

As Reported by the House Civil and Commercial Law Committee

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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 vehicle dealer, any motor vehicle leasing dealer, and any used motor vehicle dealer.

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

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

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

(N) "Salesperson" means any person employed by a dealer or manufactured home broker to sell, display, and offer for sale, or deal in motor vehicles for a commission, compensation, or other

valuable consideration, but does not mean any public officer 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 association the membership of which is comprised predominantly of new motor vehicle dealers.	138 139 140

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

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

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

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

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

(3) For the purposes of division (GG)(1) of this section, "limousine" means a motor vehicle, designed only for the purpose

of carrying nine or fewer passengers, that a person modifies by 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 385
compensation for the items described in division (A)(1) of this 386
section, including the franchisee's costs of handling, packing, 387

loading, and transporting an item for return to the franchisor, 388
within thirty days after the effective date of the termination, 389
cancellation, discontinuance, or nonrenewal so long as the 390
franchisee can provide evidence of good and clear title upon 391
return of the items to the franchisor. If there is a lien on the 392
property, the franchisor may make payment jointly to the 393
franchisee and any party having a security interest or ownership 394
interest in the property. 395

(2) The franchisee's net acquisition cost of each new, 396
unused, undamaged, and unsold part or accessory purchased from the 397
manufacturer or a source recommended or approved by the franchisor 398
if the part or accessory is in the current parts catalog. In the 399
case of sheet metal, a comparable substitute for the original 400
package may be used. If the part or accessory was purchased by the 401
franchisee from an outgoing authorized franchisee, the franchisor 402
shall purchase the part or accessory at the depreciated value 403
price or the price in the current parts catalog, whichever is 404
less. 405

(3) The franchisee's net acquisition cost of each undamaged 406
sign if the sign bears a common name, trade name, or trademark of 407
the manufacturer, the manufacturer required the new motor vehicle 408
dealer to acquire the sign, and the sign was acquired by the new 409
motor vehicle dealer from the manufacturer or a source approved by 410
the manufacturer. A manufacturer shall purchase from the new motor 411
vehicle dealer at fair market price poles or other hardware used 412
to erect a sign if the manufacturer required the sign to be free 413
standing and not include a trademark or trade name other than that 414
of the manufacturer. For purposes of division (A)(3) of this 415
section, fair market price is equal to the new motor vehicle 416
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 448
value of the franchise if the termination, cancellation, 449
discontinuance, or nonrenewal of the franchise agreement is the 450
result of an action described in division (A) of section 4517.541 451

of the Revised Code. 452

(B) In the event the franchisor does not pay the franchisee 453
the amounts specified within the time required by this section for 454
an involuntary termination, the manufacturer shall pay or 455
reimburse the new motor vehicle dealer for any costs of storing, 456
insuring, and floor planning any of the property described in this 457
section from the effective date of termination, cancellation, 458
discontinuance, or nonrenewal until the date the franchisee is 459
paid and the property is transported, in addition to 460
transportation charges associated with the manufacturer's 461
repurchase obligations. The manufacturer shall not charge the new 462
motor vehicle dealer any handling, restocking, or other similar 463
costs or fees associated with items repurchased by the 464
manufacturer under division (A) of this section. 465

(C) Dealership facilities assistance shall be paid as 466
follows: 467

(1) If the new motor vehicle dealer is leasing the dealership 468
facilities from the manufacturer or a subsidiary of the 469
manufacturer, the manufacturer or subsidiary shall forgive any 470
future lease obligations. 471

(2) Subject to division (C)(4) of this section, if the new 472
motor vehicle dealer is leasing the dealership facilities from a 473
lessor other than the manufacturer, the manufacturer shall pay the 474
new motor vehicle dealer a sum equivalent to the rent for the 475
unexpired term of the lease or twelve months' rent, whichever is 476
less. 477

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

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

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

(7) The manufacturer is not required to pay dealership facilities assistance if the termination, cancellation, discontinuance, or nonrenewal of the franchise agreement is the

result of insolvency of the franchisee or the filing of any 515
petition by or against the franchisee under any bankruptcy or 516
receivership law, is the result of any unlawful business practice 517
after written warning thereof, is the result of the franchisee 518
ceasing business operations, or is the result of the voluntary act 519
of the new motor vehicle dealer. 520

