; ~~nor discriminate~~

(c) Discriminate against any franchisee in the allocation or through the withholding from delivery of certain models of motor vehicles ordered by a franchisee out of the ordinary course of business; ~~nor unfairly~~

(d) Unfairly change or amend unilaterally a franchisee's allotment of motor vehicles or quota, sales expectancy, ~~or sales penetration, or geographic area of responsibility~~ without reasonable cause; ~~nor coerce~~. Prior to changing or amending a franchisee's geographic area of responsibility, the franchisor shall give the franchisee, other than a franchisee who deals in recreational vehicles, a reasonable opportunity to present relevant evidence demonstrating the effect of local market conditions that may materially and adversely affect the franchisee's proposed new geographic area of responsibility. Any final decision made by the franchisor without considering such local market conditions shall be considered unreasonable.

(e) Coerce a franchisee by any means to participate or contribute to any local or national advertising fund; ~~nor employ~~

(f) Employ any coercive techniques for any other purposes such as obtaining franchisee participation in contests, "giveaways," or ~~other sales devices~~;

Division (A)(6) of this section does not authorize a franchisee that is located outside of the relevant market area, as defined in section 4517.01 of the Revised Code, to challenge the establishment or relocation of a franchise location.

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

(8) Fail or refuse to make equally available to its same line-make franchisees all motor vehicles, motor vehicle parts, or other products manufactured for that line-make at the same actual price, or to utilize any device including, but not limited to, sales promotion plans or programs that result in such lesser actual price. Division (A)(8) of this section shall not apply to sales to a franchisee for resale to any unit of government or donation or use by a franchisee in a driver education program. Division (A)(8) of this section shall not prohibit the offering of incentive programs or other discounts so long as such incentives or discounts are reasonably available to all franchisees in this state on a proportionately equal basis and are based on the sale of individual vehicles and not increased for meeting a performance standard unless the standard is reasonable considering all existing circumstances.

A franchisor has not made a motor vehicle, motor vehicle part, or other product available to

all line-make franchisees if the franchisor does any of the following:

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

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

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

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

(10) Fail to approve or disapprove any warranty or recall claim submitted by a franchisee within forty-five days after receipt from the franchisee. If a claim is not approved, the franchisor shall immediately so notify in writing the franchisee who submitted the claim and shall include in the notice the specific grounds upon which the disapproval is based.

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

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

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

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

and comprehensible form;

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

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

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

(18) Initiate a charge back without an audit or perform an audit to confirm a warranty or recall repair, sales incentive, service incentive, other form of incentive compensation, or rebate more than twelve months after the date of submission by the franchisee, provided that these limitations shall not be effective in the case of a fraudulent claim. Division (A)(18) of this section does not preclude a charge back for any fraudulent claim that was previously paid.

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

(20) Reduce the amount to be paid to ~~the a~~ new motor vehicle dealer ~~or~~, assess any penalty, impose a charge back, or take any other adverse action against a new motor vehicle dealer ~~back~~ subsequent to and in relation to the payment of ~~the any claim related to a warranty repair or recall reimbursement, sales incentive or rebate, service incentive, or other form of incentive compensation~~ unless either of the following applies:

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

(b) The new motor vehicle dealer knew or should have known a new motor vehicle was sold for export to a foreign country. There shall exist a rebuttable presumption that a new motor vehicle dealer did not know, or should not have known, that a vehicle was sold for export to a foreign country if the motor vehicle is titled in the United States. Unless the manufacturer establishes that the new motor vehicle dealer knew or should have known of information that should have caused the new motor vehicle dealer to know that the new motor vehicle was purchased for export, the new motor vehicle dealer is presumed not to have known that the new motor vehicle was purchased for export if all of the following apply:

(i) The new motor vehicle was titled in the United States.

(ii) The new motor vehicle was exported not sooner than twelve months after the date of

purchase of the motor vehicle.

(iii) The purchaser's information was not on a franchisor's written list of known or suspected exporters received by the new motor vehicle dealer at least five days prior to the date of the sale of the motor vehicle.

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

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

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

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

(a) The new motor vehicle dealer at all times shall meet any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

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

(23)(a) Require, coerce, or attempt to coerce any new motor vehicle dealer in this state to change the location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so if any of the following apply:

(i) The proposed change or alteration would be unreasonable, or in light of the current market and economic conditions.

