

## Commerce

### Sub. H.B. 476

**Reps.** Schuring, Rosenberger, Strahorn, Amstutz, Boyce, Brown, Celebrezze, Cera, Derickson, Driehaus, Hayes, McClain, Slesnick, Sprague, Buchy, Anielski, Antani, Barnes, Boyd, Brenner, Craig, Dever, Dovilla, Ginter, Goodman, T. Johnson, Leland, Maag, Merrin, Perales, Roegner, Romanchuk, R. Smith, Sweeney, Terhar, Thompson, Young, Zeltwanger

**Sens.** LaRose, Bacon, Coley, Eklund, Faber, Hackett, Hite, Hottinger, Hughes, Jones, Obhof, Patton, Peterson, Seitz, Thomas, Uecker, Williams

**Effective date:** March 21, 2017

#### State contracts and boycotting

- Prohibits state agencies from entering into or renewing contracts with companies for supplies and services unless the companies declare that they are not boycotting, and will not boycott during the contract period, any jurisdiction with whom Ohio can enjoy open trade, including Israel.
- Defines "boycott" as engaging in refusals to deal, terminating business activities, or other actions intended to limit commercial relations with persons or entities in a discriminatory manner.
- Exempts the following: boycotts to which 50 U.S.C. 4607(c) applies, certain boycotts related to business or economic reasons, boycotts against a public entity of a foreign state when the boycott is applied in a nondiscriminatory manner, and conduct that is necessary to comply with law.

#### Foreign debt cap

- Raises the foreign debt cap for investments for interim funds of the state, county inactive funds, and public library funds from 1% to 2%.

### S.B. 181

**Sens.** Obhof and Schiavoni, Bacon, Eklund, Seitz, LaRose, Beagle, Brown, Burke, Coley, Hughes, Jones, Lehner, Manning, Oelslager, Patton, Sawyer, Tavares, Thomas, Yuko

**Reps.** Amstutz, Anielski, Antani, Baker, Blessing, Boccieri, Burkley, Butler, Celebrezze, Dever, Dovilla, Duffey, Green, Hagan, Hall, Hambley, Kunze, Manning, McColley, Perales, Rezabek, Rogers, Romanchuk, Scherer, Sheehy, Sprague, Thompson, Young

**Effective date:** July 6, 2016

## Corporations

- Eliminates the statutory stipulation that the chairperson of a corporation's board is an officer of the corporation.
- Prescribes the fiduciary duties of a corporate officer.
- Specifies the standard for determining whether a corporate officer will be liable for violating the officer's duties.

## Limited liability companies (LLC)

- Modifies the list of actions a limited liability company (LLC) operating agreement is prohibited from doing.
- Specifies that, despite the list of prohibited actions that an operating agreement of an LLC may not perform, a written agreement, including a written operating agreement, that modifies, waives, or eliminates the duty of loyalty, the duty of care, or both for one or more members, managers, or officers must be given effect.
- Specifies that it is the policy of Ohio's LLC Law to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.
- Modifies a member's duty of loyalty to the LLC and the other members.
- Specifies that an LLC may have, but is not required to have, officers.
- Creates certain fiduciary duties of an LLC officer, unless either a written operating agreement for the LLC or a written agreement with an officer establishes additional fiduciary duties or the duties of an officer have been modified, waived, or eliminated elsewhere in the Revised Code.
- Specifies the standard for determining whether an officer of an LLC will be found liable for violating the officer's duties.
- Adds an LLC's officers to the list of persons who are not personally liable to satisfy any judgment, decree, debt, or obligation of an LLC solely by reason of the person's position.
- Specifies that the law governing LLCs applies to all LLCs formed under R.C. Chapter 1705., whether the LLC has one or more members or whether it is formed by filing articles of organization or by merger, consolidation, or conversion.

