

AN ACT

To amend sections 4517.01, 4517.52, 4517.54, 4517.55, and 4517.59 and to enact sections 4517.541 and 4517.542 of the Revised Code relative to the termination of franchises and prohibited acts under the Motor Vehicle Dealers Law.

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

SECTION 1. That sections 4517.01, 4517.52, 4517.54, 4517.55, and 4517.59 be amended and sections 4517.541 and 4517.542 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 or manufactured home broker 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 show" means a display of current models of motor vehicles whereby the primary purpose is the exhibition of competitive makes and models in order to provide the general public the opportunity to review and inspect various makes and models of motor vehicles at a single location.

(Q) "Motor vehicle auction owner" means any person who is engaged wholly or in part in the business of auctioning motor vehicles.

(R) "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.

(S) "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.

(T) "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.

(U) "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.

(V) "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.

(W) "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.

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

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

(Z) "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.

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

(BB) "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 division (S) of section 1301.01 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.

(CC) "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.

(DD) "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.

(EE) "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.

(FF) "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.

(GG)(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 (GG)(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 (GG)(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 (GG)(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 (GG)(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 (GG)(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 (GG)(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.

(HH) "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.

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

(JJ) "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.

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

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 and parts for nonwarranty work.

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

Sec. 4517.54. (A) Notwithstanding the terms, provisions, or conditions of an existing franchise, no franchisor shall terminate, cancel, or fail to continue or renew a franchise except for good cause. This section governs any action or intent to terminate, cancel, discontinue, or not renew a franchise whether the franchise was entered into prior to or after the effective date of this amendment.

(B) ~~Each~~ Except as otherwise provided in section 4517.541 of the

Revised Code, each franchisor proposing to terminate, cancel, discontinue, or not renew a franchise shall send written notice by certified mail of the proposed action to the franchisee at such time as may be necessary to ensure that the notice is received no later than ninety days before the effective date of the proposed action, or no later than fifteen days before the effective date of the proposed action when the proposed action is based upon any of the following:

- (1) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law;
- (2) Any unlawful business practice after written warning thereof;
- (3) The franchisee has ceased business operations.

Each notice shall set forth the specific grounds for the proposed termination, cancellation, or refusal to continue or renew.

(C) Prior to the effective date of the proposed action, a franchisee receiving written notice from a franchisor proposing to terminate, cancel, discontinue, or not renew a franchise may file a protest with the board against the franchisor's proposed action. When such a protest has been filed, the board shall inform the franchisor that a timely protest has been filed and that a hearing is required pursuant to section 4517.57 of the Revised Code.

(D) A franchisor shall not terminate, cancel, discontinue, or fail to renew a franchise before the holding of a hearing on any protest filed under this section, or after the hearing, if the board determines that good cause does not exist to terminate, cancel, discontinue, or not renew the franchise.

Sec. 4517.541. (A) Each franchisor proposing to terminate, cancel, discontinue, or not renew a franchise based upon any of the following shall send written notice by certified mail of the proposed action to the franchisee at such time as may be necessary to ensure that the notice is received not later than twelve months before the effective date of the proposed action, unless prohibited by law or regulation:

(1) As a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch, whether by sale or transfer of assets, corporate stock or other equity interest, or by assignment, merger, consolidation, combination, joint venture, redemption, operation of law, or otherwise;

(2) The termination, suspension, or cessation of a part or all of the business operations of the manufacturer, factory branch, distributor, or distributor branch;

(3) Discontinuance of the sale of a line-make, series, brand or class of vehicles or a change in distribution system by the manufacturer, whether through a change in distributors or the manufacturer's decision to cease

conducting business through a distributor altogether.

(B) Each notice described in division (A) of this section shall set forth the specific grounds for the proposed termination, cancellation, or refusal to continue or renew a franchise.

(C) This section shall not apply to franchisors or franchisees who deal in recreational vehicles.

