

As Introduced

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S. B. No. 204

Senator Wagoner

**Cosponsors: Senators Carey, Gibbs, Grendell, Husted, Jones, Morano,
Niehaus, Patton, Schaffer, Widener, Schuring**

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A B I L L

To amend sections 4517.52, 4517.54, 4517.55, 4517.57, 1
and 4517.59 and to enact section 4517.541 of the 2
Revised Code relative to the termination of 3
franchises and prohibited acts under the Motor 4
Vehicle Dealers Law. 5

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

Section 1. That sections 4517.52, 4517.54, 4517.55, 4517.57, 6
and 4517.59 be amended and section 4517.541 of the Revised Code be 7
enacted to read as follows: 8

Sec. 4517.52. (A) Each franchisor shall fulfill warranty and 9
recall obligations of repairing and servicing motor vehicles, 10
including all parts and components manufactured for installation 11
in any motor vehicle. 12

(B) Each franchisor shall compensate each of its franchisees 13
for labor and parts used to fulfill warranty and recall 14
obligations of repair and servicing at rates not less than the 15
rates charged by the franchisee to its retail customers for like 16
service and parts for nonwarranty work. 17

(C) A franchisor shall not otherwise recover its costs for 18

reimbursing a franchisee for parts and labor pursuant to this 19
section. 20

Sec. 4517.54. (A) Notwithstanding the terms, provisions, or 21
conditions of an existing franchise, no franchisor shall 22
terminate, cancel, or fail to continue or renew a franchise except 23
for good cause. This section governs any action or intent to 24
terminate, cancel, discontinue, or not renew a franchise whether 25
the franchise was entered into prior to or after the effective 26
date of this amendment. 27

(B) ~~Each~~ Except as otherwise provided in section 4517.541 of 28
the Revised Code, each franchisor proposing to terminate, cancel, 29
discontinue, or not renew a franchise shall send written notice by 30
certified mail of the proposed action to the franchisee at such 31
time as may be necessary to ensure that the notice is received no 32
later than ~~ninety~~ one hundred eighty days before the effective 33
date of the proposed action, or no later than ~~fifteen~~ ninety days 34
before the effective date of the proposed action when the proposed 35
action is based upon any of the following: 36

(1) Insolvency of the franchisee, or filing of any petition 37
by or against the franchisee under any bankruptcy or receivership 38
law; 39

(2) Any unlawful business practice after written warning 40
thereof; 41

(3) The franchisee has ceased business operations. 42

Each notice shall set forth the specific grounds for the 43
proposed termination or refusal to continue or renew. 44

(C) Prior to the effective date of the proposed action, a 45
franchisee receiving written notice from a franchisor proposing to 46
terminate, cancel, discontinue, or not renew a franchise may file 47
a protest with the board against the franchisor's proposed action. 48

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, 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 product line, 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, 79
cancellation, or refusal to continue or renew. If the manufacturer 80
fails to provide notice at least twelve months before the 81
effective date of the proposed action, the manufacturer shall pay 82
liquidated damages equal to the value of the franchise as of the 83
date notice was required by this section. 84

(C) Except as provided in division (C)(6)(c) of this section, 85
upon the termination, cancellation, discontinuance, or nonrenewal 86
of any franchise by the franchisor pursuant to this section, or 87
upon a voluntary termination by a franchisee, the manufacturer 88
shall pay fair and reasonable compensation to the new motor 89
vehicle dealer for at least the following: 90

(1) New motor vehicle inventory, regardless of model year, 91
that has been acquired from the manufacturer or in trade from 92
another motor vehicle dealer, determined as follows: 93

(a) For each vehicle driven five hundred miles or less, the 94
net cost; 95

(b) For each vehicle driven more than five hundred miles, 96
whichever of the following that applies: 97

(i) Unless division (C)(1)(b)(ii) of this section applies, 98
the net cost reduced by the net discount value of each vehicle; 99

(ii) If the vehicle cannot be reduced by the net discount 100
value, the net cost of the vehicle. 101

(2) Unused, undamaged, and unsold supplies and parts 102
purchased from the manufacturer or a source recommended or 103
approved by the franchisor, at the new motor vehicle dealer's net 104
acquisition cost, provided such supplies and parts are currently 105
offered for sale by the manufacturer or distributor in its current 106
parts catalogs and are in salable condition; 107

