

[Second Reprint]

**ASSEMBLY, No. 3726**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 9, 2009

**Sponsored by:**

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**District 21 (Essex, Morris, Somerset and Union)**

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**Assemblyman RUBEN J. RAMOS, JR.**

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**Assemblyman Prieto, Assemblywomen Rodriguez, Vainieri Huttle,  
Assemblymen Johnson, Vas and Burzichelli**

**SYNOPSIS**

Concerns franchisors' assignment of interest relating to franchisees engaged in the retail sale of motor fuel.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on May 18, 2009, with amendments.



**(Sponsorship Updated As Of: 5/22/2009)**

1 AN ACT concerning the assignment of certain franchise interests  
2 and supplementing P.L.1971, c.356 (C.56:10-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. It shall be a violation of the “Franchise Practices Act,”  
8 P.L.1971, c.356 (C.56:10-1 et seq.):

9 a. For a franchisor to transfer, assign <sup>1</sup>,<sup>1</sup> or sell an interest in  
10 one or more franchise premises <sup>1</sup>[that is a retail dealer, as defined  
11 by section 101 of P.L.1938, c.163 (C.56:6-1), engaged] <sup>2</sup>[where]  
12 which<sup>2</sup> a franchisee <sup>2</sup>who purchases motor fuels and<sup>2</sup> engages<sup>1</sup> in  
13 the <sup>1</sup>retail<sup>1</sup> sale <sup>2</sup>[of motor fuel, and that <sup>1</sup>[a] the<sup>1</sup> franchisee]  
14 thereof<sup>2</sup> has occupied under a lease <sup>1</sup>[, sublease or other grant of  
15 authority] agreement or agreements for a period of at least three  
16 consecutive years, or <sup>2</sup>[has] occupies under<sup>2</sup> a lease agreement for  
17 a term of at least three years<sup>1</sup>, unless the franchisor:

18 (1) makes a bona fide offer to transfer, assign <sup>1</sup>,<sup>1</sup> or sell to the  
19 franchisee all of the franchisor's interest in the <sup>1</sup>franchise<sup>1</sup> premises,  
20 <sup>2</sup>[for]<sup>2</sup> which <sup>2</sup>offer<sup>2</sup> the franchisee shall have 60 days <sup>2</sup>[in  
21 which]<sup>2</sup> to accept or reject <sup>2</sup>[the offer]<sup>2</sup>; and

22 (2) <sup>2</sup>[<sup>1</sup>(a)<sup>1</sup>]<sup>2</sup> if applicable, offers the franchisee a right of first  
23 refusal on any offer <sup>1</sup>for the transfer, assignment, or sale of the  
24 franchise premises<sup>1</sup> presented by another person acceptable to the  
25 franchisor as a successor to the franchisor's interest, <sup>2</sup>[for]<sup>2</sup> which  
26 <sup>2</sup>offer<sup>2</sup> the franchisee shall have 60 days <sup>2</sup>[in which]<sup>2</sup> to accept or  
27 reject <sup>2</sup>[the franchisor's offer]<sup>2</sup>. <sup>1</sup>If the franchisee accepts an offer  
28 by the franchisor made pursuant to this paragraph, the franchisor, as  
29 a condition for entering into the contract for the accepted offer, may  
30 request as a good faith acknowledgement of the contract, a deposit  
31 by the franchisee of up to 10% <sup>2</sup>[on] of<sup>2</sup> the total amount payable  
32 under the terms of the contract, which shall be non-refundable if the  
33 franchisee willfully defaults on the contract. A franchisor shall not  
34 be prohibited from exercising other contractual provisions, and  
35 nothing in this paragraph shall be construed to hinder the rights of  
36 the franchisor to recover additional damages as provided under the  
37 law. <sup>2</sup>[(b)]<sup>2</sup> Any modification of the offer presented to the  
38 franchisor by the other person acceptable to the franchisor as a  
39 successor shall require that offer, as modified, <sup>2</sup>to<sup>2</sup> be resubmitted  
40 to the franchisee in accordance with <sup>2</sup>[subparagraph (a)] the  
41 foregoing provisions<sup>2</sup> of this paragraph <sup>2</sup>;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ATR committee amendments adopted March 12, 2009.

<sup>2</sup>Assembly AAP committee amendments adopted May 18, 2009.

1 except that nothing contained herein shall require the franchisor,  
2 having made a bona fide offer or offer under a right of first refusal  
3 to transfer, assign, or sell to the franchisee the franchisor's interest  
4 in the premises pursuant to paragraph (1) or paragraph (2),  
5 respectively, of this subsection, which offer the franchisee has  
6 rejected or failed to accept timely, to make a new offer upon the  
7 occurrence of a legitimate subsequent change at closing.<sup>1</sup>

8 b. For any successor owner, following a transfer, assignment  
9 <sup>1,1</sup> or sale subsequent to the franchisee's rejection of <sup>2</sup>[offers] <sup>1</sup>, or  
10 failure to accept timely, an offer<sup>2</sup> made by the franchisor pursuant  
11 to <sup>2</sup>[paragraphs] paragraph<sup>2</sup> (1) <sup>2</sup>[and] or paragraph<sup>2</sup> (2) of  
12 subsection a. <sup>2</sup>of this section<sup>2</sup>:

13 (1) not to maintain the requirements of the franchise  
14 <sup>2</sup>arrangement<sup>2</sup> in effect at the time of the transfer, assignment <sup>1,1</sup> or  
15 sale for each premises, unless <sup>2</sup>that arrangement is<sup>2</sup> changed only  
16 by mutual agreement of the franchisee and the successor owner;

17 (2) not to renew, at the expiration of the franchise <sup>1</sup>[agreement]  
18 arrangement<sup>1</sup> in effect at the time of the transfer, assignment, or  
19 sale, the franchise <sup>1</sup>[agreement] arrangement<sup>1</sup> of the franchisee for  
20 the same number of years as the franchise <sup>1</sup>[agreement]  
21 arrangement<sup>1</sup> in effect at the time of the transfer, assignment <sup>1,1</sup> or  
22 sale, provided the renewal shall not exceed five years; and

23 (3) to require the franchisee to:

24 (a) participate in promotional campaigns of the successor  
25 owner's products;

26 (b) meet sales quotas;

27 (c) sell any product at a price suggested by the successor owner  
28 or successor owner's supplier;

29 (d) keep the premises open and operating during hours which  
30 are documented by the franchisee to be unprofitable to the  
31 franchisee; or

32 (e) disclose to the successor owner or successor owner's  
33 supplier any financial records of the operation of the franchisee's  
34 premises which are not related or necessary to the franchisee's  
35 obligations under the franchise <sup>1</sup>[agreement] arrangement<sup>1</sup>.

36 Nothing in this subsection shall affect the successor owner's  
37 ability to terminate, cancel <sup>2,2</sup> or fail to renew a franchise  
38 <sup>2</sup>arrangement<sup>2</sup> for good cause shown in accordance with the  
39 provisions of the "Franchise Practices Act," P.L.1971, c.356  
40 (C.56:10-1 et seq.).

41 c. For any successor owner, as set forth in subsection b. of this  
42 section, to transfer, assign <sup>1,1</sup> or sell an interest in a single franchise  
43 premises <sup>1</sup>[that is a retail dealer] where a franchisee has<sup>1</sup> engaged  
44 in the <sup>1</sup>retail<sup>1</sup> sale of motor fuel that is not part of two or more  
45 franchise premises <sup>1</sup>[retail dealers]<sup>1</sup>, presented by the successor  
46 owner as a package to transfer, assign <sup>1,1</sup> or sell, and that <sup>1</sup>[a] the<sup>1</sup>

1 franchisee has occupied under a lease <sup>1</sup>[, sublease or other grant of  
2 authority] agreement or agreements for a period of three  
3 consecutive years, or <sup>2</sup>[has] occupies under<sup>2</sup> a lease agreement for  
4 a term of at least three years<sup>1</sup>, unless the successor owner makes an  
5 offer to transfer, assign <sup>1</sup>,<sup>1</sup> or sell to the franchisee the successor  
6 owner's interest, or offers the franchisee a right of first refusal on  
7 an offer presented by another person acceptable to the successor  
8 owner as a new successor to the interest, in accordance with the  
9 provisions of subsection a. of this section.

10  
11 <sup>2</sup>2. The provisions of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) pertaining to franchisors shall not apply to  
13 any distributor which owns or otherwise controls through lease,  
14 fewer than 40 premises. For purposes of this section, "distributor"  
15 means any person, including any affiliate of such person, who: (1)  
16 purchases motor fuel for sale, consignment, or distribution to  
17 another; or (2) receives motor fuel for consignment or distribution  
18 to the person's or affiliate's own motor fuel accounts, but shall not  
19 include a person who merely serves as a common carrier providing  
20 transportation services for another.<sup>2</sup>

21  
22 <sup>2</sup>3. The provisions of P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) shall not apply to the sale, transfer, or  
24 assignment of one or more franchise premises from one family  
25 member to another family member. For the purposes of this  
26 section, "family member" means a spouse, child, parent, sibling,  
27 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,  
28 father-in-law, mother-in-law, son-in-law, daughter-in-law,  
29 stepparent, stepchild, stepbrother, stepsister, half brother, or half  
30 sister, whether the individual is related by blood, marriage, or  
31 adoption.<sup>2</sup>

32  
33 <sup>2</sup>4. If any provision of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill) or the application of any such provision to  
35 any person or circumstance should be held invalid by a court of  
36 competent jurisdiction, the remainder of P.L. , c. (C. )  
37 (pending before the Legislature as this bill) and the application of  
38 its provisions to persons or circumstances other than those with  
39 respect to whom or which it is held invalid shall not be affected  
40 thereby.<sup>2</sup>

41  
42 <sup>2</sup>[2.] <sup>5</sup>.<sup>2</sup> This act shall take effect <sup>2</sup>[on the first day of the first  
43 month next following] upon<sup>2</sup> enactment, and shall apply to <sup>1</sup>any<sup>1</sup>  
44 franchise <sup>1</sup>[agreements entered into] arrangement in effect<sup>1</sup> on  
45 <sup>1</sup>[or after]<sup>1</sup> <sup>2</sup>[that effective date and shall also apply to any  
46 franchise]<sup>2</sup> <sup>1</sup>[agreement] <sup>2</sup>[arrangement<sup>1</sup> entered into]<sup>2</sup> <sup>1</sup>[prior

- 1 to] <sup>2</sup>[on or after<sup>1</sup> the effective date] February 2, 2009 or becoming
- 2 effective thereafter<sup>2</sup>.