## Sub. S.B. 242

**Sens.** Uecker and Coley, LaRose, Eklund, Faber, Hackett, Lehner, Seitz

**Reps.** Brown, Blessing, Clyde, Buchy, Green, McColley, R. Smith, Amstutz, Barnes, Brenner, Burkley, Fedor, Hambley, Leland, M. O'Brien, Rogers, Ryan, Schaffer, Sears, Slaby, K. Smith, Sprague, Sweeney

**Effective date:** September 14, 2016

### Compensating warranty and recall obligations

- Establishes a method by which a franchisee (motor vehicle dealer) may calculate its retail labor rate and the retail parts markup percentage for purposes of its reimbursement for warranty and recall obligations.
- Establishes a process by which a franchisor (motor vehicle manufacturer) may contest a retail labor rate or retail parts markup percentage calculated by a franchisee.
- Requires a franchisor to use a specified method when calculating the compensation that must be provided to a franchisee for labor and parts used to fulfill warranty and recall obligations.
- Specifies that these provisions do not apply to franchisors and franchisees that deal in recreational vehicles.

### Cause to terminate or fail to continue a franchise

- Requires a franchisor to allow a franchisee to present evidence demonstrating the effect of local market conditions prior to terminating or canceling a franchise agreement because the franchisee failed to meet performance criteria.

### Prohibited actions by a manufacturer

- Prohibits a franchisor from changing a franchisee's geographic area of responsibility without reasonable cause.
- Prior to changing a franchisee's geographic area of responsibility, requires a franchisor to give the franchisee an opportunity to demonstrate the effect of local market conditions that adversely affect the franchisee's proposed new geographic area of responsibility.
- Expands the prohibition against a franchisor initiating a charge back without an audit or performing an audit more than 12 months after submission by the franchisee, so that it also applies to recall repairs, service incentives, and other forms of incentive compensation.
- Generally prohibits a franchisor from assessing any penalty or taking any other adverse action against a motor vehicle dealer with regard to a warranty repair or

recall reimbursement, sales incentive or rebate, service incentive, or other form of incentive compensation claim.

- Modifies the law that allows a franchisor to reduce the amount to be paid to a new motor vehicle dealer or impose a charge back after paying any claim if the dealer knew or should have known a new motor vehicle was sold for export to a foreign country.
- Prohibits a franchisor from refusing to pay warranty repair or recall reimbursements until the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes and all available legal processes.
- Generally prohibits a franchisor from requiring, coercing, or attempting to coerce any new motor vehicle dealer to change the location of the dealership or make substantial alterations to the dealership premises if the change or alteration is proposed within seven years after the premises was constructed or altered.
- Prohibits a franchisor from using the failure of a franchisee to meet a performance standard as the basis to prevent or deny the franchisee the opportunity to name a successor or otherwise engage in succession planning.
- Prohibits a franchisor from using the inability of a franchisee to meet a performance standard as a justification to exclude the franchisee from programs offered by the franchisor if both of the following apply:
  - The failure to meet the performance standard was based on whether the franchisee is selling an adequate number of vehicles; and
  - The franchisee can demonstrate that it was unable to purchase enough vehicles from the franchisor due to the franchisor's actions.
- Prohibits a franchisor from unreasonably requiring or coercing a franchisee to use a specified vendor for expanding, constructing, or significantly modifying a facility without allowing the franchisee to choose a vendor that provides a substantially similar good or service and that is approved by the franchisor.
- Prohibits a franchisor from requiring a franchisee to conduct research on prospective vehicle purchasers.
- Prohibits a franchisor from coercing or requiring a franchisee to provide nonpublic information concerning any consumer or customer of the franchisee unless certain exceptions apply.
- Prohibits a franchisor from failing to comply with the requirements of any state or federal law that pertains to the use or disclosure of information, including the federal "Gramm-Leach-Bliley Act."

- Prohibits a franchisor from failing to indemnify a franchisee or its successor from damages related to any claim made against the franchisee or successor if the claim resulted directly from the improper use or disclosure of nonpublic personal information.

**Statement of intent**

- Codifies a statement of intent with regard to the Motor Vehicle Sales Law.