(3) Equipment, signs, and furnishings that have not been 108

altered or damaged and that have been required by the manufacturer 109
or distributor to be purchased by the new motor vehicle dealer 110
from the manufacturer or distributor, or their approved sources as 111
follows: 112

(a) The manufacturer shall purchase from the new motor 113
vehicle dealer each undamaged sign at a fair market price, if the 114
sign bears a common name, trade name, or trademark of the 115
manufacturer; the manufacturer required that the dealer acquire 116
the sign; and the sign was acquired by the dealer from the grantor 117
or from a source approved by the manufacturer. 118

(b) The manufacturer shall purchase from the new motor 119
vehicle dealer at a fair market price poles or other hardware used 120
to erect a sign if the manufacturer required that the sign be free 121
standing and not include a trademark or trade name other than that 122
of the manufacturer. 123

(c) Fair market price under division (C)(3) of this section 124
is rebuttably presumed to be equal to the new motor vehicle 125
dealer's original cost, reduced by one-tenth of the original cost 126
for each year of ownership. 127

(4) Special tools that have not been altered or damaged and 128
that the manufacturer or distributor required the new motor 129
vehicle dealer to purchase from the manufacturer or distributor, 130
or their approved sources, at whichever of the following value 131
applies: 132

(a) The new motor vehicle dealer's net acquisition cost, if 133
the item was acquired in the twelve months immediately preceding 134
the effective date of the termination, cancellation, 135
discontinuance, nonrenewal, or voluntary termination; 136

(b) The greater of the fair market value or seventy-five per 137
cent of the new motor vehicle dealer's net acquisition cost, if 138
the item was acquired more than twelve but less than twenty-four 139

months immediately preceding the effective date of the 140
termination, cancellation, discontinuance, nonrenewal, or 141
voluntary termination; 142

(c) The greater of the fair market value or fifty per cent of 143
the new motor vehicle dealer's net acquisition cost, if the item 144
was acquired twenty-four or more but less than thirty-six months 145
immediately preceding the effective date of the termination, 146
cancellation, discontinuance, nonrenewal, or voluntary 147
termination; 148

(d) The greater of the fair market value or twenty-five per 149
cent of the new motor vehicle dealer's net acquisition cost, if 150
the item was acquired thirty-six or more but less than sixty 151
months immediately preceding the effective date of the 152
termination, cancellation, discontinuance, nonrenewal, or 153
voluntary termination; 154

(e) Fair market value, if the item was acquired sixty or more 155
months immediately preceding the effective date of the 156
termination, cancellation, discontinuance, nonrenewal, or 157
voluntary termination. 158

(5) The new motor vehicle dealer's cost of handling, packing, 159
loading, and transporting an item described in divisions (C)(1) to 160
(4) of this section for return to the franchisor; 161

(6)(a) Subject to divisions (C)(6)(b) and (c) of this 162
section, fair market value of the franchise that is at least 163
equivalent to the highest fair market value of the franchise on 164
the following dates: 165

(i) The date the manufacturer announces the action that 166
results in termination, cancellation, discontinuance, nonrenewal, 167
or voluntary termination; 168

(ii) The date the action that results in termination, 169
cancellation, discontinuance, nonrenewal, or voluntary termination 170

first became general knowledge; 171

(iii) The day twelve months prior to the date on which the 172
notice of termination, cancellation, discontinuance, or nonrenewal 173
is issued; 174

(iv) The date the franchisee provides the franchisor with 175
written notice of the voluntary termination. 176

(b) If the termination, cancellation, discontinuance, or 177
nonrenewal is due to a manufacturer's change in distributors, the 178
manufacturer may avoid paying fair market value to the dealer if 179
the new distributor or the manufacturer offers the dealer a 180
franchise agreement with terms acceptable to the dealer. 181

(c) The manufacturer is not required to pay fair market value 182
of the franchise if the termination, discontinuance, nonrenewal, 183
or cancellation of the franchise agreement is the result of the 184
voluntary act of the new motor vehicle dealer. Notwithstanding the 185
terms of any contract or agreement, any dealer's termination or 186
resignation shall not be deemed to be voluntary if that 187
termination or resignation occurred under the manufacturer's 188
threat of termination, cancellation, discontinuance, or nonrenewal 189
of the franchise. 190

