

[First Reprint]

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 reported by the Senate Commerce Committee on February 26, 2009, with amendments.



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 ¹**[that is a retail dealer, as defined by**
11 **section 101 of P.L.1938, c.163 (C.56:6-1), engaged]** where a
12 franchisee engages¹ in the ¹retail¹ sale of motor fuel, and that ¹**[a]**
13 the¹ franchisee has occupied under a lease ¹**[,** sublease or other
14 grant of authority] agreement or agreements for a period of at least
15 three consecutive years, or has a lease agreement for a term of at
16 least three years¹, unless the franchisor:

17 (1) makes a bona fide offer to transfer, assign or sell to the
18 franchisee all of the franchisor's interest in the ¹franchise¹ premises,
19 for which the franchisee shall have 60 days in which to accept or
20 reject the offer; and

21 (2) ¹(a)¹ if applicable, offers the franchisee a right of first refusal
22 on any offer ¹for the transfer, assignment, or sale of the franchise
23 premises¹ presented by another person acceptable to the franchisor
24 as a successor to the franchisor's interest, for which the franchisee
25 shall have 60 days in which to accept or reject the franchisor's
26 offer. ¹If the franchisee accepts an offer by the franchisor made
27 pursuant to this paragraph, the franchisor, as a condition for
28 entering into the contract for the accepted offer, may request as a
29 good faith acknowledgement of the contract, a deposit by the
30 franchisee of up to 10% on the total amount payable under the terms
31 of the contract, which shall be non-refundable if the franchisee
32 willfully defaults on the contract. A franchisor shall not be
33 prohibited from exercising other contractual provisions, and nothing
34 in this paragraph shall be construed to hinder the rights of the
35 franchisor to recover additional damages as provided under the law.

36 (b) Any modification of the offer presented to the franchisor by
37 the other person acceptable to the franchisor as a successor shall
38 require that offer, as modified, be resubmitted to the franchisee in
39 accordance with subparagraph (a) of this paragraph.¹

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

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:

¹Senate SCM committee amendments adopted February 26, 2009.

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

5 (2) not to renew, at the expiration of the franchise ¹**【agreement】**
6 arrangement¹ in effect at the time of the transfer, assignment, or
7 sale, the franchise ¹**【agreement】** arrangement¹ of the franchisee for
8 the same number of years as the franchise ¹**【agreement】**
9 arrangement¹ in effect at the time of the transfer, assignment or
10 sale, provided the renewal shall not exceed five years; and

11 (3) to require the franchisee to:

12 (a) participate in promotional campaigns of the successor
13 owner's products;

14 (b) meet sales quotas;

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

17 (d) keep the premises open and operating during hours which
18 are documented by the franchisee to be unprofitable to the
19 franchisee; or

20 (e) disclose to the successor owner or successor owner's
21 supplier any financial records of the operation of the franchisee's
22 premises which are not related or necessary to the franchisee's
23 obligations under the franchise ¹**【agreement】** arrangement¹.

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

28 c. For any successor owner, as set forth in subsection b. of this
29 section, to transfer, assign or sell an interest in a single franchise
30 premises ¹**【that is a retail dealer】** where a franchisee has¹ engaged
31 in the ¹retail¹ sale of motor fuel that is not part of two or more
32 franchise premises ¹**【retail dealers】**¹, presented by the successor
33 owner as a package to transfer, assign or sell, and that ¹**【a】** the¹
34 franchisee has occupied under a lease ¹**【**, sublease or other grant of
35 authority**】** agreement or agreements for a period of three
36 consecutive years, or has a lease agreement for a term of at least
37 three years¹, unless the successor owner makes an offer to transfer,
38 assign or sell to the franchisee the successor owner's interest, or
39 offers the franchisee a right of first refusal on an offer presented by
40 another person acceptable to the successor owner as a new
41 successor to the interest, in accordance with the provisions of
42 subsection a. of this section.

43

44 2. This act shall take effect on the first day of the first month
45 next following enactment, and shall apply to ¹any¹ franchise
46 ¹**【agreements entered into】** arrangement in effect¹ on ¹**【or after】**¹

S2553 [1R] CARDINALE, SARLO

4

1 that effective date and shall also apply to any franchise
2 **'[agreement] arrangement'** entered into **'[prior to] on or after'** the
3 effective date.