

ASSEMBLY, No. 2035

STATE OF NEW JERSEY 216th LEGISLATURE

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Sponsored by:

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District 21 (Morris, Somerset and Union)

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SYNOPSIS

Revises law concerning the rights and responsibilities of motor vehicle franchisees and franchisors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/9/2014)

1 AN ACT concerning motor vehicle franchises, amending various
2 parts of the statutory law, and supplementing P.L.1971, c.356
3 (C.56:10-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.1989, c.24 (C.56:10-7.2) is amended to read
9 as follows:

10 1. The Legislature hereby finds and declares the following:

11 a. Notwithstanding the enactment of the "Franchise Practices
12 Act," P.L. 1971, c. 356 (C. 56:10-1 et seq.), and other legislation
13 dealing with the franchisor-franchisee relationship, including, but
14 not limited to P.L. 1982, c. 156 (C. 56:10-17 et seq.), inequality of
15 bargaining power continues to exist between motor vehicle
16 franchisors and motor vehicle franchisees. This inequality of
17 bargaining power exists even as to motor vehicle franchisees who
18 have had their franchises for many years and who have expended
19 large sums of money in the promotion of their franchises.

20 b. This inequality of bargaining power enables motor vehicle
21 franchisors to compel motor vehicle franchisees to execute
22 franchises and related leases and agreements which contain terms
23 and conditions that would not routinely be agreed to by the motor
24 vehicle franchisees absent the compulsion and duress which arise
25 out of the inequality of bargaining power. These terms and
26 conditions are detrimental to the interests of the motor vehicle
27 franchisees in that they require the motor vehicle franchisees to
28 relinquish their rights which have been established by the
29 "Franchise Practices Act" and supplemental legislation and other
30 statutes and laws of this State.

31 c. As a result, motor vehicle franchisees have been denied the
32 opportunity to have disputes with their motor vehicle franchisors
33 arising out of the franchisor-franchisee relationship heard in an
34 appropriate venue, convenient to both parties, by tribunals
35 established by statute for the resolution of these disputes. It is
36 therefore necessary and in the public interest to ensure that motor
37 vehicle franchisees voluntarily determine whether to agree to
38 certain terms and conditions contained in franchises and related
39 leases and agreements presented to them by motor vehicle
40 franchisors and under circumstances unaffected by the compulsion
41 which arises from the inequality of bargaining power.

42 d. The distribution, sale and service of new motor vehicles in
43 the State of New Jersey vitally affects the general economy of this
44 State and there is a compelling public interest in providing a system
45 of new motor vehicle franchised dealerships to promote competition

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.

1 and protect motor vehicle and highway safety by ensuring there are
2 qualified facilities to provide warranty, recall and routine service
3 for motor vehicles.

4 e. The new motor vehicle franchise system encourages local
5 investment in motor vehicle dealerships, creates jobs and economic
6 activity in virtually every community in the State, and also
7 advances the public interest in an extensive network of independent
8 new motor vehicle dealers who compete for business and offer
9 ready access to safety recall and warranty service, when needed,
10 and routine maintenance to ensure motor vehicle and highway
11 safety.

12 f. There is, however, a vast disparity in bargaining power
13 between motor vehicle franchisors and their franchisees, which, if
14 left unchecked would discourage local investment in the motor
15 vehicle franchise system and result in fewer new motor vehicle
16 dealerships, less competition in the motor vehicle marketplace and
17 diminished consumer access to qualified motor vehicle warranty,
18 safety recall and routine service facilities.

19 g. In an effort to protect the compelling public interest in the
20 new motor vehicle franchise system and promote local investment
21 in new motor vehicle franchises, the Legislature intends to clarify
22 and strengthen certain provisions in existing law and enact new
23 provisions that will ensure that new motor vehicle franchisees are
24 treated fairly by their franchisors.

25 h. Despite prior enactments, motor vehicle franchisors have
26 taken, and continue to take, actions that undermine the new motor
27 vehicle franchise system and result in economic harm to new motor
28 vehicle franchisees, which ultimately discourages continued
29 investment in the new motor vehicle franchise system, limits
30 competition and undermines the consumer and public interest in
31 fostering an extensive network of independent new motor vehicle
32 dealerships.

33 i. Consequently, the Legislature has from time to time sought
34 to strengthen and clarify certain provisions in existing law in order
35 to ensure that new motor vehicle franchisees are treated fairly by
36 their franchisors, only to find that certain courts have narrowly
37 construed these prior enactments and also have failed to apply them
38 to pre-existing motor vehicle franchisees, which is not what the
39 Legislature intended.

40 j. As a result, it is necessary for the Legislature to further
41 revise the laws pertaining to motor vehicle franchisors and
42 franchisees and to direct that the "Franchise Practices Act,"
43 P.L.1971, c.356 (C.56:10-1 et seq.) and all other laws pertaining to
44 motor vehicle franchisors and franchisees be liberally construed,
45 and applied to current and future motor vehicle franchises, so as to
46 effectuate the purposes set forth herein.