(D) This section and section 4517.541 of the Revised Code 521
shall not apply to a termination, cancellation, discontinuance, or 522
nonrenewal of a franchise that results from the sale of the assets 523
or stock of the motor vehicle dealership from a franchisee to a 524
franchisee or prospective franchisee. 525

(E) This section shall not apply to any noncoerced voluntary 526
termination. A franchisee that voluntarily terminates the 527
franchise agreement remains eligible for any termination 528
assistance provided for voluntary terminations in the franchisee's 529
franchise agreement with the franchisor. 530

(F) A franchise shall continue in full force and operation 531
notwithstanding a change, in whole or in part, of an established 532
plan of distribution or system of distribution of the motor 533
vehicles offered for sale under the franchise. The appointment of 534
a new manufacturer, factory branch, distributor, or distributor 535
branch for motor vehicles offered for sale under the franchise 536
agreement shall be considered to be a change of an established 537
plan of distribution or system of distribution. 538

(G) Disputes arising between a manufacturer or distributor 539
and a new motor vehicle dealer under this section and section 540
4517.541 of the Revised Code shall be resolved by submitting the 541
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. 554

(I) This section shall not apply to franchisors or 555
franchisees who deal in recreational vehicles. 556

(J) As used in this section: 557

(1) "Net acquisition cost" means the franchised dealer cost 558
for a new and unsold motor vehicle in a dealer's inventory plus 559
any charges by the manufacturer or distributor for destination, 560
distribution, or delivery, and taxes, less all allowances paid or 561
credited to the franchised dealer by the manufacturer or 562
distributor. 563

(2) "Line-make" means a collection of models, series, or 564
groups of motor vehicles manufactured by or for a particular 565
manufacturer, distributor, or importer that are offered for sale, 566
lease, or distribution pursuant to a common brand name or mark. 567
Multiple brand names or marks may constitute a single line-make, 568
but only when included in a common dealer agreement and when the 569
manufacturer, distributor, or importer offers such vehicles 570
bearing the multiple names or marks together, and not separately, 571
to its authorized dealers. 572

Sec. 4517.55. (A) In determining whether good cause has been 573
established by the franchisor for terminating, cancelling, or 574
failing to continue or renew a franchise, the motor vehicle 575
dealers board shall take into consideration the existing 576
circumstances, including, but not limited to: 577

(1) The amount of retail sales transacted by the franchisee during a five-year period immediately preceding such notice as compared to the business available to the franchisee;	578 579 580
(2) The investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise;	581 582
(3) The permanency of the franchisee's investment;	583
(4) Whether it is injurious or beneficial to the public interest for the franchise to be modified or replaced, or the business of the franchisee disrupted;	584 585 586
(5) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee, and is rendering adequate service to the public;	587 588 589 590 591
(6) Whether the franchisee fails to fulfill the warranty obligations of the franchisor required to be performed by the franchisee;	592 593 594
(7) The extent and materiality of the franchisee's failure to comply with the terms of the franchise and the reasonableness and fairness of the franchise terms;	595 596 597
(8) Whether the owners of the new motor vehicle dealer had actual knowledge of the facts and circumstances upon which <u>termination, cancellation, discontinuance, or nonrenewal</u> is based;	598 599 600
(9) Whether the proposed <u>termination, cancellation, discontinuance, or nonrenewal</u> constitutes discriminatory enforcement of the franchise agreement.	601 602 603
(B) Notwithstanding the terms, conditions, or provisions of any franchise or waiver, the following do not constitute sufficient good cause for terminating, <u>cancelling</u> , or failing to continue or renew a franchise:	604 605 606 607

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

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

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

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

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

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

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

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

(C) Divisions (B)(6) to (8) of this section shall not apply

to franchisors or franchisees who deal in recreational vehicles. 638

Sec. 4517.59. (A) Notwithstanding the terms, provisions, or 639
conditions of any agreement, franchise, or waiver, no franchisor 640
shall: 641

~~(A)~~(1) In acting or purporting to act under the terms, 642
provisions, or conditions of a franchise or in terminating, 643
canceling, or failing to renew a franchise, fail to act in good 644
faith; 645