(D) The manufacturer shall pay the fair and reasonable 191
compensation for the items described in division (C) of this 192
section within thirty days after the effective date of 193
termination, cancellation, discontinuance, nonrenewal, or 194
voluntary termination, provided the new motor vehicle dealer will 195
thereafter be able to present clear title to the property within a 196
reasonable period of time. The manufacturer shall pay or reimburse 197
the dealer for any costs of storing, insuring, and floor planning 198
any of the property described in division (C) of this section from 199
the effective date of termination until the date the property is 200
transported, in addition to transportation charges associated with 201

the manufacturer's repurchase obligations. The manufacturer shall 202
not charge the dealer any handling, restocking, or other similar 203
costs or fees associated with items repurchased by the 204
manufacturer under division (C) of this section. 205

(E) Dealership facilities assistance shall be paid as 207
follows: 208

(1) If the new motor vehicle dealer is leasing the dealership 209
facilities from the manufacturer or a subsidiary thereof, the 210
manufacturer or subsidiary shall forgive any future lease 211
obligations. 212

(2) Subject to division (E)(4) of this section, if the new 213
motor vehicle dealer is leasing the dealership facilities from a 214
lessor other than the manufacturer, the manufacturer shall pay the 215
new motor vehicle dealer a sum equivalent to the rent for the 216
unexpired term of the lease or two years' rent, whichever is less, 217
or such longer term as is provided in the franchise agreement 218
between the dealer and manufacturer. 219

(3) Subject to division (E)(4) of this section, if the new 220
motor vehicle dealer owns the dealership facilities, the 221
manufacturer shall pay the new motor vehicle dealer a sum 222
equivalent to the reasonable rental value of the dealership 223
facilities for two years. 224

(4) In order to be entitled to facilities assistance from the 225
manufacturer as provided in divisions (E)(2) and (3) of this 226
section, the new motor vehicle dealer shall mitigate damages by 227
listing the dealership facilities for lease or sublease with a 228
licensed real estate agent or retail industry broker within thirty 229
days after the effective date of the termination of the franchise 230
and thereafter by reasonably cooperating with the real estate 231
agent or retail industry broker in the performance of the agent's 232

or broker's duties. If the dealer is able to lease or sublease the 233
dealership facilities, the dealer shall pay the manufacturer the 234
net revenue received from the mitigation up to the total amount of 235
facilities assistance that the dealer has received from the 236
manufacturer pursuant to division (E)(2) or (3) of this section. 237

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(5) If the termination relates to fewer than all of the 239
franchises operated by the new motor vehicle dealer at a single 240
location, the amount of facilities assistance that the 241
manufacturer is required to pay the dealer under division (E) of 242
this section shall be based on the proportion of gross revenue 243
received from the sale and lease of new vehicles by the dealer and 244
from the dealer's parts and service operations during the three 245
years immediately preceding the effective date of the termination, 246
or any shorter period that the dealer may have held these 247
franchises, of the line-makes being terminated, in relation to the 248
gross revenue received from the sale and lease of all line-makes 249
of new vehicles by the dealer and from the total of the dealer's 250
and parts and service operations from this location during the 251
same three-year period. 252

(6) The manufacturer shall pay the dealership facilities 253
assistance under division (E) of this section within thirty days 254
after the effective date of termination, cancellation, 255
discontinuance, or nonrenewal. 256

(7) The manufacturer is not required to pay dealership 257
facilities assistance if the termination, discontinuance, 258
nonrenewal, or cancellation of the franchise agreement is the 259
result of the voluntary act of the new motor vehicle dealer. 260
Notwithstanding the terms of any contract or agreement, any 261
dealer's termination or resignation shall not be deemed to be 262
voluntary if that termination or resignation occurred under the 263
manufacturer's threat of termination, cancellation, 264

discontinuance, or nonrenewal of the franchise. 265

(F) A franchise shall continue in full force and operation 266
notwithstanding a change, in whole or in part, of an established 267
plan of distribution or system of distribution of the motor 268
vehicles offered for sale under the franchise. The appointment of 269
a new manufacturer, factory branch, distributor, or distributor 270
branch for motor vehicles offered for sale under the franchise 271
agreement shall be considered to be a change of an established 272
plan of distribution or system of distribution. 273

(G) Disputes arising between a manufacturer or distributor 274
and a new motor vehicle dealer under this section shall be 275
resolved by a court of competent jurisdiction and not by the motor 276
vehicle dealers board. 277

