



## Ohio Revised Code Section 4517.59 Prohibited acts.

Effective: September 14, 2016

Legislation: Senate Bill 242

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(A) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, no franchisor shall:

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

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

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

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

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



(6) Do any of the following:

(a) Coerce, or attempt to coerce, any franchisee to accept delivery of any motor vehicle, parts, accessories, or any other commodities connected therewith which are not ordered by said franchisee;

(b) Withhold or delay delivery of motor vehicles out of the ordinary course of business;

(c) Discriminate against any franchisee in the allocation or through the withholding from delivery of certain models of motor vehicles ordered by a franchisee out of the ordinary course of business;

(d) Unfairly change or amend unilaterally a franchisee's allotment of motor vehicles or quota, sales expectancy, sales penetration, or geographic area of responsibility without reasonable cause. Prior to changing or amending a franchisee's geographic area of responsibility, the franchisor shall give the franchisee, other than a franchisee who deals in recreational vehicles, a reasonable opportunity to present relevant evidence demonstrating the effect of local market conditions that may materially and adversely affect the franchisee's proposed new geographic area of responsibility. Any final decision made by the franchisor without considering such local market conditions shall be considered unreasonable.

(e) Coerce a franchisee by any means to participate or contribute to any local or national advertising fund;

(f) Employ any coercive techniques for any other purposes such as obtaining franchisee participation in contests, "giveaways," or sales devices.

Division (A)(6) of this section does not authorize a franchisee that is located outside of the relevant market area, as defined in section 4517.01 of the Revised Code, to challenge the establishment or relocation of a franchise location.

(7) Coerce, or attempt to coerce, a franchisee by threatening to award an additional franchise or agreement to another person for the sale of its same product in the same area of influence for the purposes of compelling such franchisee to yield to demands of the franchisor for increased sales of



the franchisor's products, parts, expansion of facilities and improvement of operations inconsistent with good business practices of the franchisee;

(8) 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. Division (A)(8) of this section shall 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. Division (A)(8) of this section shall not prohibit the offering of incentive programs or other discounts so long as such incentives or discounts are reasonably available to all franchisees in this state 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.

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

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

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

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

(9) Fail to either return a part to the franchisee, at the franchisor's expense, or reimburse the franchisee for the franchisee's cost of the part where a franchisor does not approve a franchisee's claim for a defective part;



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

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

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

(13) Unless otherwise authorized or required by the "National Traffic and Motor Vehicle Safety Act," 49 U.S.C. 30101, et seq. or any regulation adopted thereunder, the "Transportation Recall, Enhancement, Accountability, and Documentation Act," 49 U.S.C. 30123, et seq. or any regulation adopted thereunder, or any other federal law or regulation, provide reimbursement to any individual or entity that is not a franchisee for labor and parts used to fulfill warranty and recall work, unless the work is required for emergency service, or is performed by a service center owned by the manufacturer on employee- or company-owned vehicles only, or the work is warranty service by employees of a fleet operator on its own vehicles. Nothing in division (A)(13) of this section shall prohibit a manufacturer from reimbursing a franchisee of another line-make of the same manufacturer for labor and parts used to fulfill warranty and recall work.

(14) Refuse to disclose to any new motor vehicle dealer who handles the same line-make, the manner and mode of distribution of that line-make within the same county, or if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, color, equipment, other items or terms, and a concise listing of dealerships with an explanation of the derivation of the allocation system including its mathematical formula in a clear



and comprehensible form;

(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;

(16) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because it owns or operates a franchise of the same line-make in a contiguous market;

(17) Use any financial services company or leasing company owned in whole or part or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct 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.

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

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

(20) Reduce the amount to be paid to a new motor vehicle dealer, assess any penalty, impose a charge back, or take any other adverse action against a new motor vehicle dealer subsequent to and in relation to the payment of any claim related to a warranty repair or recall reimbursement, sales incentive or rebate, service incentive, or other form of incentive compensation unless 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. There shall exist a rebuttable presumption that a new motor vehicle dealer did not know, or should not have known, that a vehicle was sold for export to a foreign country if the motor vehicle is titled in the United States. Unless the manufacturer establishes that the new motor vehicle dealer knew or should have known of information that should have caused the new motor vehicle dealer to know that the new motor vehicle was purchased for export, the new motor vehicle dealer is presumed not to have known that the new motor vehicle was purchased for export if all of the following apply:

(i) The new motor vehicle was titled in the United States.

(ii) The new motor vehicle was exported not sooner than twelve months after the date of purchase of the motor vehicle.

(iii) The purchaser's information was not on a franchisor's written list of known or suspected exporters received by the new motor vehicle dealer at least five days prior to the date of the sale of the motor vehicle.