~~(B)~~(2) Prevent a franchisee from changing administrative or 646
executive management, provided such personnel satisfy reasonable 647
and objective standards formulated and objectively applied by the 648
franchisor; 649

~~(C)~~(3) Restrict the sale of any equity or debenture issue or 650
the transfer of any securities in a dealership, or in any way 651
prevent or attempt to prevent the transfer, sale, or issuance of 652
shares of stock or debentures to any person, if the basic 653
financial requirements of the franchisor have been equalled at the 654
time of the execution of the franchise agreement and continued in 655
effect, and if the sale, transfer, or issuance does not have the 656
effect of accomplishing a sale of a controlling interest in the 657
dealership; 658

~~(D)~~(4) Coerce or threaten any franchisee by refusing or 659
failing to renew or extend a lease of premises where the fee or 660
right of possession is in the absolute control of the franchisor 661
and the franchisee upon request or demand of the franchisor fails 662
to expand its facilities, increase sales personnel, purchase more 663
parts or accept programs for sales and operation of the 664
franchisee's business, when such demand is not reasonable, fair, 665
and equitable under all circumstances, or tends to depreciate the 666
franchisee's equity; 667

~~(E)~~(5) Sell, lease, or rent goods or motor vehicles, or 668
render any service normally performed and required of franchisees 669
under the franchise agreement with the franchisor, in unfair 670
competition with the franchisee, except that this division does 671
not apply to a sale, lease, or rental to, or service performed 672
for, an agency of federal, state, or local government; 673

~~(F)~~(6) Coerce, or attempt to coerce, any franchisee to accept 674
delivery of any motor vehicle, parts, accessories, or any other 675
commodities connected therewith which are not ordered by said 676
franchisee; nor withhold or delay delivery of motor vehicles out 677
of the ordinary course of business; nor discriminate against any 678
franchisee in the allocation or through the withholding from 679
delivery of certain models of motor vehicles ordered by a 680
franchisee out of the ordinary course of business; nor unfairly 681
change or amend unilaterally a franchisee's allotment of motor 682
vehicles or quota in a sales contest, sales expectancy, or sales 683
penetration without reasonable cause; nor coerce a franchisee by 684
any means to participate or contribute to any local or national 685
advertising fund; nor employ any coercive techniques for any other 686
purposes such as obtaining franchisee participation in contests, 687
"giveaways," or other sales devices; 688

~~(G)~~(7) Coerce, or attempt to coerce, a franchisee by 689
threatening to award an additional franchise or agreement to 690
another person for the sale of its same product in the same area 691
of influence for the purposes of compelling such franchisee to 692
yield to demands of the franchisor for increased sales of the 693
franchisor's products, parts, expansion of facilities and 694
improvement of operations inconsistent with good business 695
practices of the franchisee; 696

~~(H)~~(8) Fail or refuse to make equally available to its same 697
line-make franchisees all motor vehicles, motor vehicle parts, or 698
other products manufactured for that line-make at the same actual 699

price, or to utilize any device including, but not limited to, 700
sales promotion plans or programs that result in such lesser 701
actual price. Division (A)(8) of this section shall not apply to 702
sales to a franchisee for resale to any unit of government or 703
donation or use by a franchisee in a driver education program. 704
Division (A)(8) of this section shall not prohibit the offering of 705
incentive programs or other discounts so long as such incentives 706
or discounts are reasonably available to all franchisees in this 707
state on a proportionately equal basis and are based on the sale 708
of individual vehicles and not increased for meeting a performance 709
standard unless the standard is reasonable considering all 710
existing circumstances. 711

A franchisor has not made a motor vehicle, motor vehicle 712
part, or other product available to all line-make franchisees if 713
the franchisor does any of the following: 714

(a) Requires a franchisee to remodel, renovate, or 715
recondition the new motor vehicle dealer's existing dealership 716
facilities as a prerequisite to receiving the model, part, or 717
product, unless reasonably necessary to accommodate the adequate 718
sale and service of a vehicle based on the technology of that 719
vehicle. As used in division (A)(8) of this section, "remodel, 720
renovate, and recondition" includes the requirement that a 721
franchisee purchase or lease unreasonably expensive advertising or 722
promotional displays or other similar materials. 723

