

**Corrected Version
As Passed by the Senate**

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Am. Sub. S. B. No. 204

Senator Wagoner

**Cosponsors: Senators Carey, Gibbs, Grendell, Husted, Jones, Morano,
Niehaus, Patton, Schaffer, Widener, Schuring, Kearney, Buehrer, Harris,
Hughes, Miller, D., Sawyer, Seitz, Turner, Wilson**

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A B I L L

To amend sections 4517.01, 4517.52, 4517.54, 4517.55, 1
and 4517.59 and to enact sections 4517.541 and 2
4517.542 of the Revised Code relative to the 3
termination of franchises and prohibited acts 4
under the Motor Vehicle Dealers Law. 5

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

Section 1. That sections 4517.01, 4517.52, 4517.54, 4517.55, 6
and 4517.59 be amended and sections 4517.541 and 4517.542 of the 7
Revised Code be enacted to read as follows: 8

Sec. 4517.01. As used in sections 4517.01 to 4517.65 of the 9
Revised Code: 10

(A) "Persons" includes individuals, firms, partnerships, 11
associations, joint stock companies, corporations, and any 12
combinations of individuals. 13

(B) "Motor vehicle" means motor vehicle as defined in section 14
4501.01 of the Revised Code and also includes "all-purpose 15

vehicle" and "off-highway motorcycle" as those terms are defined 16
in section 4519.01 of the Revised Code. "Motor vehicle" does not 17
include a snowmobile as defined in section 4519.01 of the Revised 18
Code or manufactured and mobile homes. 19

(C) "New motor vehicle" means a motor vehicle, the legal 20
title to which has never been transferred by a manufacturer, 21
remanufacturer, distributor, or dealer to an ultimate purchaser. 22

(D) "Ultimate purchaser" means, with respect to any new motor 23
vehicle, the first person, other than a dealer purchasing in the 24
capacity of a dealer, who in good faith purchases such new motor 25
vehicle for purposes other than resale. 26

(E) "Business" includes any activities engaged in by any 27
person for the object of gain, benefit, or advantage either direct 28
or indirect. 29

(F) "Engaging in business" means commencing, conducting, or 30
continuing in business, or liquidating a business when the 31
liquidator thereof holds self out to be conducting such business; 32
making a casual sale or otherwise making transfers in the ordinary 33
course of business when the transfers are made in connection with 34
the disposition of all or substantially all of the transferor's 35
assets is not engaging in business. 36

(G) "Retail sale" or "sale at retail" means the act or 37
attempted act of selling, bartering, exchanging, or otherwise 38
disposing of a motor vehicle to an ultimate purchaser for use as a 39
consumer. 40

(H) "Retail installment contract" includes any contract in 41
the form of a note, chattel mortgage, conditional sales contract, 42
lease, agreement, or other instrument payable in one or more 43
installments over a period of time and arising out of the retail 44
sale of a motor vehicle. 45

(I) "Farm machinery" means all machines and tools used in the 46

production, harvesting, and care of farm products. 47

(J) "Dealer" or "motor vehicle dealer" means any new motor 48
vehicle dealer, any motor vehicle leasing dealer, and any used 49
motor vehicle dealer. 50

(K) "New motor vehicle dealer" means any person engaged in 51
the business of selling at retail, displaying, offering for sale, 52
or dealing in new motor vehicles pursuant to a contract or 53
agreement entered into with the manufacturer, remanufacturer, or 54
distributor of the motor vehicles. 55

(L) "Used motor vehicle dealer" means any person engaged in 56
the business of selling, displaying, offering for sale, or dealing 57
in used motor vehicles, at retail or wholesale, but does not mean 58
any new motor vehicle dealer selling, displaying, offering for 59
sale, or dealing in used motor vehicles incidentally to engaging 60
in the business of selling, displaying, offering for sale, or 61
dealing in new motor vehicles, any person engaged in the business 62
of dismantling, salvaging, or rebuilding motor vehicles by means 63
of using used parts, or any public officer performing official 64
duties. 65

(M) "Motor vehicle leasing dealer" means any person engaged 66
in the business of regularly making available, offering to make 67
available, or arranging for another person to use a motor vehicle 68
pursuant to a bailment, lease, sublease, or other contractual 69
arrangement under which a charge is made for its use at a periodic 70
rate for a term of thirty days or more, and title to the motor 71
vehicle is in and remains in the motor vehicle leasing dealer who 72
originally leases it, irrespective of whether or not the motor 73
vehicle is the subject of a later sublease, and not in the user, 74
but does not mean a manufacturer or its affiliate leasing to its 75
employees or to dealers. 76