Sec. 4517.542. (A) Except as provided in division (A)(6)(c) of this section, upon the termination, cancellation, discontinuance, or nonrenewal of any franchise by the franchisor pursuant to section 4517.541 of the Revised Code, the manufacturer shall pay fair and reasonable compensation to the new motor vehicle dealer for at least the following:

(1)(a) The franchisee's net acquisition cost for any new, undamaged, unaltered, and unsold vehicle in the franchisee's inventory of the current model year or the model year preceding the current model year, purchased from the franchisor or another franchisee of the same line-make in the ordinary course of business prior to receipt of a notice of termination, cancellation, discontinuance, or nonrenewal, provided the vehicle has less than five hundred miles registered on the odometer, including mileage incurred in delivery from the franchisor or in transporting the vehicle between new motor vehicle dealers for sale;

(b) Notwithstanding division (A)(1)(a) of this section, a vehicle damaged prior to delivery to the franchisee by the manufacturer or its agent shall be eligible for repurchase in accordance with this section;

(c) The franchisor shall pay the fair and reasonable compensation for the items described in division (A)(1) of this section, including the franchisee's costs of handling, packing, loading, and transporting an item for return to the franchisor, within thirty days after the effective date of the termination, cancellation, discontinuance, or nonrenewal so long as the franchisee can provide evidence of good and clear title upon return of the items to the franchisor. If there is a lien on the property, the franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property.

(2) The franchisee's net acquisition cost of each new, unused, undamaged, and unsold part or accessory purchased from the manufacturer or a source recommended or approved by the franchisor if the part or accessory is in the current parts catalog. In the case of sheet metal, a comparable substitute for the original package may be used. If the part or accessory was purchased by the franchisee from an outgoing authorized franchisee, the franchisor shall purchase the part or accessory at the depreciated value price or the price in the current parts catalog, whichever is

less.

(3) The franchisee's net acquisition cost of each undamaged sign if the sign bears a common name, trade name, or trademark of the manufacturer, the manufacturer required the new motor vehicle dealer to acquire the sign, and the sign was acquired by the new motor vehicle dealer from the manufacturer or a source approved by the manufacturer. A manufacturer shall purchase from the new motor vehicle dealer at fair market price poles or other hardware used to erect a sign if the manufacturer required the sign to be free standing and not include a trademark or trade name other than that of the manufacturer. For purposes of division (A)(3) of this section, fair market price is equal to the new motor vehicle dealer's original cost, reduced by one-tenth of the original cost for each year of ownership.

(4) The franchisee's net acquisition cost of all equipment, special tools, automotive service equipment, and other items bearing the manufacturer's trademark that were required by the manufacturer or distributor, and purchased from the manufacturer or a source recommended or approved by the manufacturer. The net acquisition cost shall be reduced over a period of five years at a rate of twenty per cent per year.

(5) The franchisor shall pay the fair and reasonable compensation for the items described in divisions (A)(2), (3), and (4) of this section, including the cost of handling, packing, loading, and transporting an item for return to the franchisor, within sixty days after the effective date of termination, cancellation, discontinuance, or nonrenewal, so long as the franchisee is able to provide evidence of good and clear title upon return of the items to the franchisor. The franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property.

(6)(a) Subject to division (A)(6)(b) of this section, fair market value of the franchise that is at least equivalent to the fair market value of the franchise on the day before the manufacturer announces the action that results in termination, cancellation, discontinuance, or nonrenewal.

(b) If the termination, cancellation, discontinuance, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the new distributor or the manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line-make new motor vehicle dealers.

(c) The manufacturer is only required to pay fair market value of the franchise if the termination, cancellation, discontinuance, or nonrenewal of the franchise agreement is the result of an action described in division (A) of section 4517.541 of the Revised Code.

(B) In the event the franchisor does not pay the franchisee the amounts specified within the time required by this section for an involuntary termination, the manufacturer shall pay or reimburse the new motor vehicle dealer for any costs of storing, insuring, and floor planning any of the property described in this section from the effective date of termination, cancellation, discontinuance, or nonrenewal until the date the franchisee is paid and the property is transported, in addition to transportation charges associated with the manufacturer's repurchase obligations. The manufacturer shall not charge the new motor vehicle dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under division (A) of this section.

(C) Dealership facilities assistance shall be paid as follows:

(1) If the new motor vehicle dealer is leasing the dealership facilities from the manufacturer or a subsidiary of the manufacturer, the manufacturer or subsidiary shall forgive any future lease obligations.

(2) Subject to division (C)(4) of this section, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or twelve months' rent, whichever is less.

(3) Subject to division (C)(4) of this section, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for twelve months.

(4) In order to be entitled to facilities assistance from the manufacturer as provided in divisions (C)(2) and (3) of this section, the new motor vehicle dealer shall mitigate damages by listing the dealership facilities for lease or sublease with a licensed real estate agent or retail industry broker within thirty days after the effective date of the termination, cancellation, discontinuance, or nonrenewal of the franchise and thereafter by reasonably cooperating with the real estate agent or retail industry broker in the performance of the agent's or broker's duties. If the new motor vehicle dealer is able to lease or sublease the dealership facilities, the new motor vehicle dealer shall pay the manufacturer the net revenue received from the mitigation up to the total amount of facilities assistance that the new motor vehicle dealer has received from the manufacturer pursuant to division (C)(2) or (3) of this section.