(H) Nothing in this section shall be construed as prohibiting 278
a manufacturer or distributor from changing, adding or deleting 279
models, specifications, model names, numbers or identifying marks, 280
or similar characteristics of the new vehicles it markets, 281
provided that the change, addition, or deletion does not result in 282
the termination or discontinuance of a distinct series, line, 283
brand, or class of new vehicle. 284

(I) As used in this section: 285

(1) "Discontinuation of a product line, series, brand, or 286
class" includes a reduction in products manufactured or made 287
available for sale through a new motor vehicle that results in a 288
substantial impairment of the viability of the franchise. 289

(2) "Net cost" means the franchised dealer cost for a new and 290
unsold motor vehicle in a dealer's inventory plus any charges by 291
the manufacturer or distributor for destination, distribution, or 292
delivery, and taxes, less all allowances paid or credited to the 293
franchised dealer by the manufacturer or distributor, and less an 294
amount equal to the diminution in wholesale value caused by 295

damages to the new motor vehicle before the motor vehicle dealer 296
delivers the new motor vehicle to the manufacturer. 297

(3) "Net discount value" is the net cost multiplied by the 298
total mileage, exclusive of mileage placed on the motor vehicle 299
before it was delivered to a dealer, divided by one hundred 300
thousand. 301

(4) "Product line" is a line-make produced by a manufacturer. 302

Sec. 4517.55. (A) In determining whether good cause has been 303
established by the franchisor for terminating, cancelling, or 304
failing to continue or renew a franchise, the motor vehicle 305
dealers board shall take into consideration the existing 306
circumstances, including, but not limited to: 307

(1) The amount of retail sales transacted by the franchisee 308
during a five-year period immediately preceding such notice as 309
compared to the business available to the franchisee; 310

(2) The investment necessarily made and obligations incurred 311
by the franchisee to perform its part of the franchise; 312

(3) The permanency of the franchisee's investment; 313

(4) Whether it is injurious or beneficial to the public 314
interest for the franchise to be modified or replaced, or the 315
business of the franchisee disrupted; 316

(5) Whether the franchisee has adequate motor vehicle sales 317
and service facilities, equipment, vehicle parts, and qualified 318
service personnel to reasonably provide for the needs of the 319
consumers for the motor vehicles handled by the franchisee, and is 320
rendering adequate service to the public; 321

(6) Whether the franchisee fails to fulfill the warranty 322
obligations of the franchisor required to be performed by the 323
franchisee; 324

(7) The extent and materiality of the franchisee's failure to	325
comply with the terms of the franchise and the reasonableness and	326
fairness of the franchise terms;	327
(8) Whether the owners of the new motor vehicle dealer had	328
actual knowledge of the facts and circumstances upon which	329
termination is based;	330
(9) Whether the proposed termination constitutes	331
discriminatory enforcement of the franchise agreement.	332
(B) Notwithstanding the terms, conditions, or provisions of	333
any franchise or waiver, the following do not constitute	334
sufficient good cause for terminating, <u>cancelling</u> , or failing to	335
continue or renew a franchise:	336
(1) Refusal by the franchisee to purchase or accept delivery	337
of any new motor vehicle, parts, accessories, or any other	338
commodity or service not ordered by the franchisee;	339
(2) The fact that the franchisee or the owner of any interest	340
therein, owns, has an investment in, participates in the	341
management of, or holds a license for the sale of the same or any	342
other line-make of new motor vehicle;	343
(3) The sale, transfer, or issuance of any equity or	344
debenture issue, or the transfer or issuance of any security or	345
shares of stock in a new motor vehicle dealer to any person,	346
whenever the sale, issuance, or transfer does not result in a	347
change in the controlling ownership of the dealership;	348
(4) A change by the franchisee in the administrative or	349
executive management of the dealership;	350
(5) Failure of the franchisee to achieve any unreasonable or	351
discriminatory performance criteria;	352
<u>(6) A loss of trust by the franchisor absent circumstances or</u>	353
<u>facts that would be a material breach of the franchise agreement</u>	354

and that material breach is known and ratified by the owners of 355
the new motor vehicle dealer; 356

(7) A change, in whole or in part, of an established plan of 357
distribution or system of distribution of the motor vehicles 358
offered for sale under the franchise. The appointment of a new 359
manufacturer, factory branch, distributor, or distributor branch 360
for motor vehicles offered for sale under the franchise agreement 361
shall be considered to be a change of an established plan or 362
system of distribution. 363