(N) "Salesperson" means any person employed by a dealer or 77

manufactured home broker to sell, display, and offer for sale, or 78
deal in motor vehicles for a commission, compensation, or other 79
valuable consideration, but does not mean any public officer 80
performing official duties. 81

(O) "Casual sale" means any transfer of a motor vehicle by a 82
person other than a new motor vehicle dealer, used motor vehicle 83
dealer, motor vehicle salvage dealer, as defined in division (A) 84
of section 4738.01 of the Revised Code, salesperson, motor vehicle 85
auction owner, manufacturer, or distributor acting in the capacity 86
of a dealer, salesperson, auction owner, manufacturer, or 87
distributor, to a person who purchases the motor vehicle for use 88
as a consumer. 89

(P) "Motor vehicle show" means a display of current models of 90
motor vehicles whereby the primary purpose is the exhibition of 91
competitive makes and models in order to provide the general 92
public the opportunity to review and inspect various makes and 93
models of motor vehicles at a single location. 94

(Q) "Motor vehicle auction owner" means any person who is 95
engaged wholly or in part in the business of auctioning motor 96
vehicles. 97

(R) "Manufacturer" means a person who manufactures, 98
assembles, or imports motor vehicles, including motor homes, but 99
does not mean a person who only assembles or installs a body, 100
special equipment unit, finishing trim, or accessories on a motor 101
vehicle chassis supplied by a manufacturer or distributor. 102

(S) "Tent-type fold-out camping trailer" means any vehicle 103
intended to be used, when stationary, as a temporary shelter with 104
living and sleeping facilities, and that is subject to the 105
following properties and limitations: 106

(1) A minimum of twenty-five per cent of the fold-out portion 107
of the top and sidewalls combined must be constructed of canvas, 108

vinyl, or other fabric, and form an integral part of the shelter.	109
(2) When folded, the unit must not exceed:	110
(a) Fifteen feet in length, exclusive of bumper and tongue;	111
(b) Sixty inches in height from the point of contact with the ground;	112 113
(c) Eight feet in width;	114
(d) One ton gross weight at time of sale.	115
(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.	116 117 118 119 120 121
(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.	122 123 124 125
(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.	126 127 128 129 130
(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.	131 132 133 134
(X) "Franchisor" means a new motor vehicle manufacturer, remanufacturer, or distributor who supplies new motor vehicles under a franchise agreement to a franchisee.	135 136 137
(Y) "Dealer organization" means a state or local trade	138

association the membership of which is comprised predominantly of 139
new motor vehicle dealers. 140

(Z) "Factory representative" means a representative employed 141
by a manufacturer, remanufacturer, or by a factory branch 142
primarily for the purpose of promoting the sale of its motor 143
vehicles, parts, or accessories to dealers or for supervising or 144
contacting its dealers or prospective dealers. 145

(AA) "Administrative or executive management" means those 146
individuals who are not subject to federal wage and hour laws. 147

(BB) "Good faith" means honesty in the conduct or transaction 148
concerned and the observance of reasonable commercial standards of 149
fair dealing in the trade as is defined in division (S) of section 150
1301.01 of the Revised Code, including, but not limited to, the 151
duty to act in a fair and equitable manner so as to guarantee 152
freedom from coercion, intimidation, or threats of coercion or 153
intimidation; provided however, that recommendation, endorsement, 154
exposition, persuasion, urging, or argument shall not be 155
considered to constitute a lack of good faith. 156

(CC) "Coerce" means to compel or attempt to compel by failing 157
to act in good faith or by threat of economic harm, breach of 158
contract, or other adverse consequences. Coerce does not mean to 159
argue, urge, recommend, or persuade. 160

(DD) "Relevant market area" means any area within a radius of 161
ten miles from the site of a potential new dealership, except that 162
for manufactured home or recreational vehicle dealerships the 163
radius shall be twenty-five miles. The ten-mile radius shall be 164
measured from the dealer's established place of business that is 165
used exclusively for the purpose of selling, displaying, offering 166
for sale, or dealing in motor vehicles. 167

(EE) "Wholesale" or "at wholesale" means the act or attempted 168
act of selling, bartering, exchanging, or otherwise disposing of a 169

motor vehicle to a transferee for the purpose of resale and not 170
for ultimate consumption by that transferee. 171

(FF) "Motor vehicle wholesaler" means any person licensed as 172
a dealer under the laws of another state and engaged in the 173
business of selling, displaying, or offering for sale used motor 174
vehicles, at wholesale, but does not mean any motor vehicle dealer 175
as defined in this section. 176

