



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

Sub. S.B. 204*

128th General Assembly

(As Reported by H. Civil and Commercial Law)

Sens. Wagoner, Carey, Gibbs, Grendell, Husted, Jones, Morano, Niehaus, Patton, Schaffer, Widener, Schuring, Kearney, Buehrer, Harris, Hughes, D. Miller, Sawyer, Seitz, Turner, Wilson

BILL SUMMARY

Terminating a franchise, generally

- Specifically applies the provisions of the New Motor Vehicle Franchisee Law, as amended by the bill, to the "cancellation" of a franchise.
- Adds circumstances that do not constitute good cause to terminate a franchise.

Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product

- Requires a franchisor proposing to terminate a franchise for specified reasons to provide notice 12 months prior to the effective date of the termination.
- Specifies that a franchise continues in full force and operation notwithstanding a change of an established plan or system of distribution of the motor vehicles offered for sale under the franchise.
- Requires the franchisor to pay fair and reasonable compensation to the new motor vehicle dealer upon the franchisor's termination of the franchise, including the franchise's fair market value, new motor vehicle inventory, and certain other items.
- Requires, generally, the manufacturer to pay dealership facilities assistance to a new motor vehicle dealer in an amount that depends on how the facilities are held.

* This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires disputes arising between a manufacturer or distributor and a new motor vehicle dealer to be resolved by submitting the dispute to the manufacturer's internal dispute resolution process if one is available, and requires the dispute to be submitted to a court of competent jurisdiction if no such process exists.

Prohibitions

- Regulates franchisor information available to a franchisee and a franchisee's allotment of motor vehicles or quota.
- Enacts franchisor prohibitions relating to:
 - (1) Making certain items equally available to its same line-make franchisees;
 - (2) Reimbursing nonfranchised persons for warranty and recall work;
 - (3) A franchisee acquiring a new motor vehicle line-make when it owns or operates a franchise of the same line-make in a contiguous market;
 - (4) Using a franchisor-owned financial services or leasing company to accomplish what would otherwise be illegal conduct;
 - (5) Charge-backs;
 - (6) Payment of incentive compensation or payment to the franchisee;
 - (7) The franchisee charging consumers legally allowed fees;
 - (8) The capital structure of the franchisee and the means by which the franchisee finances dealership operations;
 - (9) The dealership's location and alterations to dealership premises;
 - (10) Performance standards for measuring franchisee performance;
 - (11) Maintaining exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities;
 - (12) Discriminating among the franchisor's dealers in programs that provide dealer assistance;
 - (13) Providing to the franchisor certain information concerning the dealership or any information regarding the dealership's customers.

- Prohibits a franchise agreement from containing certain provisions regarding payment of attorney fees, waiving rights, or waive any provision of the Motor Vehicle Dealers Law.
- Allows the parties to enter into a voluntary agreement to arbitrate or mediate a controversy after it arises, so long as the agreement requires that the dispute be heard in Ohio and that the arbitrator or mediator apply Ohio law in resolving the controversy.

Warranty and recall obligations

- Requires a franchisor to fulfill certain warranty and recall obligations.

Application of the bill

- Prohibits the bill from applying to franchisors and franchisees who deal in recreational vehicles.

TABLE OF CONTENTS

Notice of intent to terminate, discontinue, or not renew a franchise	4
Existing law	4
Operation of the bill	4
Good cause for terminating a franchise	4
Existing law	4
Operation of the bill	5
Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product	6
Notice	6
Compensation	7
Time of payment	9
Failure to pay compensation within specified time	9
Dealership facilities assistance	9
Amount of assistance	9
Partial termination	10
Time of payment	10
When dealership facilities assistance is not required	10
Exception to compensation and facilities assistance	10
Disputes	11
Franchisor prohibitions	11
Revised prohibitions	11
Unfairly changing a franchisee's allotment of motor vehicles or quota in a sales contest	11
Failure to disclose certain information	11
Predatory or discriminatory behavior	11
New prohibitions	12
Penalty for revised and new prohibitions	15
Warranty and recall obligations	15

Cancelling a franchise.....	16
Application of the bill.....	16

CONTENT AND OPERATION

Notice of intent to terminate, discontinue, or not renew a franchise

Existing law

Under existing law, a franchisor may not terminate a franchise¹ except for good cause. Each franchisor proposing to terminate a franchise must send written notice of the termination by certified mail to the franchisee at such time as may be necessary to ensure that the notice is received no later than 90 days before the effective date of the termination, or no later than 15 days before the effective date of the termination when the termination is based upon any of the following:

- (1) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law;
- (2) Any unlawful business practice after written warning thereof;
- (3) The franchisee has ceased business operations. (R.C. 4517.54.)

