



# Ohio Legislative Service Commission

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## Bill Analysis

Amanda M. Ferguson

### **S.B. 242**

131st General Assembly  
(As Introduced)

**Sens.** Uecker and Coley

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## **BILL SUMMARY**

- Modifies the method for calculating the amount that a new motor vehicle franchisor must pay to a franchisee as compensation for fulfilling a warranty or recall obligation.
- Specifies that the failure of a franchisee to achieve performance criteria that do not take into account local market conditions is not sufficient good cause for terminating, cancelling, or failing to continue or renew a franchise agreement.
- Prohibits a franchisor from unfairly changing or amending a franchisee's allotment of motor vehicles or quota, sales expectancy, or sales penetration without considering local market conditions.
- Prohibits a franchisor from changing a franchisee's geographic area of responsibility without reasonable cause and consideration of local market conditions.
- Prohibits a franchisor from establishing any performance standard or program for measuring franchisee performance that may have a material impact on a franchisee that does not take into account local market conditions.

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## **CONTENT AND OPERATION**

### **Overview**

The bill 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.<sup>1</sup>

### **Compensating franchisees for warranty and recall obligations**

Under current 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 at rates not less than the rates charged by the franchisee to its retail customers for like service and parts for nonwarranty work. The bill instead requires a franchisor to compensate its franchisees as follows:

(1) For labor, the franchisee's retail hourly rate, multiplied by the time allocated for the work as published in the same nationally recognized labor time study guide used by the franchisee to calculate its retail labor times;

(2) For parts, the manufacturer's suggested retail price as published in the most recent edition of the franchisor's price guide.<sup>2</sup>

The bill also specifies that a franchisor is prohibited from doing any of the following: (1) assessing penalties, surcharges, or similar costs to a franchisee, (2) transferring or shifting any costs to a franchisee, (3) limiting allocation of vehicles or parts to a franchisee, or (4) otherwise directly or indirectly taking retaliatory action against a franchisee based on any franchisee's exercise of its right to compensation. However, the bill specifically states that the provision above does not prohibit a franchisor from increasing the price of a vehicle or part in the normal course of business.<sup>3</sup>

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

Current 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.<sup>4</sup> Further, current law specifies factors that do not constitute sufficient good cause to take such an action.<sup>5</sup> One factor that does not

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<sup>1</sup> R.C. 4517.01(U) and (V).

<sup>2</sup> R.C. 4517.52(A) and (B).

<sup>3</sup> R.C. 4517.52(C).

<sup>4</sup> R.C. 4517.55(A).

<sup>5</sup> R.C. 4517.55(B).

constitute sufficient good cause is the failure of the franchisee to achieve any unreasonable or discriminatory performance criteria. The bill specifies that for purposes of this factor, performance criteria that do not take into account local market conditions are deemed unreasonable. As a result, the failure of a franchisee to achieve performance criteria that do not take into account local market conditions is not sufficient good cause for terminating, cancelling, or failing to continue or renew a franchise agreement.<sup>6</sup>

The bill specifies that "local market conditions" includes but is not limited to factors beyond the control of the franchisee, such as:

- (1) The proximity of other motor vehicle dealers and the brands sold by such dealers;
- (2) The proximity of manufacturing facilities for motor vehicles, parts, and accessories;
- (3) The buying patterns of motor vehicle purchasers;
- (4) Traffic patterns and customer drive time and drive distance;
- (5) The population, demographics, geography, topography, and employment and unemployment rate of the relevant market area; and
- (6) Changes in any of the factors listed above.<sup>7</sup>

### **Prohibited actions by a franchisor**

Current law prohibits a franchisor from taking specified actions regardless of the terms, provisions, or conditions of any agreement, franchise, or waiver. The bill modifies two such prohibitions. The first prohibition currently specifies that no franchisor may "unfairly change or amend unilaterally a franchisee's allotment of motor vehicles or quota, sales expectancy, or sales penetration without reasonable cause." The bill adds that none of those changes may be made without consideration of local market conditions (defined above). The bill also prohibits a franchisor from changing a franchisee's geographic area of responsibility without reasonable cause and consideration of local market conditions.<sup>8</sup>

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<sup>6</sup> R.C. 4517.55(B)(5).

<sup>7</sup> R.C. 4517.01(MM).

<sup>8</sup> R.C. 4517.59(A)(6).



The second prohibition currently specifies that no franchisor may "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." The bill modifies this prohibition by adding that such a performance standard or program cannot be established without taking into account local market conditions.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	11-12-15

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<sup>9</sup> R.C. 4517.59(A)(24).