(GG)(1) "Remanufacturer" means a person who assembles or 177
installs passenger seating, walls, a roof elevation, or a body 178
extension on a conversion van with the motor vehicle chassis 179
supplied by a manufacturer or distributor, a person who modifies a 180
truck chassis supplied by a manufacturer or distributor for use as 181
a public safety or public service vehicle, a person who modifies a 182
motor vehicle chassis supplied by a manufacturer or distributor 183
for use as a limousine or hearse, or a person who modifies an 184
incomplete motor vehicle cab and chassis supplied by a new motor 185
vehicle dealer or distributor for use as a tow truck, but does not 186
mean either of the following: 187

(a) A person who assembles or installs passenger seating, a 188
roof elevation, or a body extension on a recreational vehicle as 189
defined in division (Q) and referred to in division (B) of section 190
4501.01 of the Revised Code; 191

(b) A person who assembles or installs special equipment or 192
accessories for handicapped persons, as defined in section 4503.44 193
of the Revised Code, upon a motor vehicle chassis supplied by a 194
manufacturer or distributor. 195

(2) For the purposes of division (GG)(1) of this section, 196
"public safety vehicle or public service vehicle" means a fire 197
truck, ambulance, school bus, street sweeper, garbage packing 198
truck, or cement mixer, or a mobile self-contained facility 199
vehicle. 200

(3) For the purposes of division (GG)(1) of this section, 201
"limousine" means a motor vehicle, designed only for the purpose 202
of carrying nine or fewer passengers, that a person modifies by 203
cutting the original chassis, lengthening the wheelbase by forty 204
inches or more, and reinforcing the chassis in such a way that all 205
modifications comply with all applicable federal motor vehicle 206
safety standards. No person shall qualify as or be deemed to be a 207
remanufacturer who produces limousines unless the person has a 208
written agreement with the manufacturer of the chassis the person 209
utilizes to produce the limousines to complete properly the 210
remanufacture of the chassis into limousines. 211

(4) For the purposes of division (GG)(1) of this section, 212
"hearse" means a motor vehicle, designed only for the purpose of 213
transporting a single casket, that is equipped with a compartment 214
designed specifically to carry a single casket that a person 215
modifies by cutting the original chassis, lengthening the 216
wheelbase by ten inches or more, and reinforcing the chassis in 217
such a way that all modifications comply with all applicable 218
federal motor vehicle safety standards. No person shall qualify as 219
or be deemed to be a remanufacturer who produces hearses unless 220
the person has a written agreement with the manufacturer of the 221
chassis the person utilizes to produce the hearses to complete 222
properly the remanufacture of the chassis into hearses. 223

(5) For the purposes of division (GG)(1) of this section, 224
"mobile self-contained facility vehicle" means a mobile classroom 225
vehicle, mobile laboratory vehicle, bookmobile, bloodmobile, 226
testing laboratory, and mobile display vehicle, each of which is 227
designed for purposes other than for passenger transportation and 228
other than the transportation or displacement of cargo, freight, 229
materials, or merchandise. A vehicle is remanufactured into a 230
mobile self-contained facility vehicle in part by the addition of 231
insulation to the body shell, and installation of all of the 232

following: a generator, electrical wiring, plumbing, holding 233
tanks, doors, windows, cabinets, shelving, and heating, 234
ventilating, and air conditioning systems. 235

(6) For the purposes of division (GG)(1) of this section, 236
"tow truck" means both of the following: 237

(a) An incomplete cab and chassis that are purchased by a 238
remanufacturer from a new motor vehicle dealer or distributor of 239
the cab and chassis and on which the remanufacturer then installs 240
in a permanent manner a wrecker body it purchases from a 241
manufacturer or distributor of wrecker bodies, installs an 242
emergency flashing light pylon and emergency lights upon the mast 243
of the wrecker body or rooftop, and installs such other related 244
accessories and equipment, including push bumpers, front grille 245
guards with pads and other custom-ordered items such as painting, 246
special lettering, and safety striping so as to create a complete 247
motor vehicle capable of lifting and towing another motor vehicle. 248

(b) An incomplete cab and chassis that are purchased by a 249
remanufacturer from a new motor vehicle dealer or distributor of 250
the cab and chassis and on which the remanufacturer then installs 251
in a permanent manner a car carrier body it purchases from a 252
manufacturer or distributor of car carrier bodies, installs an 253
emergency flashing light pylon and emergency lights upon the 254
rooftop, and installs such other related accessories and 255
equipment, including push bumpers, front grille guards with pads 256
and other custom-ordered items such as painting, special 257
lettering, and safety striping. 258