Operation of the bill

The bill applies this provision to situations in which the franchisor is cancelling the franchise (see also "**Cancelling a franchise**," below). In addition, the bill subjects this provision to the provisions described in "**Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product**," below. (R.C. 4517.54.)

Good cause for terminating a franchise

Existing law

Under existing law, a franchisor may terminate a franchise for good cause. But, notwithstanding the terms of any franchise or waiver, the following do not constitute sufficient good cause for terminating a franchise:

¹ For purposes of this analysis, "terminating a franchise" includes discontinuing and not renewing a franchise and, in accordance with the amendments made by the bill, cancelling a franchise.

(1) Refusal by the franchisee to purchase or accept delivery of any new motor vehicle,² 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. (R.C. 4517.55(A) and (B).)

Operation of the bill

The bill specifies additional circumstances that do not constitute good cause:

(1) 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;

(2) 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 120 days or longer;

(3) The export of new motor vehicles to a foreign country, absent evidence that the dealer knew or should have known that the vehicle was purchased for export.³ (R.C. 4517.55(B).)

² "Motor vehicle" means motor vehicle as defined in R.C. 4501.01 and also includes all-purpose vehicles, off-highway motorcycles, and manufactured and mobile homes. "Motor vehicle" does not include a snowmobile. (R.C. 4517.01(B).) R.C. 4501.01(B) defines "motor vehicle" as any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires. "Motor vehicle" does not include utility vehicles, motorized bicycles, equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, and certain trailers that are designed and used exclusively to transport a boat.

Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product

Notice

Under the bill, each franchisor proposing to terminate a franchise based upon any of the following must, unless otherwise prohibited by law or regulation, send written notice by certified mail of the termination to the franchisee at such time as may be necessary to ensure that the notice is received not later than 12 months before the effective date of the termination:

(1) As a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch;

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

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

The notice must set forth the specific grounds for the proposed action. (R.C. 4517.541(A) and (B).)

A franchise continues 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.⁴ (R.C. 4517.542(F).)

None of the provisions described in "**Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product**" may be construed as prohibiting a manufacturer or distributor from changing, adding or deleting models, specifications, model names, numbers or identifying marks, or similar characteristics of the new vehicles it markets, provided that the action does not result in the termination or discontinuance of a line-make series, brand, or class of new vehicle (R.C. 4517.542(H)).

³ The bill creates a rebuttable presumption that a 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.

⁴ The appointment of a new manufacturer, factory branch, distributor, or distributor branch for motor vehicles offered for sale under the franchise agreement is considered to be a change of an established plan of distribution or system of distribution (R.C. 4517.542(F)).

Compensation

Upon the termination of the franchise by the franchisor based upon the above reasons the bill requires the manufacturer to pay fair and reasonable compensation to the new motor vehicle dealer for at least the following:

(1) The franchisee's net acquisition cost⁵ for any new, undamaged, unaltered, and unsold vehicle in the franchisee's inventory of the current model year or the model year preceding the current model year, purchased from the franchisor or another franchisee of the same line-make in the ordinary course of business prior to receipt of a notice of termination, provided the vehicle has less than 500 miles registered on the odometer, including mileage incurred in delivery from the franchisor or in transporting the vehicle between new motor vehicle dealers for sale.

- A vehicle damaged prior to delivery to the franchisee by the manufacturer or is agent its eligible for repurchase.
- The franchisor must pay the fair and reasonable compensation as described above, including the franchisee's costs of handling, packing, loading, and transporting an item for return to the franchisor, within 30 days after the effective date of the termination 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 must purchase the part or accessory at the depreciated value price or the price in the current parts catalog, whichever is less.

⁵ "Net acquisition cost" means the franchised dealer cost for a new and unsold motor vehicle in a dealer's inventory plus any charges by the manufacturer or distributor for destination, distribution, or delivery, and taxes, less all allowances paid or credited to the franchised dealer by the manufacturer or distributor (R.C. 4517.542(J)(1)).

(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 must purchase from the new motor vehicle dealer at fair market price⁶ 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.

