Ohio Legislative Service Commission

Final Analysis

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Sub. S.B. 242

131st General Assembly
(As Passed by the General Assembly)

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

ACT SUMMARY

Compensating franchisees for 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 purposes of 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.

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CONTENT AND OPERATION

Overview

The act modifies the law governing motor vehicle franchise agreements and the relationship between franchisors and franchisees. A franchisor is a new motor vehicle manufacturer, remanufacturer, or distributor who supplies new motor vehicles to a franchisee under a franchise agreement. A franchisee is a person who receives new motor vehicles from a franchisor under a franchise agreement and who offers, sells, and provides service for such new motor vehicles to the general public. In the Revised Code, the term "new motor vehicle dealer" is sometimes used in lieu of the term franchisee.[1]

Compensating franchisees for warranty and recall obligations

Under continuing law, a franchisor is required to fulfill warranty and recall obligations to repair and service motor vehicles and all parts and components manufactured for installation in a motor vehicle. A franchisor also must compensate each of its franchisees for labor and parts used to fulfill warranty and recall obligations. Under prior law, the reimbursement rates that a franchisor pays to a franchisee were required to be not less than the rates charged by the franchisee to its retail customers for *like service* and parts for nonwarranty work. The act instead requires the franchisor to compensate each of its franchisees at rates charged by the franchisee to its retail customers for *warranty-like labor* and parts for nonwarranty work.[2]

Establishing rates of compensation

The act allows a franchisee, other than a franchisee that deals in recreational vehicles, to establish rates of compensation for labor performed and parts used by the franchisee in accordance with a specified process. In order to establish its own rates of compensation, the franchisee must submit to the franchisor either of the following:

[1] R.C. 4517.01(V) and (W).

[2] R.C. 4517.52(A) and (B).

(1) 100 sequential nonwarranty service repair orders for warranty-like repairs that have been paid by a customer, closed by the time of submission, and occurred within 180 days before the submission; or

(2) All service repair orders for warranty-like repairs, that have been paid by a customer and closed by the time of submission, for a period of 90 consecutive days that occurred within 180 days before the submission.

A franchisee may submit a single set of repair orders for purposes of calculating both its retail labor rate and its retail parts markup percentage or may submit separate sets of repair orders for purposes of calculating its retail labor rate and its retail parts markup percentage separately.[3]

The franchisee must calculate its retail labor rate by determining its total labor sales from the service repair orders (submitted as provided above) and dividing that amount by the total number of labor hours that generated those sales.[4] The franchisee must calculate its retail parts markup percentage by determining the franchisee's total parts sales from the service repair orders (submitted as provided above) and dividing that amount by the franchisee's total cost for the purchase of those parts, subtracting one from that amount, and then multiplying the amount by one hundred.[5] However, in calculating the retail labor rate and the retail parts markup percentage, the franchisee must omit charges for any of the following:[6]

(1) Manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;

(2) Parts sold, or repairs performed, at wholesale;

(3) Routine maintenance that is not covered under a retail customer warranty, including the replacement of fluids, filters, and belts that are not provided in the course of other repairs;

(4) Items that do not have individual part numbers, such as nuts, bolts, and fasteners;

(5) Vehicle reconditioning;

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[3] R.C. 4517.52(B)(1).

[4] R.C. 4517.52(B)(2).

[5] R.C. 4517.52(B)(3).

[6] R.C. 4517.52(B)(4).

(6) Accessories;

(7) Repairs of damage caused by a collision, a road hazard, the force of the elements, vandalism, theft, or operator negligence;

(8) Parts sold or repairs performed for insurance carriers;

(9) Vehicle emission or safety inspections required by law;

(10) Goodwill or policy repairs or replacements;

(11) Repairs for which volume discounts have been negotiated with government agencies or insurance carriers;

(12) Repairs performed on vehicles from a different line-make; and

(13) Replacement of tires or related elements.