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

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

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

(JJ) "Remote service facility" means premises that are 277
separate from a licensed new motor vehicle dealer's sales facility 278
by not more than one mile and that are used by the dealer to 279
perform repairs, warranty work, recall work, and maintenance on 280
motor vehicles pursuant to a franchise agreement entered into with 281
a manufacturer of motor vehicles. A remote service facility shall 282
be deemed to be part of the franchise agreement and is subject to 283
all the rights, duties, obligations, and requirements of Chapter 284
4517. of the Revised Code that relate to the performance of motor 285
vehicle repairs, warranty work, recall work, and maintenance work 286
by new motor vehicle dealers. 287

(KK) "Recreational vehicle" has the same meaning as in 288
section 4501.01 of the Revised Code. 289

Sec. 4517.52. (A) Each franchisor shall fulfill warranty and 290
recall obligations of repairing and servicing motor vehicles, 291
including all parts and components manufactured for installation 292
in any motor vehicle. 293

(B) Each franchisor shall compensate each of its franchisees 294

for labor and parts used to fulfill warranty and recall 295
obligations of repair and servicing at rates not less than the 296
rates charged by the franchisee to its retail customers for like 297
service and parts for nonwarranty work. 298

(C) Division (A) of this section shall not apply to 299
franchisors or franchisees who deal in recreational vehicles. 300

Sec. 4517.54. (A) Notwithstanding the terms, provisions, or 301
conditions of an existing franchise, no franchisor shall 302
terminate, cancel, or fail to continue or renew a franchise except 303
for good cause. This section governs any action or intent to 304
terminate, cancel, discontinue, or not renew a franchise whether 305
the franchise was entered into prior to or after the effective 306
date of this amendment. 307

(B) ~~Each~~ Except as otherwise provided in section 4517.541 of 308
the Revised Code, each franchisor proposing to terminate, cancel, 309
discontinue, or not renew a franchise shall send written notice by 310
certified mail of the proposed action to the franchisee at such 311
time as may be necessary to ensure that the notice is received no 312
later than ninety days before the effective date of the proposed 313
action, or no later than fifteen days before the effective date of 314
the proposed action when the proposed action is based upon any of 315
the following: 316

(1) Insolvency of the franchisee, or filing of any petition 317
by or against the franchisee under any bankruptcy or receivership 318
law; 319

(2) Any unlawful business practice after written warning 320
thereof; 321

(3) The franchisee has ceased business operations. 322

Each notice shall set forth the specific grounds for the 323
proposed termination, cancellation, or refusal to continue or 324

renew. 325

(C) Prior to the effective date of the proposed action, a 326
franchisee receiving written notice from a franchisor proposing to 327
terminate, cancel, discontinue, or not renew a franchise may file 328
a protest with the board against the franchisor's proposed action. 329
When such a protest has been filed, the board shall inform the 330
franchisor that a timely protest has been filed and that a hearing 331
is required pursuant to section 4517.57 of the Revised Code. 332

(D) A franchisor shall not terminate, cancel, discontinue, or 333
fail to renew a franchise before the holding of a hearing on any 334
protest filed under this section, or after the hearing, if the 335
board determines that good cause does not exist to terminate, 336
cancel, discontinue, or not renew the franchise. 337

Sec. 4517.541. (A) Each franchisor proposing to terminate, 338
cancel, discontinue, or not renew a franchise based upon any of 339
the following shall send written notice by certified mail of the 340
proposed action to the franchisee at such time as may be necessary 341
to ensure that the notice is received not later than twelve months 342
before the effective date of the proposed action, unless 343
prohibited by law or regulation: 344

(1) As a result of any change in ownership, operation, or 345
control of all or any part of the business of the manufacturer, 346
factory branch, distributor, or distributor branch, whether by 347
sale or transfer of assets, corporate stock or other equity 348
interest, or by assignment, merger, consolidation, combination, 349
joint venture, redemption, operation of law, or otherwise; 350

(2) The termination, suspension, or cessation of a part or 351
all of the business operations of the manufacturer, factory 352
branch, distributor, or distributor branch; 353

(3) Discontinuance of the sale of a line-make, series, brand 354

or class of vehicles or a change in distribution system by the 355
manufacturer, whether through a change in distributors or the 356
manufacturer's decision to cease conducting business through a 357
distributor altogether. 358

(B) Each notice described in division (A) of this section 359
shall set forth the specific grounds for the proposed termination, 360
cancellation, or refusal to continue or renew a franchise. 361

