



Ohio Revised Code

Section 4517.542 Termination of franchise; compensation.

Effective: September 10, 2010

Legislation: Senate Bill 204 - 128th General Assembly

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

(1)(a) The franchisee's net acquisition cost 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, cancellation, discontinuance, or nonrenewal, provided the vehicle has less than five hundred 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;

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

(c) The franchisor shall pay the fair and reasonable compensation for the items described in division (A)(1) of this section, including the franchisee's costs of handling, packing, loading, and transporting an item for return to the franchisor, within thirty days after the effective date of the termination, cancellation, discontinuance, or nonrenewal so long as the franchisee can provide evidence of good and clear title upon return of the items to the franchisor. If there is a lien on the property, the franchisor may make payment jointly to the franchisee and any party having a security interest or ownership interest in the property.

(2) The franchisee's net acquisition cost of each new, unused, undamaged, and unsold part or accessory purchased from the manufacturer or a source recommended or approved by the franchisor if the part or accessory is in the current parts catalog. In the case of sheet metal, a comparable



substitute for the original package may be used. If the part or accessory was purchased by the franchisee from an outgoing authorized franchisee, the franchisor shall purchase the part or accessory at the depreciated value price or the price in the current parts catalog, whichever is less.

(3) The franchisee's net acquisition cost of each undamaged sign if the sign bears a common name, trade name, or trademark of the manufacturer, the manufacturer required the new motor vehicle dealer to acquire the sign, and the sign was acquired by the new motor vehicle dealer from the manufacturer or a source approved by the manufacturer. A manufacturer shall purchase from the new motor vehicle dealer at fair market price poles or other hardware used to erect a sign if the manufacturer required the sign to be free standing and not include a trademark or trade name other than that of the manufacturer. For purposes of division (A)(3) of this section, fair market price is equal to the new motor vehicle dealer's original cost, reduced by one-tenth of the original cost for each year of ownership.

(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 shall be reduced over a period of five years at a rate of twenty per cent per year.

(5) The franchisor shall pay the fair and reasonable compensation for the items described in divisions (A)(2), (3), and (4) of this section, including the cost of handling, packing, loading, and transporting an item for return to the franchisor, within sixty days after the effective date of termination, cancellation, discontinuance, or nonrenewal, 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.

(6)(a) Subject to division (A)(6)(b) of this section, 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, cancellation, discontinuance, or nonrenewal.

(b) If the termination, cancellation, discontinuance, or nonrenewal 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-make new motor vehicle dealers.

(c) The manufacturer is only required to pay fair market value of the franchise if the termination, cancellation, discontinuance, or nonrenewal of the franchise agreement is the result of an action described in division (A) of section 4517.541 of the Revised Code.

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

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

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

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

(3) Subject to division (C)(4) of this section, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for twelve months.



(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 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.

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



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

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

(G) Disputes arising between a manufacturer or distributor and a new motor vehicle dealer under this section and section 4517.541 of the Revised Code shall be resolved by submitting the dispute to the manufacturer's internal dispute resolution process if one is available. If no such process exists, the dispute shall 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.

(H) Nothing in this section or section 4517.541 of the Revised Code shall 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 change, addition, or deletion does not result in the termination or discontinuance of a line-make, series, brand, or class of new vehicle.

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

(J) As used in this section:

(1) "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.

(2) "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.