(4) The franchisee's net acquisition cost of all equipment, special tools, automotive service equipment, and other items bearing the manufacturer's trademark that were required by the manufacturer or distributor, and purchased from the manufacturer or a source recommended or approved by the manufacturer.

- The net acquisition cost must be reduced over a period of five years at a rate of 20% per year.

(5) Fair market value of the franchise that is at least equivalent to the fair market value of the franchise on the day before the manufacturer announces the action that results in termination.

- If the termination is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the new motor vehicle dealer if the new distributor or the manufacturer offers the new motor vehicle dealer a franchise agreement with terms substantially similar to terms offered to other same line-make⁷ new motor vehicle dealers.
- The manufacturer is only required to pay fair market value of the franchise if the termination of the franchise agreement is the result of an action described in "**Terminating a franchise based upon change in**

⁶ Fair market price is equal to the new motor vehicle dealer's original cost, reduced by 1/10 of the original cost for each year of ownership (R.C. 4517.542(A)(3)).

⁷ "Line-make" means a collection of models, series, or groups of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution pursuant to a common brand name or mark. Multiple brand names or marks may constitute a single line-make, but only when included in a common dealer agreement and when the manufacturer, distributor, or importer offers such vehicles bearing the multiple names or marks together, and not separately, to its authorized dealers (R.C. 4517.542(J)(2)).

ownership, cessation of business operations, or discontinuances of product." (R.C. 4517.542(A).)

Time of payment

The manufacturer must pay the compensation described in numbers (2), (3), and (4) of "**Compensation**," above, including the cost of handling, packing, loading, and transporting an item for return to the franchisor, within 60 days of the effective date of termination, so long as the franchisee is able to provide evidence of good and clear title upon return of the items to the franchisor. The franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property. (R.C. 4517.542(A)(5).)

Failure to pay compensation within specified time

If the franchisor does not pay the franchisee the amounts described in "**Compensation**" within the time required, the manufacturer must pay or reimburse the new motor vehicle dealer for any costs of storing, insuring, and floor planning any of the property described from the effective date of termination 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 is prohibited from charging the new motor vehicle dealer any handling, restocking, or other similar costs of fees associated with items repurchased by the manufacturer under "**Compensation**." (R.C. 4517.542(B).)

Dealership facilities assistance

The bill also requires the manufacturer or subsidiary to pay dealership facilities assistance to a new motor vehicle dealer in an amount that depends on how the facilities are held.

Amount of assistance

If the new motor vehicle dealer is leasing the dealership facilities from the manufacturer or a subsidiary thereof, the manufacturer or subsidiary is required to forgive any future lease obligations. If the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer is required to pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or 12 months' rent, whichever is less. If the new motor vehicle dealer owns the dealership facilities, the manufacturer is required to pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for 12 months.

In these latter two situations, the new motor vehicle dealer is required to mitigate damages by listing the dealership facilities for lease or sublease with a licensed real estate agent or retail industry broker within 30 days after the effective date of the termination 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 dealer is able to lease or sublease the dealership facilities, the dealer is required to pay the manufacturer the net revenue received from the mitigation up to the total amount of facilities assistance that the dealer has received from the manufacturer. (R.C. 4517.542(C)(1) to (4).)

Partial termination

If the termination 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 dealer must be based on the percentage of total square footage attributed to the line-make being terminated (R.C. 4517.542(C)(5).)

Time of payment

The manufacturer must pay the dealership facilities assistance within 60 days after the effective date of termination. The franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property. (R.C. 4517.542(C)(6).)

When dealership facilities assistance is not required

The manufacturer is not required to pay dealership facilities assistance if the termination 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. (R.C. 4517.542(C)(7).)

Exception to compensation and facilities assistance

The provisions described in "**Terminating a franchise based upon change in ownership, cessation of business operations, or discontinuance of product**" do not apply to a termination that results from the sale of the assets or stock of the motor vehicle dealership from a franchisee to a franchisee or prospective franchisee. Additionally, the provisions do not apply to any noncoerced voluntary terminations. 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. (R.C. 4517.542(D) and (E).)

Disputes

Disputes arising between a manufacturer or distributor and a new motor vehicle dealer must be resolved by submitting the dispute to the manufacturer's internal dispute resolution process if one is available. If no such process exists, the dispute must be submitted to a court of competent jurisdiction. Either party may appeal the decision of the manufacturer's internal dispute resolution process to a court of competent jurisdiction. (R.C. 4517.542(G).)