(C) This section shall not apply to franchisors or 362
franchisees who deal in recreational vehicles. 363

Sec. 4517.542. (A) Except as provided in division (A)(6)(c) 364
of this section, upon the termination, cancellation, 365
discontinuance, or nonrenewal of any franchise by the franchisor 366
pursuant to section 4517.541 of the Revised Code, the manufacturer 367
shall pay fair and reasonable compensation to the new motor 368
vehicle dealer for at least the following: 369

(1)(a) The franchisee's net acquisition cost for any new, 370
undamaged, unaltered, and unsold vehicle in the franchisee's 371
inventory of the current model year or the model year preceding 372
the current model year, purchased from the franchisor or another 373
franchisee of the same line-make in the ordinary course of 374
business prior to receipt of a notice of termination, 375
cancellation, discontinuance, or nonrenewal, provided the vehicle 376
has less than five hundred miles registered on the odometer, 377
including mileage incurred in delivery from the franchisor or in 378
transporting the vehicle between new motor vehicle dealers for 379
sale; 380

(b) Notwithstanding division (A)(1)(a) of this section, a 381
vehicle damaged prior to delivery to the franchisee by the 382
manufacturer or its agent shall be eligible for repurchase in 383
accordance with this section; 384

(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 417
for each year of ownership. 418

(4) The franchisee's net acquisition cost of all equipment, 419
special tools, automotive service equipment, and other items 420
bearing the manufacturer's trademark that were required by the 421
manufacturer or distributor, and purchased from the manufacturer 422
or a source recommended or approved by the manufacturer. The net 423
acquisition cost shall be reduced over a period of five years at a 424
rate of twenty per cent per year. 425

(5) The franchisor shall pay the fair and reasonable 426
compensation for the items described in divisions (A)(2), (3), and 427
(4) of this section, including the cost of handling, packing, 428
loading, and transporting an item for return to the franchisor, 429
within sixty days after the effective date of termination, 430
cancellation, discontinuance, or nonrenewal, so long as the 431
franchisee is able to provide evidence of good and clear title 432
upon return of the items to the franchisor. The franchisor may 433
make payment jointly to the franchisee and any party having a 434
security interest or ownership interest in the property. 435

(6)(a) Subject to division (A)(6)(b) of this section, fair 436
market value of the franchise that is at least equivalent to the 437
fair market value of the franchise on the day before the 438
manufacturer announces the action that results in termination, 439
cancellation, discontinuance, or nonrenewal. 440

(b) If the termination, cancellation, discontinuance, or 441
nonrenewal is due to a manufacturer's change in distributors, the 442
manufacturer may avoid paying fair market value to the new motor 443
vehicle dealer if the new distributor or the manufacturer offers 444
the new motor vehicle dealer a franchise agreement with terms 445
substantially similar to terms offered to other same line-make new 446
motor vehicle dealers. 447

(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. 448
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(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. 453
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(C) Dealership facilities assistance shall be paid as follows: 466
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(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. 468
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(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. 472
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(3) Subject to division (C)(4) of this section, if the new 478

motor vehicle dealer owns the dealership facilities, the 479
manufacturer shall pay the new motor vehicle dealer a sum 480
equivalent to the reasonable rental value of the dealership 481
facilities for twelve months. 482

(4) In order to be entitled to facilities assistance from the 483
manufacturer as provided in divisions (C)(2) and (3) of this 484
section, the new motor vehicle dealer shall mitigate damages by 485
listing the dealership facilities for lease or sublease with a 486
licensed real estate agent or retail industry broker within thirty 487
days after the effective date of the termination, cancellation, 488
discontinuance, or nonrenewal of the franchise and thereafter by 489
reasonably cooperating with the real estate agent or retail 490
industry broker in the performance of the agent's or broker's 491
duties. If the new motor vehicle dealer is able to lease or 492
sublease the dealership facilities, the new motor vehicle dealer 493
shall pay the manufacturer the net revenue received from the 494
mitigation up to the total amount of facilities assistance that 495
the new motor vehicle dealer has received from the manufacturer 496
pursuant to division (C)(2) or (3) of this section. 497

(5) If the termination, cancellation, discontinuance, or 498
nonrenewal relates to fewer than all of the franchises operated by 499
the new motor vehicle dealer at a single location, the amount of 500
facilities assistance that the manufacturer is required to pay the 501
new motor vehicle dealer under division (C) of this section shall 502
be based on the percentage of total square footage attributed to 503
the line-make being terminated, canceled, discontinued, or not 504
renewed. 505

