

SENATE, No. 2553

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 or sell an interest in one
10 or more franchise premises that is a retail dealer, as defined by
11 section 101 of P.L.1938, c.163 (C.56:6-1), engaged in the sale of
12 motor fuel, and that a franchisee has occupied under a lease,
13 sublease or other grant of authority, unless the franchisor:

14 (1) makes a bona fide offer to transfer, assign or sell to the
15 franchisee all of the franchisor's interest in the premises, for which
16 the franchisee shall have 60 days in which to accept or reject the
17 offer; and

18 (2) if applicable, offers the franchisee a right of first refusal on
19 any offer presented by another person acceptable to the franchisor
20 as a successor to the franchisor's interest, for which the franchisee
21 shall have 60 days in which to accept or reject the franchisor's
22 offer.

23 b. For any successor owner, following a transfer, assignment or
24 sale subsequent to the franchisee's rejection of offers made by the
25 franchisor pursuant to paragraphs (1) and (2) of subsection a.:

26 (1) not to maintain the requirements of the franchise in effect at
27 the time of the transfer, assignment or sale for each premises, unless
28 changed only by mutual agreement of the franchisee and the
29 successor owner;

30 (2) not to renew, at the expiration of the franchise agreement in
31 effect at the time of the transfer, assignment, or sale, the franchise
32 agreement of the franchisee for the same number of years as the
33 franchise agreement in effect at the time of the transfer, assignment
34 or sale, provided the renewal shall not exceed five years; and

35 (3) to require the franchisee to:

36 (a) participate in promotional campaigns of the successor
37 owner's products;

38 (b) meet sales quotas;

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

41 (d) keep the premises open and operating during hours which
42 are documented by the franchisee to be unprofitable to the
43 franchisee; or

44 (e) disclose to the successor owner or successor owner's
45 supplier any financial records of the operation of the franchisee's
46 premises which are not related or necessary to the franchisee's
47 obligations under the franchise agreement.

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

5 c. For any successor owner, as set forth in subsection b. of this
6 section, to transfer, assign or sell an interest in a single franchise
7 premises that is a retail dealer engaged in the sale of motor fuel that
8 is not part of two or more franchise premises retail dealers,
9 presented by the successor owner as a package to transfer, assign or
10 sell, and that a franchisee has occupied under a lease, sublease or
11 other grant of authority, unless the successor owner makes an offer
12 to transfer, assign or sell to the franchisee the successor owner's
13 interest, or offers the franchisee a right of first refusal on an offer
14 presented by another person acceptable to the successor owner as a
15 new successor to the interest, in accordance with the provisions of
16 subsection a. of this section.

17
18 2. This act shall take effect on the first day of the first month
19 next following enactment, and shall apply to franchise agreements
20 entered into on or after that effective date and shall also apply to
21 any franchise agreement entered into prior to the effective date.

22
23
24 STATEMENT

25
26 This bill establishes certain limitations on a franchisor's
27 assignment of interest relating to franchisees engaged in the retail
28 sale of motor fuel.

29 The first limitation set forth under the bill prevents a franchisor
30 from transferring, assigning or selling an interest in one or more
31 franchise premises that a franchisee has occupied under a lease,
32 sublease or other grant of authority, unless the franchisor: (1) makes
33 a bona fide offer to transfer, assign or sell the interest to the
34 franchisee; and (2) if applicable, offers the franchisee a right of first
35 refusal on any offer presented by another person acceptable to
36 succeed the franchisor to the interest. In both cases, the franchisee
37 shall have 60 days in which to accept or reject the offer.

38 The next limitation concerns successor owners. Any successor
39 owner, following a transfer, assignment or sale: shall maintain the
40 requirements of the franchise in effect at the time of the transfer,
41 assignment or sale, unless changed by mutual agreement of the
42 franchisee and successor owner; shall renew the franchise
43 agreement at its expiration for the same number of years as the
44 previously effective agreement, provided the renewal shall not
45 exceed five years; and shall not require the franchisee to adhere to
46 certain business practices, such as sales quotas, selling products at
47 the successor owner's suggested prices, and keeping the premises
48 open and operating during hours documented to be unprofitable.

S2553 CARDINALE, SARLO

1 The final limitation prevents the above described successor
2 owner from then transferring, assigning or selling an interest in a
3 single premises that a franchisee has occupied under a lease,
4 sublease or other grant of authority, unless the successor owner: (1)
5 makes a bona fide offer to transfer, assign or sell the interest to the
6 franchisee; and (2) if applicable, offers the franchisee a right of first
7 refusal on any offer presented by another person acceptable to
8 succeed the successor owner to the interest. In both cases, the
9 franchisee shall have 60 days in which to accept or reject the offer.

10 A violation of these limitations is declared under the bill to be a
11 violation of the "Franchise Practices Act," P.L.1971, c.356
12 (C.56:10-1), thus permitting a franchisee to bring an action in
13 Superior Court to recover damages sustained, injunctive relief
14 where appropriate, and entitlement to costs of suit and reasonable
15 attorney's fees.

16 The bill is intended to take effect on the first day of the first
17 month next following enactment and apply to franchise agreements
18 entered into on or after the effective date, and shall additionally
19 apply retroactively to any franchise agreement entered into prior to
20 the bill taking effect.