The franchisee must provide notice of its retail labor rate and retail parts markup percentage calculated in accordance with the act to the franchisor.[7] Subject to the dispute resolution process established by the act (see below), if the franchisor determines from any set of submitted repair orders that either the retail labor rate or retail parts markup percentage is substantially higher or lower than the rate currently on record with the franchisor for parts or labor, the franchisor may request additional documentation from the franchisee for a period of either 90 days prior or 90 days subsequent to the period for which repair orders were submitted for purposes of an alteration.[8]

Disputes over rates of compensation

Under the act, a franchisor may contest the retail labor rate or retail parts markup percentage within 30 days after receiving notice from the franchisee. In order to contest the retail labor rate or retail parts markup percentage, the franchisor must do all of the following:

(1) Notify the franchisee that the franchisor believes the rate or markup percentage is materially inaccurate or substantially different than that of other similarly situated, same line-make new motor vehicle dealers in the vicinity;

[7] R.C. 4517.52(B)(5).

[8] R.C. 4517.52(B)(1).

(2) Provide a full explanation of the reasons the franchisor disagrees with the rate or markup percentage;

(3) Provide evidence substantiating the franchisor's position; and

(4) Propose an adjustment of the contested rate or markup percentage.

The act prohibits a franchisor from modifying its notice to the franchisee or its grounds for contesting the rate or markup percentage after submitting a notice to the franchisee.[9]

If the franchisor does not contest the rate or markup percentage that was calculated by the franchisee within 30 days after receiving the franchisee's notice of the rate or markup percentage, the uncontested rate or markup percentage takes effect. The franchisor then must use the rate and markup percentage to determine compensation for any warranty and recall work and service performed by the franchisee until the rate or markup percentage is modified.[10]

If the franchisor contests a rate or markup percentage established by the franchisee, the franchisor and franchisee must resolve the disagreement through the franchisor's internal dispute resolution process. However, the franchisee may appeal a determination made as part of the dispute resolution process to a court of competent jurisdiction. Any rate or markup percentage established either through an internal dispute resolution process or by a court as part of an appeal must be applied retroactively to govern reimbursement for labor or parts beginning 30 days after the franchisee submitted the disputed rate or markup percentage.[11]

A franchisee is prohibited from establishing or modifying a retail labor rate or retail parts markup percentage more frequently than once per calendar year.[12]

Calculating the amount of compensation

When calculating the compensation that must be provided to a franchisee for labor and parts used to fulfill warranty and recall obligations, all of the following apply:

(1) The franchisor must use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician;

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[9] R.C. 4517.52(C)(1).

[10] R.C. 4517.52(C)(2).

[11] R.C. 4517.52(C)(3).

[12] R.C. 4517.52(C)(4).

(2) The franchisor must use any retail labor rate and any retail parts markup percentage established under the act in calculating the compensation;

(3) If the franchisor provided a part or component at no cost to the franchisee to use in performing repairs under a recall, campaign service action, or warranty repair, the franchisor must provide to the franchisee an amount equal to the retail parts markup for that part or component. The amount must be calculated by multiplying the dealer cost for the part or component as listed in the franchisor's price schedule by the retail parts markup percentage; and

(4) A franchisor is prohibited from assessing penalties, surcharges, or similar costs to a franchisee, transferring or shifting any costs to a franchisee, limiting allocation of vehicles or parts to a franchisee, or otherwise taking retaliatory action against a franchisee based on any franchisee's exercise of its rights under the act. However, the act specifically states that a franchisor is not prohibited from increasing the price of a vehicle or part in the normal course of business. The franchisee bears the burden of proof for any claims against the franchisor under this provision by a preponderance of the evidence.[13]

The act also prohibits a franchisor from requiring a franchisee to establish a retail labor rate or retail parts markup percentage using any method that is unduly burdensome or time consuming, or requiring the use of information that is unduly burdensome or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement. Further, the act prohibits a franchisor from unilaterally calculating a retail labor rate or retail parts markup percentage for a franchisee.[14]

Recreational vehicles

The new provisions of the act related to establishing rates of compensation and calculating the amount of compensation do not apply to franchisors and franchisees that deal in recreational vehicles. A recreational vehicle is a vehicular portable structure that meets all of the following conditions:

(1) It is designed for the sole purpose of recreational travel;

(2) It is not used for the purpose of engaging in business for profit;

(3) It is not used for the purpose of engaging in intrastate commerce;

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[13] R.C. 4517.52(D).