(6) The manufacturer shall pay the dealership facilities 506
assistance under division (C) of this section within sixty days 507
after the effective date of termination, cancellation, 508
discontinuance, or nonrenewal. The franchisor may make payment 509
jointly to the franchisee and any party having a security interest 510

or ownership interest in the property. 511

(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. 512
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(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. 521
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(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. 526
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(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. 531
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(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 539
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dispute to the manufacturer's internal dispute resolution process 542
if one is available. If no such process exists, the dispute shall 543
be submitted to a court of competent jurisdiction. Either party 544
may appeal the decision of the manufacturer's internal dispute 545
resolution process to a court of competent jurisdiction. 546

(H) Nothing in this section or section 4517.541 of the 547
Revised Code shall be construed as prohibiting a manufacturer or 548
distributor from changing, adding or deleting models, 549
specifications, model names, numbers or identifying marks, or 550
similar characteristics of the new vehicles it markets, provided 551
that the change, addition, or deletion does not result in the 552
termination or discontinuance of a line-make, series, brand, or 553
class of new vehicle.

(I) This section shall not apply to franchisors or 554
franchisees who deal in recreational vehicles. 555

(J) As used in this section: 556

(1) "Net acquisition cost" means the franchised dealer cost 557
for a new and unsold motor vehicle in a dealer's inventory plus 558
any charges by the manufacturer or distributor for destination, 559
distribution, or delivery, and taxes, less all allowances paid or 560
credited to the franchised dealer by the manufacturer or 561
distributor. 562

(2) "Line-make" means a collection of models, series, or 563
groups of motor vehicles manufactured by or for a particular 564
manufacturer, distributor, or importer that are offered for sale, 565
lease, or distribution pursuant to a common brand name or mark. 566
Multiple brand names or marks may constitute a single line-make, 567
but only when included in a common dealer agreement and when the 568
manufacturer, distributor, or importer offers such vehicles 569
bearing the multiple names or marks together, and not separately, 570
to its authorized dealers. 571

Sec. 4517.55. (A) In determining whether good cause has been 572
established by the franchisor for terminating, cancelling, or 573
failing to continue or renew a franchise, the motor vehicle 574
dealers board shall take into consideration the existing 575
circumstances, including, but not limited to: 576

(1) The amount of retail sales transacted by the franchisee 577
during a five-year period immediately preceding such notice as 578
compared to the business available to the franchisee; 579

(2) The investment necessarily made and obligations incurred 580
by the franchisee to perform its part of the franchise; 581

(3) The permanency of the franchisee's investment; 582

(4) Whether it is injurious or beneficial to the public 583
interest for the franchise to be modified or replaced, or the 584
business of the franchisee disrupted; 585

(5) Whether the franchisee has adequate motor vehicle sales 586
and service facilities, equipment, vehicle parts, and qualified 587
service personnel to reasonably provide for the needs of the 588
consumers for the motor vehicles handled by the franchisee, and is 589
rendering adequate service to the public; 590

(6) Whether the franchisee fails to fulfill the warranty 591
obligations of the franchisor required to be performed by the 592
franchisee; 593

(7) The extent and materiality of the franchisee's failure to 594
comply with the terms of the franchise and the reasonableness and 595
fairness of the franchise terms; 596

(8) Whether the owners of the new motor vehicle dealer had 597
actual knowledge of the facts and circumstances upon which 598
termination, cancellation, discontinuance, or nonrenewal is based; 599

(9) Whether the proposed termination, cancellation, 600
discontinuance, or nonrenewal constitutes discriminatory 601

enforcement of the franchise agreement. 602

(B) Notwithstanding the terms, conditions, or provisions of 603
any franchise or waiver, the following do not constitute 604
sufficient good cause for terminating, cancelling, or failing to 605
continue or renew a franchise: 606

(1) Refusal by the franchisee to purchase or accept delivery 607
of any new motor vehicle, parts, accessories, or any other 608
commodity or service not ordered by the franchisee; 609

(2) The fact that the franchisee or the owner of any interest 610
therein, owns, has an investment in, participates in the 611
management of, or holds a license for the sale of the same or any 612
other line-make of new motor vehicle; 613

(3) The sale, transfer, or issuance of any equity or 614
debenture issue, or the transfer or issuance of any security or 615
shares of stock in a new motor vehicle dealer to any person, 616
whenever the sale, issuance, or transfer does not result in a 617
change in the controlling ownership of the dealership; 618

(4) A change by the franchisee in the administrative or 619
executive management of the dealership; 620

(5) Failure of the franchisee to achieve any unreasonable or 621
discriminatory performance criteria; 622