(8) A change in ownership, operation, or control of all or 364
any part of the business of the manufacturer, factory branch, 365
distributor, or distributor branch whether by sale or transfer of 366
assets, corporate stock or other equity interest, assignment, 367
merger, consolidation, combination, joint venture, redemption, 368
operation of law or otherwise; 369

(9) The termination, suspension, or cessation of a part or 370
all of the business operations of the manufacturer, factory 371
branch, distributor, or distributor branch; 372

(10) Discontinuance of the sale of the product line or a 373
change in distribution system by the manufacturer whether through 374
a change in distributors or the manufacturer's decision to cease 375
conducting business through a distributor altogether; 376

(11) The failure of a franchisee to maintain a motor vehicle 377
floor plan line of credit, unless the franchisee fails to maintain 378
a floor plan line of credit for one hundred twenty days or longer; 379

(12) The export of new motor vehicles to a foreign country, 380
absent evidence that the dealer had actual knowledge that the 381
vehicle was purchased for export. There shall be a rebuttable 382
presumption that a dealer does not have actual knowledge that a 383
vehicle was purchased for export if the vehicle is titled in the 384
United States. 385

Sec. 4517.57. (A) Upon receiving a notice of protest pursuant 386
to section 4517.50, 4517.53, 4517.54, or 4517.56 of the Revised 387
Code, the motor vehicle dealers board shall set a time, which 388
shall be within one hundred eighty days of such order, and place 389
of hearing and send by certified mail a copy of the order to the 390
franchisor, the protesting franchisee or dealer organization, and 391
all individuals and groups that have requested notification by the 392
board of protests to and decisions of the board. Subject to 393
sections 119.01 to 119.13 of the Revised Code, the board shall 394
designate an attorney at law as a hearing officer, who shall hear 395
and consider the oral and documented evidence introduced by the 396
parties and other interested individuals and groups, and issue ~~his~~ 397
findings and recommendations to the board within thirty days 398
following the close of the hearing. 399

(B) The parties may engage in discovery, prior to the 400
hearing, in accordance with the Rules of Civil Procedure. The 401
hearing examiner may continue the hearing date, beyond one hundred 402
eighty days of the board's order, by agreement of the parties, or 403
upon a finding of good cause, including but not limited to the 404
failure of either party to allow relevant discovery. 405

(C) In any hearing on a protest filed pursuant to section 406
4517.50, 4517.53, 4517.54, or 4517.56 of the Revised Code, the 407
franchisor shall have the burden of going forward and of 408
persuasion to establish that there is good cause for the 409
franchisor: to establish or relocate an additional motor vehicle 410
dealer; to terminate, cancel, discontinue, or not renew a 411
franchise; to fail or refuse to approve a sale or transfer of all 412
or a controlling interest in a franchise; or that recall 413
reimbursement schedules or formulas or the schedules of 414
compensation are reasonable. 415

(D) Only the public members of the board and the hearing 416

officer designated by the board shall participate in, deliberate 417
on, hear, consider, or decide any matter filed pursuant to section 418
4517.50, 4517.53, 4517.54, or 4517.56 of the Revised Code. The 419
public members shall act by majority vote. 420

(E) In any hearing filed under section 4517.50, 4517.53, 421
4517.54, or 4517.56 of the Revised Code, the hearing officer shall 422
permit the parties of cross examination. 423

(F) In any hearing on a protest filed pursuant to section 424
4517.54 of the Revised Code, the board shall hear evidence 425
concerning only the grounds set forth in the franchisor's written 426
notice proposing to terminate, cancel, discontinue, or not renew 427
the franchise sent in accordance with that section. 428

In any hearing or appeal relating to a protest filed pursuant 429
to section 4517.54 of the Revised Code, the board or court shall 430
prohibit the franchisor from offering evidence concerning any 431
grounds not set forth in the notice proposing to terminate, 432
cancel, discontinue, or not renew the franchise sent in accordance 433
with that section. 434

Sec. 4517.59. (A) Notwithstanding the terms, provisions, or 435
conditions of any agreement, franchise, or waiver, no franchisor 436
shall: 437

~~(A)~~(1) In acting or purporting to act under the terms, 438
provisions, or conditions of a franchise or in terminating, 439
canceling, or failing to renew a franchise, fail to act in good 440
faith; 441

~~(B)~~(2) Prevent a franchisee from changing administrative or 442
executive management, provided such personnel satisfy reasonable 443
and objective standards formulated and objectively applied by the 444
franchisor; 445