(5) If the termination, cancellation, discontinuance, or nonrenewal relates to fewer than all of the franchises operated by the new motor vehicle dealer at a single location, the amount of facilities assistance that the

manufacturer is required to pay the new motor vehicle dealer under division (C) of this section shall be based on the percentage of total square footage attributed to the line-make being terminated, canceled, discontinued, or not renewed.

(6) The manufacturer shall pay the dealership facilities assistance under division (C) of this section within sixty days after the effective date of termination, cancellation, discontinuance, or nonrenewal. The franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property.

(7) The manufacturer is not required to pay dealership facilities assistance if the termination, cancellation, discontinuance, or nonrenewal of the franchise agreement is the result of insolvency of the franchisee or the filing of any petition by or against the franchisee under any bankruptcy or receivership law, is the result of any unlawful business practice after written warning thereof, is the result of the franchisee ceasing business operations, or is the result of the voluntary act of the new motor vehicle dealer.

(D) This section and section 4517.541 of the Revised Code shall not apply to a termination, cancellation, discontinuance, or nonrenewal of a franchise that results from the sale of the assets or stock of the motor vehicle dealership from a franchisee to a franchisee or prospective franchisee.

(E) This section shall not apply to any noncoerced voluntary termination. A franchisee that voluntarily terminates the franchise agreement remains eligible for any termination assistance provided for voluntary terminations in the franchisee's franchise agreement with the franchisor.

(F) A franchise shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan of distribution or system of distribution of the motor vehicles offered for sale under the franchise. The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement shall be considered to be a change of an established plan of distribution or system of distribution.

(G) Disputes arising between a manufacturer or distributor and a new motor vehicle dealer under this section and section 4517.541 of the Revised Code shall be resolved by submitting the dispute to the manufacturer's internal dispute resolution process if one is available. If no such process exists, the dispute shall be submitted to a court of competent jurisdiction. Either party may appeal the decision of the manufacturer's internal dispute resolution process to a court of competent jurisdiction.

(H) Nothing in this section or section 4517.541 of the Revised Code

shall be construed as prohibiting a manufacturer or distributor from changing, adding or deleting models, specifications, model names, numbers or identifying marks, or similar characteristics of the new vehicles it markets, provided that the change, addition, or deletion does not result in the termination or discontinuance of a line-make, series, brand, or class of new vehicle.

(I) This section shall not apply to franchisors or franchisees who deal in recreational vehicles.

(J) As used in this section:

(1) "Net acquisition cost" means the franchised dealer cost for a new and unsold motor vehicle in a dealer's inventory plus any charges by the manufacturer or distributor for destination, distribution, or delivery, and taxes, less all allowances paid or credited to the franchised dealer by the manufacturer or distributor.

(2) "Line-make" means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark. Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and when the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together, and not separately, to its authorized dealers.

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. 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) Divisions (B)(6) to (8) 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:

~~(A)~~(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;

~~(B)~~(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;

~~(C)~~(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;

~~(D)~~(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;

~~(E)~~(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;

~~(F)~~(6) 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 or delay delivery of motor vehicles out of the ordinary course of business; nor 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 change or amend unilaterally a franchisee's allotment of motor vehicles or quota ~~in a~~ sales contest, sales expectancy, or sales penetration without reasonable cause; nor coerce a franchisee by any means to participate or contribute to any local or national advertising fund; nor employ any coercive techniques

for any other purposes such as obtaining franchisee participation in contests, "giveaways," or other sales devices;

~~(G)(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;

~~(H)(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;

~~(H)~~(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.

~~(J)~~(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 ~~sections~~ 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.

~~(K)~~(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;

~~(L)~~(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;

~~(M)~~(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;

~~(N)~~(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 repair, sales incentive, 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 new motor vehicle dealer or charge a new motor vehicle dealer back subsequent to the payment of the claim 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.

No refusal to pay 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) Require, coerce, or attempt to coerce any new motor vehicle dealer in this state to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without 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;

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

(B) 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. The franchisor shall not require a franchisee to provide its customer lists or service files 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.

(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. Divisions (A)(8), (13), (16) to (25), (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, 4517.54, 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. 204

128th 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 _____