No refusal to pay warranty repair or recall reimbursements, sales incentives, service incentives, rebates, or other forms of incentive compensation, no reduction in the amount to be paid to the new motor vehicle dealer, and no charge back subsequent to the payment of a claim may be made until the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. If a charge back is the subject of adjudication, internal appeal, mediation, or arbitration, no charge back shall be made until, in the case of an adjudication or legal action, a final appealable order has been issued.



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

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

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

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

(b) No change in the capital structure shall 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, and further provided that the manufacturer or distributor shall not unreasonably withhold consent.

(23)(a) Require, coerce, or attempt to coerce any new motor vehicle dealer in this state to change the location of the dealership, or to make any substantial alterations to the dealership premises or facilities, if any of the following apply:

(i) The proposed change or alteration would be unreasonable in light of the current market and economic conditions.

(ii) The change or alteration is proposed without a 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.

(iii) The change or alteration is proposed within seven years after the dealership premises was



constructed or altered, as approved by the franchisor unless the change or alteration is necessary to comply with a health or safety law, or a technology requirement that is essential to the sale or service of a motor vehicle that the new motor vehicle dealer is authorized by the franchisor to sell or service.

(b) The seven-year time period set forth under division (A)(23)(a)(iii) of this section continues with regard to the successor to the new motor vehicle dealer if the successor was approved by the franchisor in the franchise agreement.

(c) As used in division (A)(23)(a) of this section, "substantial alteration" means an alteration that has a major impact on the architectural features, characteristics, or integrity of a structure or lot. "Substantial alteration" does not include routine maintenance, such as interior painting, that is reasonably necessary to keep the dealership facility in an attractive condition.

(d) Division (A)(23) of this section does not prohibit a franchisor from taking any of the following actions:

(i) Continuing, renewing, or modifying a facility improvement program that involves more than one new motor vehicle dealer in this state and that was in effect prior to the effective date of this amendment ;

(ii) Providing payments to assist a new motor vehicle dealer in making any facility improvement, including construction, remodeling, or installing signage or franchisor image elements;

(iii) Providing reimbursement to a new motor vehicle dealer for a portion of the costs that the new motor vehicle dealer incurs in making any facility improvement.

(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;

(25) Use 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, provided, however, that any designated successor shall meet the manufacturer's written and





uniformly applied requirements to be a franchisee at the time of succession;

(26) Use the inability of a franchisee to meet a performance standard as a justification to exclude the franchisee from programs offered by the franchisor if 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 actions of the franchisor;

(27) 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.

(28) Unreasonably require or coerce a franchisee to lease or purchase a good or service from a specified vendor for purposes of expanding, constructing, or significantly modifying a facility without allowing the franchisee to choose a vendor that provides a good or service of a substantially similar quality and general appearance and that is approved by the franchisor. No franchisor shall unreasonably withhold approval of a vendor under division (A)(28) of this section.

Division (A)(28) of this section does not do either of the following:

(a) Allow a franchisee or vendor to eliminate or impair the franchisor's intellectual property rights, including with regard to a trademark;

(b) Permit a franchisee to erect or maintain signs that do not conform to the intellectual property usage guidelines of the franchisor.

(29) Require a franchisee to conduct research on prospective vehicle purchasers.

(30) Require or request a franchisee to waive any requirements of this section.



(B)(1) 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, warranty policy adjustments, marketing programs, and dealer recognition programs.

(2) The franchisor shall not require or coerce a franchisee to provide its customer lists, service files, or other nonpublic personal information concerning any consumer or concerning any customer of the franchisee to the franchisor, unless necessary for the sale and delivery of a 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. Nothing in this division shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation.

(3) No franchisor shall fail to comply with the requirements of any state or federal law that pertains to the use or disclosure of information, including the "Gramm-Leach-Bliley Act," 113 Stat. 1338 (1999), 15 U.S.C. 6801 et seq.

(4) No franchisor shall fail, upon demand, to indemnify any existing or former franchisee and the successors and assigns of the franchisee from all damages that result from or relate to any claim made by a third party against the franchisee or successor if the claim results directly from the improper use or disclosure of nonpublic personal information by the manufacturer, distributor, or any third party to whom information was provided by the manufacturer or distributor. The franchisor shall pay attorney's fees and other expenses reasonably incurred by the franchisee or successor in relation to such a claim.

(C) No franchise agreement shall require the franchisee to pay the attorney's 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 this chapter. Nothing in this division shall 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 shall require that the dispute be heard in this state and that the arbitrator or mediator apply the law of this state in resolving the controversy. Either party may appeal a decision of an arbitrator in the court of common pleas of Franklin county on the grounds that the arbitrator failed to apply the law of this state.



(D) This section applies to any franchise whether entered into prior to or after October 22, 1987. Divisions (A)(8), (13), (16) to (27), (29), (B), and (C) of this section shall not apply to franchisors or franchisees who deal in recreational vehicles.