(ii) The change or alteration is proposed without a written estimation of a sufficient supply of new motor vehicles so as to justify the location change or alterations; in light of the current market and economic conditions;

(iii) The change or alteration is proposed within seven years after the dealership premises was constructed or altered, as approved by the franchisor unless the change or alteration is necessary to comply with a health or safety law, or a technology requirement that is essential to the sale or service of a motor vehicle that the new motor vehicle dealer is authorized by the franchisor to sell or service.

(b) The seven-year time period set forth under division (A)(23)(a)(iii) of this section continues with regard to the successor to the new motor vehicle dealer if the successor was approved

by the franchisor in the franchise agreement.

(c) As used in division (A)(23)(a) of this section, "substantial alteration" means an alteration that has a major impact on the architectural features, characteristics, or integrity of a structure or lot. "Substantial alteration" does not include routine maintenance, such as interior painting, that is reasonably necessary to keep the dealership facility in an attractive condition.

(d) Division (A)(23) of this section does not prohibit a franchisor from taking any of the following actions:

(i) Continuing, renewing, or modifying a facility improvement program that involves more than one new motor vehicle dealer in this state and that was in effect prior to the effective date of this amendment;

(ii) Providing payments to assist a new motor vehicle dealer in making any facility improvement, including construction, remodeling, or installing signage or franchisor image elements;

(iii) Providing reimbursement to a new motor vehicle dealer for a portion of the costs that the new motor vehicle dealer incurs in making any facility improvement.

(24) Establish any performance standard or program for measuring franchisee performance that may have a material impact on a franchisee that is not fair, reasonable, and equitable, or apply any such standard or program to a franchisee in a manner that is not fair, reasonable, and equitable;

(25) Use the failure of a franchisee to meet a performance standard as the basis to prevent or deny the franchisee the opportunity to name a successor or otherwise engage in succession planning, provided, however, that any designated successor shall meet the manufacturer's written and uniformly applied requirements to be a franchisee at the time of succession;

(26) Use the inability of a franchisee to meet a performance standard as a justification to exclude the franchisee from programs offered by the franchisor if the failure to meet the performance standard was based on whether the franchisee is selling an adequate number of vehicles and the franchisee can demonstrate that it was unable to purchase enough vehicles from the franchisor due to the actions of the franchisor;

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

~~(26)-(28)~~ Unreasonably require or coerce a franchisee to lease or purchase a good or service from a specified vendor for purposes of expanding, constructing, or significantly modifying a facility without allowing the franchisee to choose a vendor that provides a good or service of a substantially similar quality and general appearance and that is approved by the franchisor. No franchisor shall unreasonably withhold approval of a vendor under division (A)(28) of this section.

Division (A)(28) of this section does not do either of the following:

(a) Allow a franchisee or vendor to eliminate or impair the franchisor's intellectual property rights, including with regard to a trademark;

(b) Permit a franchisee to erect or maintain signs that do not conform to the intellectual property usage guidelines of the franchisor.

(29) Require a franchisee to conduct research on prospective vehicle purchasers.

(30) Require or request a franchisee to waive any requirements of this section.

(B)(1) No franchisor shall discriminate among the franchisor's dealers in any program that provides assistance to the franchisor's dealers, including internet listings, sales leads, warranty policy adjustments, marketing programs, and dealer recognition programs.

(2) The franchisor shall not require or coerce a franchisee to provide its customer lists or service files, or other nonpublic personal information concerning any consumer or concerning any customer of the franchisee to the franchisor, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this division shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation.

(3) No franchisor shall fail to comply with the requirements of any state or federal law that pertains to the use or disclosure of information, including the "Gramm-Leach-Bliley Act," 113 Stat. 1338 (1999), 15 U.S.C. 6801 et seq.

(4) No franchisor shall fail, upon demand, to indemnify any existing or former franchisee and the successors and assigns of the franchisee from all damages that result from or relate to any claim made by a third party against the franchisee or successor if the claim results directly from the improper use or disclosure of nonpublic personal information by the manufacturer, distributor, or any third party to whom information was provided by the manufacturer or distributor. The franchisor shall pay attorney's fees and other expenses reasonably incurred by the franchisee or successor in relation to such a claim.

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

(D) This section applies to any franchise whether entered into prior to or after ~~the effective date of this amendment~~ October 22, 1987. Divisions (A)(8), (13), (16) to ~~(25)(27), (29)~~, (B), and (C) of this section shall not apply to franchisors or franchisees who deal in recreational vehicles.

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 242

131st G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____