~~(C)~~(3) Restrict the sale of any equity or debenture issue or 446

the transfer of any securities in a dealership, or in any way 447
prevent or attempt to prevent the transfer, sale, or issuance of 448
shares of stock or debentures to any person, if the basic 449
financial requirements of the franchisor have been equalled at the 450
time of the execution of the franchise agreement and continued in 451
effect, and if the sale, transfer, or issuance does not have the 452
effect of accomplishing a sale of a controlling interest in the 453
dealership; 454

~~(D)~~(4) Coerce or threaten any franchisee by refusing or 455
failing to renew or extend a lease of premises where the fee or 456
right of possession is in the absolute control of the franchisor 457
and the franchisee upon request or demand of the franchisor fails 458
to expand its facilities, increase sales personnel, purchase more 459
parts or accept programs for sales and operation of the 460
franchisee's business, when such demand is not reasonable, fair, 461
and equitable under all circumstances, or tends to depreciate the 462
franchisee's equity; 463

~~(E)~~(5) Sell, lease, or rent goods or new or used motor 464
vehicles, or render any service normally performed and required of 465
franchisees under the franchise agreement with the franchisor, ~~in~~ 466
~~unfair competition with the franchisee whether directly or~~ 467
indirectly, or in combination with or through any person, 468
subsidiary, or affiliated entity, except that this division does 469
not apply to a sale, lease, or rental to, or service performed 470
for, an agency of federal, state, or local government~~+. Nothing in~~ 471
division (A)(5) of this section shall prohibit a franchisor from 472
operating a dealership for a time limited to that which is 473
required to wind up all transactions in instances in which a 474
franchisee has been terminated or voluntarily relinquishes its 475
franchise. 476

~~(F)~~(6) Coerce, or attempt to coerce, any franchisee to accept 477
delivery of any motor vehicle, parts, accessories, or any other 478

commodities connected therewith which are not ordered by said 479
franchisee; nor withhold or delay delivery of motor vehicles out 480
of the ordinary course of business; nor discriminate against any 481
franchisee in the allocation or through the withholding from 482
delivery of certain models of motor vehicles ordered by a 483
franchisee out of the ordinary course of business; nor unfairly 484
change or amend unilaterally a franchisee's allotment of motor 485
vehicles or quota in a sales contest, sales expectancy, or sales 486
penetration without reasonable cause; nor coerce a franchisee by 487
any means to participate or contribute to any local or national 488
advertising fund; nor employ any coercive techniques for any other 489
purposes such as obtaining franchisee participation in contests, 490
"giveaways," or other sales devices; 491

~~(G)~~(7) Coerce, or attempt to coerce, a franchisee by 492
threatening to award an additional franchise or agreement to 493
another person for the sale of its same product in the same area 494
of influence for the purposes of compelling such franchisee to 495
yield to demands of the franchisor for increased sales of the 496
franchisor's products, parts, expansion of facilities and 497
improvement of operations inconsistent with good business 498
practices of the franchisee; 499

~~(H)~~(8) Fail or refuse to make equally available to its same 500
line-make franchisees all motor vehicles, motor vehicle parts, or 501
other products manufactured for that line-make at the same price, 502
including discounts, rebates, incentives, or other payments or 503
allowances affecting the net price. A franchisor has not made a 504
motor vehicle, motor vehicle part, or other product available to 505
all line-make franchisees if the franchisor does any of the 506
following: 507

(a) Requires a franchisee to remodel, renovate, or 508
recondition the dealer's existing dealership facilities as a 509
prerequisite to receiving the model, part, or product. As used in 510

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. 511 512 513 514

(b) Requires a franchisee to pay an additional fee to receive
any model, part, or product within a franchisor's line-make; 515 516

(c) Requires a franchisee to accept additional inventory to
receive any model, part, or product within a franchisor's
line-make. 517 518 519

(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; 520 521 522 523

~~(I)~~(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. 524 525 526 527 528 529

~~(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. 530 531 532 533 534 535 536 537