[14] R.C. 4517.52(E).

(4) It is not used for the purpose of commerce as defined under the federal Commercial Driver's License Law;

(5) It is not regulated as a motor carrier by the Public Utilities Commission; and

(6) It is classed as a travel trailer, motor home, truck camper, fifth wheel trailer, or park trailer.[15]

Cause to terminate or fail to continue a franchise

Continuing law specifies a number of factors that must be considered by a franchisor in determining whether there is good cause to terminate, cancel, or fail to continue or renew a franchise agreement. Further, continuing law specifies factors that do not constitute sufficient good cause to take such an action. For example, one factor that does not constitute sufficient good cause is the failure of the franchisee to achieve any unreasonable or discriminatory performance criteria.[16]

The act specifies that prior to a final determination by a franchisor that a franchisee has failed to achieve any performance criteria for purposes of terminating, canceling, or failing to continue or renew a franchise agreement, the franchisor must give the franchisee a reasonable opportunity to present evidence demonstrating the effect of local market conditions that materially and adversely affected the franchisee's performance. If a franchisor makes a final decision related to performance criteria without allowing the franchisee the reasonable opportunity to present evidence, or does not consider the effect of the local market conditions on the franchisee's performance, the performance criteria is deemed unreasonable. This provision does not apply to franchisors and franchisees that deal in recreational vehicles.[17]

Local market conditions

The act specifies that the term "local market conditions" includes, but is not limited to the following:

(1) Demographics in the franchisee's area;

(2) Geographical and market characteristics in the franchisee's area;

(3) Local economic circumstances;

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[15] R.C. 4501.01(Q), not in the act, and 4517.52(E).

[16] R.C. 4517.55(A) and (B).

[17] R.C. 4517.55(C) and (D).

(4) The proximity of other motor vehicle dealers of the same line-make;

(5) The proximity of motor vehicle manufacturing facilities;

(6) The buying patterns of motor vehicle purchasers; and

(7) Customer drive time and drive distance.[18]

Prohibited actions by a franchisor

Continuing law prohibits a franchisor from taking specified actions that may have an adverse impact on a franchisee or new motor vehicle dealer regardless of the terms, provisions, or conditions of any agreement, franchise, or waiver. For example, a franchisor is prohibited from failing to act in good faith with regard to a franchise agreement. The act modifies several existing prohibitions and establishes additional prohibitions.

Changes to a franchisee's quota, sales expectancy, or sales penetration

The act prohibits a franchisor from unfairly changing or unilaterally amending a franchisee's geographic area of responsibility without reasonable cause. Additionally, it specifies that, prior to changing or amending a franchisee's geographic area of responsibility, the franchisor must 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 those local market conditions is considered unreasonable.[19]

Continuing law also prohibits a franchisor from unfairly changing or unilaterally amending a franchisee's allotment of motor vehicles or quota, sales expectancy, or sales penetration without reasonable cause. The act provides that the new prohibition and the prohibitions under continuing law do not authorize a franchisee that is located outside of the relevant market area to challenge the establishment or relocation of a franchise location. Under continuing law, relevant market area means any area within a radius of ten miles from the dealer's established place of business to the site of a

[18] R.C. 4517.01(MM).

[19] R.C. 4517.59(A)(6).

potential new dealership. However, for manufactured home or recreational vehicle dealerships, the radius is 25 miles.[20]

Charge backs

Continuing law prohibits a franchisor from initiating a charge back without an audit or performing the audit to confirm a warranty repair, sales incentive, or rebate more than 12 months after the date of submission by the franchisee. A chargeback generally means the process by which a franchisor charges the franchisee the amount of incentive payments made to the franchisee, due to the determination that the incentive payments were made improperly. For example, a franchisor may initiate a charge back if it determines that a franchisee misreported sales for purposes of receiving sales incentive payments.