Franchisor prohibitions

Revised prohibitions

Unfairly changing a franchisee's allotment of motor vehicles or quota in a sales contest

Existing law prohibits a franchisor, without reasonable cause and notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, from unfairly changing or amending unilaterally a franchisee's allotment of motor vehicles or quota in a sales contest. Under the bill, this prohibition applies to sales expectancies and sales penetrations instead of sales contests. (R.C. 4517.59(A)(6).)

Failure to disclose certain information

Under existing law, notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, a franchisor is prohibited from refusing 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. Under the bill, if a line-make is allocated among new motor vehicle dealers the franchisor is prohibited from refusing 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 concise listing of dealerships with an explanation of the derivation of the allocation system including its mathematical formula in a clear and comprehensible form. (R.C. 4517.59(A)(14).)

Predatory or discriminatory behavior

Existing law prohibits a franchisor, notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, from engaging in any predatory practice or discriminating against any new motor vehicle dealer. The bill includes a specific example: 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. (R.C. 4517.59(A)(15).)

New prohibitions

The bill also enacts a series of new prohibitions. Under the bill, notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, no franchisor may do any of the following (R.C. 4517.59(A)(8), (13), and (16) to (25)):

(1) Fail or refuse to make equally available to its same line-make franchisees all motor vehicles, motor vehicle parts, or other products manufactured for that line-make at the same actual price, or to utilize any device including, but not limited to, sales promotion plans or programs that result in such lesser actual price. This prohibition does not apply to sales to a franchisee for resale to any unit of government or donation or use by a franchisee in a driver education program. This prohibition does not prohibit the offering of incentive programs or other discounts so long as such incentives or discounts are reasonably available to all franchisees in Ohio on a proportionately equal basis and are based on the sale of individual vehicles and not increased for meeting a performance standard unless the standard is reasonable considering all existing circumstances. Under this prohibition, a franchisor has not made the product available to all line-make franchisees if the franchisor does any of the following: (a) requires a franchisee to remodel, renovate, or recondition⁸ the dealer's existing dealership facilities as a prerequisite to receiving the product, unless reasonably necessary to accommodate the adequate sale and service of a vehicle based on the technology of that vehicle, (b) requires a franchisee to pay an additional fee to receive any model, part, or product within a franchisor's line-make, or (c) requires a franchisee to accept additional inventory to receive any model, part, or product within a franchisor's line-make.

(2) Unless otherwise authorized or required by the National Traffic and Motor Vehicle Safety Act (49 United States Code § 30101, *et seq.*) or any regulation adopted thereunder, the Transportation Recall, Enhancement, Accountability, and Documentation Act (49 U.S.C. 30123, *et seq.*) or any regulation adopted thereunder, or any other federal law or regulation, provide reimbursement to any individual or entity that is not a franchisee for labor and parts used to fulfill warranty and recall work, unless the work is required for emergency service, or is performed by a service center owned by the manufacturer on employee- or company-owned vehicles only, or the work is warranty service by employees of a fleet operator on its own vehicles. This prohibition does not prohibit a manufacturer from reimbursing a franchisee of another

⁸ "Remodel, renovate, and recondition" includes the requirement that a franchisee purchase or lease unreasonably expensive advertising or promotional displays or other similar materials.

line-make of the same manufacturer for labor and parts used to fulfill warranty and recall work.

(3) 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.

(4) 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 the franchisor prohibitions section, R.C. 4517.59.⁹

(5) Initiate a charge back without an audit or perform an audit to confirm a warranty repair, sales incentive, or rebate more than 12 months after the date of submission by the franchisee, provided that these limitations are not effective in the case of a fraudulent claim. This prohibition does not preclude a charge back for any fraudulent claim that was previously paid.

(6) Refuse to pay a franchisee for sales incentives, service incentives, rebates, or other forms of incentive compensation within 30 days after their approval by the manufacturer. The franchisor must either approve or disapprove each claim by the franchisee within 30 days after receipt of the claim in a proper form generally used by the franchisor. Any claims not specifically disapproved in writing within 30 days after receipt will be considered to be approved.

(7) Reduce the amount to be paid to the dealer, or charge back a dealer subsequent to the payment of the claim unless it can be shown that either of the following applies:

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

(b) The new motor vehicle dealer knew or should have known a new motor vehicle was sold for export to a foreign country.¹⁰

⁹ Under the bill, a financial services or leasing company may otherwise engage in regular financial services or leasing business practices.