~~(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; 538 539 540 541

~~(L)~~(13) Provide reimbursement to any nonfranchised individual or entity for labor and parts used to fulfill warranty and recall work; 542
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(14) Directly sell, distribute, or otherwise make available to any nonfranchised individual or entity any original equipment manufacturer motor vehicle parts, accessories, or other commodities that would otherwise be sold by a franchised dealer; 545
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(15) 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, the allocation by segment of that line-make, and the number of units allocated by that line-make to other same line-make dealers within the same county and all contiguous counties for the previous five years; 549
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~~(M)~~(16) 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; 555
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~~(N)~~(17) Prohibit a franchisee from operating a franchise in conjunction with the franchise of another line-make of new motor vehicles at the same address and in the same dealership facility building; 563
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(18) Prohibit a franchisee from operating a franchise of the same line-make of new motor vehicles at two or more locations regardless of whether the markets served by the locations are contiguous; 567
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(19) Use any financial services company or leasing company owned in whole or part or controlled by the manufacturer or 571
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distributor to accomplish what would otherwise be illegal conduct 573
on the part of the manufacturer or distributor pursuant to this 574
section. This section does not limit the right of the financial 575
services or leasing company to otherwise engage in regular 576
financial services or leasing business practices. 577

(20) Initiate a charge back without an audit or perform an 578
audit to confirm a warranty repair, sales incentive, or rebate 579
more than six months after the date of the repair or purchase, 580
provided that these limitations shall not be effective in the case 581
of a fraudulent claim; 582

(21) Refuse to pay a franchisee for sales incentives, service 583
incentives, rebates, or other forms of incentive compensation, 584
reduce the amount to be paid to the dealer, or charge a dealer 585
back subsequent to the payment of the claim unless it can be shown 586
that any of the following apply: 587

(a) The claim was false or fraudulent. 588

(b) The repairs were not properly made or were unnecessary to 589
correct the defective condition. 590

(c) The dealer failed to reasonably substantiate the claim in 591
accordance with the written requirements of the manufacturer in 592
effect at the time the claim arose. 593

(d) The dealer, with intent to do so, sold a new motor 594
vehicle for export to a foreign country. There shall exist a 595
rebuttable presumption that a dealer does not intend to export a 596
vehicle to a foreign country if the motor vehicle is titled in the 597
United States. 598

No refusal to pay sales incentives, service incentives, 599
rebates, or other forms of incentive compensation, no reduction in 600
the amount to be paid to the dealer, and no charge back subsequent 601
to the payment of a claim may be made until the dealer has had 602
notice and an opportunity to participate in all franchisor 603

internal appeal processes as well as all available legal 604
processes. If a charge back is the subject of adjudication, 605
internal appeal, mediation, or arbitration, no charge back shall 606
be made until, in the case of an adjudication or legal action, a 607
final appealable order has been issued. 608

No otherwise valid reimbursement claims shall be denied, 609
delayed, or restricted once properly submitted within 610
manufacturers' submission guidelines unless the denial, delay, or 611
restriction is the direct result of a material defect in the claim 612
that affects the claim's validity. At the time submitted, the 613
claim shall act as an immediate automatic credit against future 614
billings. Clerical errors or omissions or a different level of 615
technician technical certification or the dealer's failure to 616
subscribe to any manufacturer's computerized training programs are 617
not material defects. Any ambiguity or inconsistency in submission 618
guidelines shall be construed against the drafter. Any failure by 619
a dealer to exercise its rights to reimbursement under this 620
section does not create a waiver of these rights. Any unreasonable 621
denial, delay, or restriction of a valid reimbursement claim shall 622
subject the manufacturer to interest in accordance with division 623
(A) of section 1343.03 of the Revised Code until paid. 624

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

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

(a) The new motor vehicle dealer at all times shall meet any 634
reasonable capital standards determined by the manufacturer in 635

accordance with uniformly applied criteria. 636

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

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

(25) Require or request a franchisee to waive any 649
requirements of this section. 650

(B) No franchisor shall release to a third party any 651
information concerning the dealership or any information regarding 652
the dealership's customers that has been provided by the 653
franchisee to the franchisor, unless agreed to by both parties or 654
unless required by law. 655

(C) No franchise agreement shall require the franchisee to 656
pay the attorney fees of a franchisor, waive any remedy or defense 657
available to the franchisee, or waive any other provisions of this 658
chapter. In addition, no franchisor shall restrict a franchisee 659
from filing a legal action in a particular forum otherwise 660
available under federal or state law. 661

(D) This section applies to any franchise whether entered 662
into prior to or after the effective date of this amendment. 663

Section 2. That existing sections 4517.52, 4517.54, 4517.55, 664
4517.57, and 4517.59 of the Revised Code are hereby repealed. 665