The act expands the prohibition to include recall repairs, service incentives, and other forms of incentive compensation.

Under continuing law, the prohibition does not apply to a charge back for a fraudulent claim.[21]

Reduced payments

The act modifies a provision of law related to a franchisor's ability to make a reduced payment to a new motor vehicle dealer. Prior to the act, a franchisor was prohibited from reducing the amount to be paid to a new motor vehicle dealer or charging back a new motor vehicle dealer after the payment of any claim unless either:

(1) The manufacturer showed that the claim lacked material documentation or was false, fraudulent, or a misrepresentation; or

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

The act alters this provision so that a franchisor also cannot assess any penalty, charge back, *or take any other adverse action* against a 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.[22]

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[20] R.C. 4517.01(CC) and 4517.59(A)(6).

[21] R.C. 4517.59(A)(18).

[22] R.C. 4517.59(A)(20).

Export exception

As noted above, under continuing law, a franchisor is not prohibited from reducing payments to a new motor vehicle dealer when the dealer knew or should have known that a new motor vehicle was sold for export to a foreign country. However, there is 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 vehicle is titled in the United States. The act adds that unless the manufacturer establishes that the dealer knew, or should have known of information that should have caused the dealer to know, that the new motor vehicle was purchased for export, the dealer is presumed not to have known that the vehicle was purchased for export if all of the following apply:

(1) The new motor vehicle was titled in the United States;

(2) The vehicle was exported not sooner than 12 months after the date of purchase of the motor vehicle; and

(3) The purchaser's information was not on a franchisor's written list of known or suspected exporters received by the dealer at least five days prior to the date of the sale (see **COMMENT**).[23]

Notice and opportunity to participate in an appeal

Under continuing law, a franchisor cannot do any of the following 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:

(1) Refuse to pay sales incentives, service incentives, rebates, or other forms of incentive compensation;

(2) Reduce the amount to be paid to the dealer; or

(3) Impose a charge back after the payment of a claim.

The act specifies that a franchisor likewise cannot refuse to pay warranty repair or recall reimbursements until the dealer has had notice and an opportunity to participate in all franchisor internal appeal processes and all available legal processes.[24]

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[23] R.C. 4517.59(A)(20)(b).

[24] R.C. 4517.59(A)(20).

Changes to or relocation of dealership premises

Under continuing law, a franchisor cannot require, coerce, or attempt to coerce any new motor vehicle dealer in Ohio to change location of the dealership or make any substantial alterations to the dealership premises or facilities, when either:

(1) The proposed change or alteration would be unreasonable in light of current market and economic conditions; or

(2) 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.[25]

The act expands the prohibition to include a third circumstance: that 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 either of the following:

(1) A health or safety law; or

(2) 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.

The act further provides that the seven-year time period continues with regard to a dealer's successor if the successor was approved by the franchisor in the franchise agreement. Under the act, "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.[26]

The act specifically states that the prohibition does not prohibit a franchisor from taking any of the following actions:

(1) Continuing, renewing, or modifying a facility improvement program that involves more than one new motor vehicle dealer in Ohio and that was in effect prior to the act's effective date (September 14, 2016);

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[25] R.C. 4517.59(A)(23).

[26] R.C. 4517.59(A)(23)(a)(iii), (b), and (c).

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

(3) Providing reimbursement to a new motor vehicle dealer for a portion of the costs that the dealer incurs in making any facility improvement.[27]

Opportunity to designate a successor

The act 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. However, the act specifies that any designated successor must meet the manufacturer's written and uniformly applied requirements to be a franchisee at the time of succession.[28]

Exclusion from franchisor programs

The act 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 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.[29]

Required use of specified vendors

The act prohibits a franchisor from unreasonably requiring or coercing 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. Under the act, a franchisor is also prohibited from unreasonably withholding approval of a vendor. The act specifically states that this prohibition does not do either of the following:

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

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[27] R.C. 4517.59(A)(23)(d).