(b) Requires a franchisee to pay an additional fee to receive 724
any model, part, or product within a franchisor's line-make; 725

(c) Requires a franchisee to accept additional inventory to 726
receive any model, part, or product within a franchisor's 727
line-make. 728

(9) Fail to either return a part to the franchisee, at the 729
franchisor's expense, or reimburse the franchisee for the 730

franchisee's cost of the part where a franchisor does not approve 731
a franchisee's claim for a defective part; 732

~~(I)~~(10) Fail to approve or disapprove any warranty or recall 733
claim submitted by a franchisee within forty-five days after 734
receipt from the franchisee. If a claim is not approved, the 735
franchisor shall immediately so notify in writing the franchisee 736
who submitted the claim and shall include in the notice the 737
specific grounds upon which the disapproval is based. 738

~~(J)~~(11) Fail to pay a franchisee within thirty days after 739
approval by the franchisor of any claim by a franchisee for labor 740
and parts made under ~~sections~~ division (B) of section 4517.52 and 741
section 4517.53 of the Revised Code. Any failure of a franchisor 742
to act on or pay a claim within the time limits specified by this 743
section that results from causes beyond the franchisor's 744
reasonable control does not constitute a violation of this 745
section. 746

~~(K)~~(12) Disclaim an otherwise valid warranty or recall claim 747
because the franchisee fails to submit or resubmit the claim 748
within a period of less than six months from the date on which the 749
service was rendered or parts supplied; 750

~~(L)~~(13) Unless otherwise authorized or required by the 751
"National Traffic and Motor Vehicle Safety Act," 49 U.S.C. 30101, 752
et seq. or any regulation adopted thereunder, the "Transportation 753
Recall, Enhancement, Accountability, and Documentation Act," 49 754
U.S.C. 30123, et seq. or any regulation adopted thereunder, or any 755
other federal law or regulation, provide reimbursement to any 756
individual or entity that is not a franchisee for labor and parts 757
used to fulfill warranty and recall work, unless the work is 758
required for emergency service, or is performed by a service 759
center owned by the manufacturer on employee- or company-owned 760
vehicles only, or the work is warranty service by employees of a 761
fleet operator on its own vehicles. Nothing in division (A)(13) of 762

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. 763
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(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; 766
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~~(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; 776
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~~(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; 784
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(17) Use any financial services company or leasing company owned in whole or part or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to this section. This section does not limit the right of the financial services or leasing company to otherwise engage in regular financial services or leasing business practices. 787
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(18) Initiate a charge back without an audit or perform an 794
audit to confirm a warranty repair, sales incentive, or rebate 795
more than twelve months after the date of submission by the 796
franchisee, provided that these limitations shall not be effective 797
in the case of a fraudulent claim. Division (A)(18) of this 798
section does not preclude a charge back for any fraudulent claim 799
that was previously paid. 800

(19) Refuse to pay a franchisee for sales incentives, service 801
incentives, rebates, or other forms of incentive compensation 802
within thirty days after their approval by the manufacturer. The 803
franchisor shall either approve or disapprove each claim by the 804
franchisee within thirty days after receipt of the claim in a 805
proper form generally used by the franchisor. Any claims not 806
specifically disapproved in writing within thirty days after 807
receipt shall be considered to be approved. 808

(20) Reduce the amount to be paid to the new motor vehicle 809
dealer or charge a new motor vehicle dealer back subsequent to the 810
payment of the claim unless either of the following applies: 811

(a) The manufacturer shows that the claim lacks material 812
documentation or is false, fraudulent, or a misrepresentation. A 813
franchisor may not deny a claim based solely on a new motor 814
vehicle dealer's incidental failure to comply with a specific 815
claim processing requirement, such as a clerical error, that does 816
not put into question the legitimacy of the claim. 817

(b) The new motor vehicle dealer knew or should have known a 818
new motor vehicle was sold for export to a foreign country. There 819
shall exist a rebuttable presumption that a new motor vehicle 820
dealer did not know, or should not have known, that a vehicle was 821
sold for export to a foreign country if the motor vehicle is 822
titled in the United States. 823

