



SB 242 Proponent Testimony by  
Joe Cannon, Vice President, Government Relations  
Before the  
Ohio Senate Transportation, Commerce &  
Labor Committee  
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Chairwoman Manning, Vice Chairman Patton, Ranking Member Cafaro and members of the committee, on behalf of OADA's over 830 franchised motor vehicle dealers, I am here today to express our support for Senate Bill 242, which will update Ohio's Motor Vehicle Dealer Franchise Law.

Recognizing the significant disparity in bargaining power between dealers and their manufacturers, Ohio, like all states, created its dealer franchise law nearly forty years ago to afford rights to dealers which provide balance during negotiations between the two parties. In enacting this law, Ohio recognized the substantial investments Ohio dealers make in their dealerships and in their communities. According to the National Automobile Dealers Association 2013 economic study guide, new car and truck franchised dealerships in Ohio generate 16% of the Ohio retail sales tax, employ over 50,000 Ohioans, and pay an average annual wage of nearly \$48,000.

The law also provides important consumer safeguards relating to the sale, service, and repair of motor vehicles. Ohio's franchise law and Ohio's franchised dealer network serve a vital role encouraging competition, consumer protection, and investment in Ohio.

*Senate Bill 242 would make the following changes to the law:*

### **Performance Criteria**

Manufacturers determine dealers' areas of sales responsibility and vehicle allocation, judge a dealer's sales effectiveness, and terminate dealers based upon criteria they establish with little or no input from dealers. Dealers' performance standards are often calculated based on statewide or national averages, which fail to recognize local market conditions influencing consumers' buying patterns. These local market conditions (such as nearby auto manufacturing facilities) can

significantly impact a dealer's ability to sell their line make and meet their manufacturer established sales effectiveness goals. There are significant business implications - such as succession planning, ability to buy or sell a dealership, as well as financial sales and service incentives - tied to the results of the performance criteria set by the manufacturers.

Senate Bill 242 requires manufacturers to take into account "local market conditions" when:

- Establishing any performance standard or program measuring dealer performance
- Amending a dealer's allotment of vehicles, sales expectancy, sales penetration, or area of responsibility
- Attempting to terminate a dealer

The bill defines "local market conditions" to include such factors as the proximity to motor vehicle manufacturing facilities, the unemployment rate, proximity to other dealers, and road construction affecting traffic patterns.

### **Warranty & Recall Reimbursement**

Dealers invest significantly in technician training required by their manufacturers to perform warranty and recall repairs and regularly invest in expensive special tools and specialized equipment required to do so. Since 1979, Ohio law has required manufacturers to reimburse dealers for service and parts related to warranty and recall work at the same rate as non-warranty customers for similar work. However, a recent 6<sup>th</sup> Circuit Court of Appeals decision found an important part of the statute ambiguous. The court ruled that while ORC 4517.52 clearly allows a dealer to determine the amount charged for labor per hour, the ambiguity in the statute allows the manufacturer to dictate the time allotted for the repair. The result is a dealer can charge his or her

labor rate, but the manufacturer has final say on how long the repair takes, regardless of any issues related to the repair that extends the time the dealer needs to diagnose the problem and fix it.

The Court recognized strong public policy arguments in favor of the dealership, but indicated “such concerns are for legislative determination.” Senate Bill 242 would clarify that manufacturers reimburse dealers at the dealer’s current retail labor rate (as already required by law) and base the repair time not on a time the manufacturers set themselves, but on the time allotted for the work in the nationally recognized, independent labor time study guide used by the dealer. For parts, reimbursement would be the manufacturer’s suggested retail price as published in the most recent edition of the manufacturer’s price guide. Senate Bill 242 would also prohibit manufacturers from retaliating against dealers who exercise their rights under this section.

In closing, I would like to thank Senator Uecker and Senator Coley for recognizing the importance of this legislation to our industry. On behalf of the dealers in your districts and throughout Ohio, I urge your support of Senate Bill 242. Thank you for your consideration.