(6) A loss of trust by the franchisor absent circumstances or 623
facts that would be a material breach of the franchise agreement 624
and that material breach is known and ratified by the owners of 625
the new motor vehicle dealer; 626

(7) The failure of a franchisee to maintain a motor vehicle 627
floor plan line of credit, unless the franchisee fails to maintain 628
a floor plan line of credit for one hundred twenty days or longer; 629

(8) The export of new motor vehicles to a foreign country, 630
absent evidence that the new motor vehicle dealer knew or should 631

have known that the vehicle was purchased for export. There shall 632
be a rebuttable presumption that a new motor vehicle dealer did 633
not know, or should not have known, that a vehicle was purchased 634
for export if the vehicle is titled in the United States. 635

(C) Divisions (B)(6) to (8) of this section shall not apply 636
to franchisors or franchisees who deal in recreational vehicles. 637

Sec. 4517.59. (A) Notwithstanding the terms, provisions, or 638
conditions of any agreement, franchise, or waiver, no franchisor 639
shall: 640

~~(A)~~(1) In acting or purporting to act under the terms, 641
provisions, or conditions of a franchise or in terminating, 642
canceling, or failing to renew a franchise, fail to act in good 643
faith; 644

~~(B)~~(2) Prevent a franchisee from changing administrative or 645
executive management, provided such personnel satisfy reasonable 646
and objective standards formulated and objectively applied by the 647
franchisor; 648

~~(C)~~(3) Restrict the sale of any equity or debenture issue or 649
the transfer of any securities in a dealership, or in any way 650
prevent or attempt to prevent the transfer, sale, or issuance of 651
shares of stock or debentures to any person, if the basic 652
financial requirements of the franchisor have been equalled at the 653
time of the execution of the franchise agreement and continued in 654
effect, and if the sale, transfer, or issuance does not have the 655
effect of accomplishing a sale of a controlling interest in the 656
dealership; 657

~~(D)~~(4) Coerce or threaten any franchisee by refusing or 658
failing to renew or extend a lease of premises where the fee or 659
right of possession is in the absolute control of the franchisor 660
and the franchisee upon request or demand of the franchisor fails 661

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 694
practices of the franchisee; 695

~~(H)~~(8) Fail or refuse to make equally available to its same 696
line-make franchisees all motor vehicles, motor vehicle parts, or 697
other products manufactured for that line-make at the same actual 698
price, or to utilize any device including, but not limited to, 699
sales promotion plans or programs that result in such lesser 700
actual price. Division (A)(8) of this section shall not apply to 701
sales to a franchisee for resale to any unit of government or 702
donation or use by a franchisee in a driver education program. 703
Division (A)(8) of this section shall not prohibit the offering of 704
incentive programs or other discounts so long as such incentives 705
or discounts are reasonably available to all franchisees in this 706
state on a proportionately equal basis and are based on the sale 707
of individual vehicles and not increased for meeting a performance 708
standard unless the standard is reasonable considering all 709
existing circumstances. 710

A franchisor has not made a motor vehicle, motor vehicle 711
part, or other product available to all line-make franchisees if 712
the franchisor does any of the following: 713

(a) Requires a franchisee to remodel, renovate, or 714
recondition the new motor vehicle dealer's existing dealership 715
facilities as a prerequisite to receiving the model, part, or 716
product, unless reasonably necessary to accommodate the adequate 717
sale and service of a vehicle based on the technology of that 718
vehicle. As used in division (A)(8) of this section, "remodel, 719
renovate, and recondition" includes the requirement that a 720
franchisee purchase or lease unreasonably expensive advertising or 721
promotional displays or other similar materials. 722

(b) Requires a franchisee to pay an additional fee to receive 723
any model, part, or product within a franchisor's line-make; 724

(c) Requires a franchisee to accept additional inventory to receive any model, part, or product within a franchisor's line-make. 725
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(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; 728
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~~(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. 732
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~~(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. 738
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~~(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; 746
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~~(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 750
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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 788
on the part of the manufacturer or distributor pursuant to this 789
section. This section does not limit the right of the financial 790
services or leasing company to otherwise engage in regular 791
financial services or leasing business practices. 792

(18) Initiate a charge back without an audit or perform an 793
audit to confirm a warranty repair, sales incentive, or rebate 794
more than twelve months after the date of submission by the 795
franchisee, provided that these limitations shall not be effective 796
in the case of a fraudulent claim. Division (A)(18) of this 797
section does not preclude a charge back for any fraudulent claim 798
that was previously paid. 799