No refusal to pay sales incentives, service incentives, 824

rebates, or other forms of incentive compensation, no reduction in 825
the amount to be paid to the new motor vehicle dealer, and no 826
charge back subsequent to the payment of a claim may be made until 827
the new motor vehicle dealer has had notice and an opportunity to 828
participate in all franchisor internal appeal processes as well as 829
all available legal processes. If a charge back is the subject of 830
adjudication, internal appeal, mediation, or arbitration, no 831
charge back shall be made until, in the case of an adjudication or 832
legal action, a final appealable order has been issued. 833

At the time submitted, the claim shall act as an immediate 834
automatic credit against future billings. Any ambiguity or 835
inconsistency in submission guidelines shall be construed against 836
the drafter. Any failure by a new motor vehicle dealer to exercise 837
its rights to reimbursement under this section does not create a 838
waiver of these rights. Any unreasonable denial, delay, or 839
restriction of a valid reimbursement claim shall subject the 840
manufacturer to interest in accordance with division (A) of 841
section 1343.03 of the Revised Code until paid. 842

(21) Prevent, attempt to prevent, prohibit, coerce, or 843
attempt to coerce, any new motor vehicle dealer from charging any 844
consumer any fee allowed to be charged by the dealer under Ohio 845
law; 846

(22) Require, coerce, or attempt to coerce any new motor 847
vehicle dealer in this state to change the capital structure of 848
the new motor vehicle dealer or the means by or through which the 849
new motor vehicle dealer finances the operation of the dealership 850
provided that: 851

(a) The new motor vehicle dealer at all times shall meet any 852
reasonable capital standards determined by the manufacturer in 853
accordance with uniformly applied criteria. 854

(b) No change in the capital structure shall cause a change 855

in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, and further provided that the manufacturer or distributor shall not unreasonably withhold consent. 856
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(23) Require, coerce, or attempt to coerce any new motor vehicle dealer in this state to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written estimation of a sufficient supply of new motor vehicles so as to justify the location change or alterations, in light of the current market and economic conditions; 860
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(24) Establish any performance standard or program for measuring franchisee performance that may have a material impact on a franchisee that is not fair, reasonable, and equitable, or apply any such standard or program to a franchisee in a manner that is not fair, reasonable, and equitable; 867
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(25) Unreasonably require a franchisee to establish or maintain exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations. In making that determination, the franchisor shall take into consideration the franchisee's satisfaction of facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that reasonable business considerations justify exclusivity. 872
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(26) Require or request a franchisee to waive any requirements of this section. 882
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(B) No franchisor shall discriminate among the franchisor's dealers in any program that provides assistance to the franchisor's dealers, including internet listings, sales leads, 884
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warranty policy adjustments, marketing programs, and dealer 887
recognition programs. The franchisor shall not require a 888
franchisee to provide its customer lists or service files to the 889
franchisor, unless necessary for the sale and delivery of a new 890
motor vehicle to a consumer, to validate and pay consumer or 891
dealer incentives, or for the submission to the franchisor for any 892
services supplied by the franchisee for any claim for warranty 893
parts or repairs. Nothing in this division shall limit the 894
franchisor's ability to require or use customer information to 895
satisfy any safety or recall notice obligation. 896

(C) No franchise agreement shall require the franchisee to 897
pay the attorney's fees of a franchisor, waive any remedy or 898
defense available to the franchisee, require a motor vehicle 899
dealer to submit to arbitration or mediation to resolve a 900
controversy before the controversy arises, or waive any other 901
provisions of this chapter. Nothing in this division shall 902
preclude the parties from entering into a voluntary agreement to 903
arbitrate or mediate a controversy after it arises unless 904
otherwise precluded by law. Such an agreement shall require that 905
the dispute be heard in this state and that the arbitrator or 906
mediator apply the law of this state in resolving the controversy. 907
Either party may appeal a decision of an arbitrator in the court 908
of common pleas of Franklin county on the grounds that the 909
arbitrator failed to apply the law of this state. 910

(D) This section applies to any franchise whether entered 911
into prior to or after the effective date of this amendment. 912
Divisions (A)(8), (13), (16) to (25), (B), and (C) of this section 913
shall not apply to franchisors or franchisees who deal in 914
recreational vehicles. 915

Section 2. That existing sections 4517.01, 4517.52, 4517.54, 916
4517.55, and 4517.59 of the Revised Code are hereby repealed. 917