[28] R.C. 4517.59(A)(25).

[29] R.C. 4517.59(A)(26).

(2) Permit a franchisee to erect or maintain signs that do not conform to the franchisor's intellectual property usage guidelines.[30]

Research on vehicle purchasers

The act prohibits a franchisor from requiring a franchisee to conduct research on prospective vehicle purchasers.[31]

Customer lists, service files, and other nonpublic personal information

Under continuing law, a franchisor cannot require 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 submission to the franchisor for services supplied by the franchisee for any claim for warranty parts or repairs. The act also prohibits a franchisor from coercing a franchisee to provide such information and expands the prohibition to include other nonpublic information concerning any consumer or concerning any customer of the franchisee.[32]

The act also adds two related prohibitions. First, it 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."[33]

Second, it prohibits a franchisor from failing, upon demand, to indemnify any existing or former franchisee, and its successors and assigns, from all damages that relate to any claim 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 the manufacturer or distributor provided it. The act specifies that the franchisor must pay attorney's fees and other expenses reasonably incurred by the franchisee or successor in relation to such a claim.[34]

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[30] R.C. 4517.59(A)(28).

[31] R.C. 4517.59(A)(29).

[32] R.C. 4517.59(B)(2).

[33] 113 Stat. 1338 (1999), 15 U.S.C. 6801 *et seq*.

[34] R.C. 4517.59(B)(3) and (4).

Recreational vehicle franchisors

Only the prohibitions related to changes to a franchisee's quota, sales expectancy, or sales penetration and to the required use of specified vendors (see above) apply to franchisors or franchisees that deal in recreational vehicles. Such franchisors and franchisees are exempted from the other prohibitions under either continuing law or new exemptions created under the act.[35]

Declaration of intent

The act codifies a statement of intent in the Motor Vehicle Sales Law. The statement of intent specifies that the distribution and sale of motor vehicles in Ohio vitally affects commerce, the economy, and the public interest, welfare, and safety. The act further provides that in order to promote the interests of Ohio, the Motor Vehicle Sales Law must be liberally construed in order to ensure a sound system for distributing and selling motor vehicles through all of the following:

(1) Enforcing the comprehensive and uniform framework for licensing and regulating manufacturers, distributors, wholesalers, and dealers of motor vehicles;

(2) Promoting the right of the public to post-sale mechanical and operational services between the buyer and seller that are necessary to ensure the safe operating condition of a motor vehicle and are expected and implied at the time of sale;

(3) Enforcing the Motor Vehicle Sales Law as to other persons to provide for compliance with the manufacturer's warranties and to prevent fraud, unfair practices, discrimination, or other abuses;

(4) Maintaining full and fair competition among intra-brand and inter-brand dealers; and

(5) Maintaining strong and sound dealerships in order to provide continuing and necessary reliable services to the citizens of Ohio and to provide stable employment to the citizens of Ohio.[36]

The act also specifies that the distribution and sale of motor vehicles is a matter of general statewide interest that requires uniform statewide regulation and the

[35] R.C. 4517.59(D).

[36] R.C. 4517.011(A).

provisions of the Revised Code governing such distribution and sale constitute a comprehensive plan with regard to such issues.[37]

COMMENT

The presumption established under the act that governs whether a franchisee knew or should have known that a new motor vehicle was purchased for export is narrower than the presumption established under continuing law. Due to the fact that the new presumption contains the element that establishes the preexisting presumption, in any case in which the new presumption applies the preexisting presumption would also apply. As a result, it is unclear whether the new presumption has any meaningful legal effect.

HISTORY

ACTION	DATE
Introduced	11-12-15
Reported, S. Transportation, Commerce & Labor	05-11-16
Passed Senate (33-0)	05-11-16
Reported, H. Gov't Accountability & Oversight	05-25-16
Passed House (95-0)	05-25-16

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[37] R.C. 4517.011(B).