¹⁰ The bill creates a rebuttable presumption that a 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.

(8) 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;

(9) Require, coerce, or attempt to coerce any Ohio new motor vehicle dealer 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:

- The new motor vehicle dealer at all times must meet any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.
- No change in the capital structure may cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor (the manufacturer or distributor may not unreasonably withhold consent).

(10) Require, coerce, or attempt to coerce any Ohio new motor vehicle dealer 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;

(11) 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;

(12) Unreasonably require a franchisee to establish or maintain exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a

Also, 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 dealer, and no charge back subsequent to the payment of a claim may be made until the 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 may be made until, in the case of an adjudication or legal action, a final appealable order has been issued.

At the time submitted, the claim acts as an immediate automatic credit against future billings. Any ambiguity or inconsistency in submission guidelines must be construed against the drafter. Any failure by a dealer to exercise its rights to reimbursement under this provision 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 at the statutory rate, R.C. 1343.03(A), until paid.

line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations. In making that determination, the franchisor must take into consideration the franchisee's satisfaction of facility requirements as required by the franchise agreement. The bill places the burden of proving that reasonable business considerations justify exclusivity on the franchisor.

(13) Require or request a franchisee to waive any requirements of the franchisor prohibitions section (existing law, but expanded as a result of the amended and new prohibitions) (R.C. 4517.59).

The bill prohibits a franchisor from discriminating among the franchisor's dealers in any program that provides assistance to the franchisor's dealers, including internet listings, sales leads, warranty policy adjustments, marketing programs, and dealer recognition programs. The franchisor is prohibited from requiring a franchisee to provide its customer lists or service files to the franchisor, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. This prohibition does not limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation. (R.C. 4517.59(B).)

The bill also prohibits a franchise agreement from requiring the franchisee to pay the attorney fees of a franchisor, waive any remedy or defense available to the franchisee, require a motor vehicle dealer to submit to arbitration or mediation to resolve a controversy before the controversy arises, or waive any other provisions of the Motor Vehicle Dealers Law. This prohibition does not preclude the parties from entering into a voluntary agreement to arbitrate or mediate a controversy after it arises unless otherwise precluded by law. Such an agreement must require that the dispute be heard in Ohio and that the arbitrator or mediator apply Ohio law in resolving the controversy. Either party may appeal a decision of an arbitrator in the Franklin County Court of Common Pleas on the grounds that the arbitrator failed to apply Ohio law. (R.C. 4517.59(C).)

Penalty for revised and new prohibitions

A provision of continuing law makes a violation of either the revised or new prohibitions described above a fourth degree misdemeanor (R.C. 4517.99, not in the bill).

Warranty and recall obligations

Under existing law, each franchisor is required to compensate each of its franchisees for labor and parts used to fulfill warranty and recall obligations of repair

and servicing at rates not less than the rates charged by the franchisee to its retail customers for like service and parts for nonwarranty work.

The bill additionally requires each franchisor to fulfill warranty and recall obligations of repairing and servicing motor vehicles, including all parts and components manufactured for installation in any motor vehicle (R.C. 4517.52 and a conforming change in R.C. 4517.59(A)(11)).

Cancelling a franchise

Under existing law, no franchisor may terminate or fail to continue or renew a franchise except for good cause. Each franchisor proposing to terminate a franchise must send a written termination notice to the franchisee that sets forth the specific grounds for the termination. The franchisee has certain rights in relation to the termination, including the right to file a protest and have a hearing before the Motor Vehicle Dealers Board, which determines whether the franchisor has good cause to terminate the franchise. The franchisor has the burden of going forward and of persuasion to establish that there is good cause.

The bill applies these provisions to when a franchisor desires to cancel a franchise. The amendment to include cancellations governs any action or intent to cancel a franchise whether the franchise was entered into prior to or after the effective date of the bill. (R.C. 4517.54 and 4517.55(A) and (B).)

Application of the bill

The bill does not apply to franchisors or franchisees who deal in recreational vehicles (R.C. 4517.01(KK), 4517.52(C), 4517.541(C), 4517.542(I), 4517.55(C), and 4517.59(D)).

HISTORY

ACTION	DATE
Introduced	11-12-09
Reported, S. Insurance, Commerce, & Labor	05-26-10
Passed Senate (33-0)	05-26-10
Reported, H. Civil & Commercial Law	---

s0204-rh-128.docx/kl