(19) Refuse to pay a franchisee for sales incentives, service 800
incentives, rebates, or other forms of incentive compensation 801
within thirty days after their approval by the manufacturer. The 802
franchisor shall either approve or disapprove each claim by the 803
franchisor within thirty days after receipt of the claim in a 804
proper form generally used by the franchisor. Any claims not 805
specifically disapproved in writing within thirty days after 806
receipt shall be considered to be approved. 807

(20) Reduce the amount to be paid to the new motor vehicle 808
dealer or charge a new motor vehicle dealer back subsequent to the 809
payment of the claim unless either of the following applies: 810

(a) The manufacturer shows that the claim lacks material 811
documentation or is false, fraudulent, or a misrepresentation. A 812
franchisor may not deny a claim based solely on a new motor 813
vehicle dealer's incidental failure to comply with a specific 814
claim processing requirement, such as a clerical error, that does 815
not put into question the legitimacy of the claim. 816

(b) The new motor vehicle dealer knew or should have known a 817
new motor vehicle was sold for export to a foreign country. There 818

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. 819
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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. 823
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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. 833
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(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; 842
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(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: 846
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(a) The new motor vehicle dealer at all times shall meet any 851
reasonable capital standards determined by the manufacturer in 852
accordance with uniformly applied criteria. 853

(b) No change in the capital structure shall cause a change 854
in the principal management or have the effect of a sale of the 855
franchise without the consent of the manufacturer or distributor, 856
and further provided that the manufacturer or distributor shall 857
not unreasonably withhold consent. 858

(23) Require, coerce, or attempt to coerce any new motor 859
vehicle dealer in this state to change location of the dealership, 860
or to make any substantial alterations to the dealership premises 861
or facilities, when to do so would be unreasonable, or without 862
written estimation of a sufficient supply of new motor vehicles so 863
as to justify the location change or alterations, in light of the 864
current market and economic conditions; 865

(24) Establish any performance standard or program for 866
measuring franchisee performance that may have a material impact 867
on a franchisee that is not fair, reasonable, and equitable, or 868
apply any such standard or program to a franchisee in a manner 869
that is not fair, reasonable, and equitable; 870

(25) Unreasonably require a franchisee to establish or 871
maintain exclusive sales facilities, sales display space, 872
personnel, service, parts, or administrative facilities for a 873
line-make, unless such exclusivity is reasonable and otherwise 874
justified by reasonable business considerations. In making that 875
determination, the franchisor shall take into consideration the 876
franchisee's satisfaction of facility requirements as required by 877
the franchise agreement. The franchisor shall have the burden of 878
proving that reasonable business considerations justify 879
exclusivity. 880

(26) Require or request a franchisee to waive any 881

requirements of this section. 882

(B) No franchisor shall discriminate among the franchisor's 883
dealers in any program that provides assistance to the 884
franchisor's dealers, including internet listings, sales leads, 885
warranty policy adjustments, marketing programs, and dealer 886
recognition programs. The franchisor shall not require a 887
franchisee to provide its customer lists or service files to the 888
franchisor, unless necessary for the sale and delivery of a new 889
motor vehicle to a consumer, to validate and pay consumer or 890
dealer incentives, or for the submission to the franchisor for any 891
services supplied by the franchisee for any claim for warranty 892
parts or repairs. Nothing in this division shall limit the 893
franchisor's ability to require or use customer information to 894
satisfy any safety or recall notice obligation. 895

(C) No franchise agreement shall require the franchisee to 896
pay the attorney's fees of a franchisor, waive any remedy or 897
defense available to the franchisee, require a motor vehicle 898
dealer to submit to arbitration or mediation to resolve a 899
controversy before the controversy arises, or waive any other 900
provisions of this chapter. Nothing in this division shall 901
preclude the parties from entering into a voluntary agreement to 902
arbitrate or mediate a controversy after it arises unless 903
otherwise precluded by law. Such an agreement shall require that 904
the dispute be heard in this state and that the arbitrator or 905
mediator apply the law of this state in resolving the controversy. 906
Either party may appeal a decision of an arbitrator in the court 907
of common pleas of Franklin county on the grounds that the 908
arbitrator failed to apply the law of this state. 909

(D) This section applies to any franchise whether entered 910
into prior to or after the effective date of this amendment. 911
Divisions (A)(8), (13), (16) to (25), (B), and (C) of this section 912
shall not apply to franchisors or franchisees who deal in 913

recreational vehicles. 914

Section 2. That existing sections 4517.01, 4517.52, 4517.54, 915
4517.55, and 4517.59 of the Revised Code are hereby repealed. 916