47 (cf: P.L.1989, c.24, s.1)

- 1 2. Section 5 of P.L.1999, c.45 (C.56:10-7.4) is amended to read
2 as follows:
- 3 5. It shall be a violation of P.L.1971, c.356 (C.56:10-1 et seq.)
4 for any motor vehicle franchisor, directly or indirectly, through any
5 officer, agent or employee, to engage in any of the following
6 practices:
- 7 a. To impose unreasonable standards of performance or
8 unreasonable facilities, financial, operating or other requirements
9 upon a motor vehicle franchisee.
- 10 b. To base the disapproval of the transfer, sale or assignment of
11 a motor vehicle franchise, or any interest therein, on the ground that
12 the proposed transferee is not a natural person.
- 13 c. To fail to compensate a motor vehicle franchisee for all
14 reasonable costs incurred by the franchisee in complying with the
15 requirements imposed on the franchisee by the franchisor relating to
16 a product recall.
- 17 d. To utilize an arbitrary or unreasonable formula or other
18 calculation or process intended to gauge performance as a basis for
19 making any decision or taking any action governed by P.L.1971,
20 c.356 (C.56:10-1 et seq.).
- 21 e. To own or operate or enter into an agreement with a person,
22 other than an existing motor vehicle franchisee, to operate a retail
23 facility for the servicing of motor vehicles, which is authorized to
24 perform warranty service on motor vehicles manufactured or
25 distributed by the motor vehicle franchisor. The establishment,
26 relocation, reopening or reactivation of such a facility pursuant to
27 an agreement with a motor vehicle franchisee shall be subject to the
28 provisions of P.L.1982, c.156 (C.56:10-16 et seq.), except that
29 paragraph (3) of subsection b. of section 8 of that act (C.56:10-23)
30 shall not be applicable. Notice shall be given to motor vehicle
31 franchisees in the same line make or makes within six miles of the
32 proposed retail facility for the servicing of motor vehicles which is
33 authorized to perform warranty service on motor vehicles
34 manufactured or distributed by the motor vehicle franchisor.
- 35 f. To require an unconditional release from a motor vehicle
36 franchisee without permitting the franchisee to except from the
37 release any claims for outstanding financial obligations of the motor
38 vehicle franchisor to the motor vehicle franchisee for which
39 payment will not be made at or before the giving of the release.
- 40 g. (1) To require or attempt to require a motor vehicle
41 franchisee to order or purchase a new or used motor vehicle, or any
42 accessory or equipment thereof not required by law; or (2) to
43 require or attempt to require a motor vehicle franchisee to accept
44 delivery of any motor vehicle, or any accessory or equipment
45 thereof not required by law, which is not as ordered by the motor
46 vehicle franchisee; or (3) to take or withhold or threaten to take or
47 withhold any action, impose or threaten to impose any penalty, or

1 deny or threaten to deny any benefit, as a result of the motor vehicle
2 franchisee's failure or refusal to purchase, order or accept delivery
3 of any such motor vehicle, accessory or equipment. This subsection
4 shall not prevent a motor vehicle franchisor from requiring that a
5 motor vehicle franchisee carry a representative inventory of models
6 offered for sale by the motor vehicle franchisor.

7 h. To fail or refuse to sell or offer to sell to all motor vehicle
8 franchisees in a line make every motor vehicle sold or offered for
9 sale to any motor vehicle franchisee of the same line make, or to
10 fail or refuse to sell or offer to sell such motor vehicles to all motor
11 vehicle franchisees at the same price for a comparably equipped
12 motor vehicle, on the same terms, with no differential in discount,
13 allowance, credit or bonus, and on reasonable, good faith and non-
14 discriminatory allocation and availability terms; provided, however,
15 that this subsection shall not apply to a discount, allowance, credit
16 or bonus: (1) which is available to a motor vehicle franchisee as of
17 the effective date of P.L. , c. (C.)(pending before the
18 Legislature as this bill); (2) for which the motor vehicle franchisee
19 has entered into a written agreement with the motor vehicle
20 franchisor with respect to facility modifications by the motor
21 vehicle franchisee; and (3) which represents compensation to the
22 motor vehicle franchisee in connection with such agreement for
23 facility modifications. [However, the] The failure to deliver any
24 such motor vehicle shall not be considered a violation of this
25 section if the failure is not arbitrary and is due to a lack of
26 manufacturing capacity or to a strike or labor difficulty, a shortage
27 of materials, a freight embargo or other cause over which the
28 franchisor has no control. A motor vehicle franchisor shall not
29 require a motor vehicle franchisee to purchase unreasonable
30 quantities of advertising materials, purchase special tools not
31 required to properly service a motor vehicle or undertake sales
32 person or service person training unrelated to the motor vehicle or
33 meet unreasonable display requirements as a condition of receiving
34 a motor vehicle.

35 i. Unless compelled by law or legal process, (1) if the
36 customer has objected thereto in writing, to require a motor vehicle
37 franchisee to publish, release, convey or otherwise provide
38 information obtained with respect to any customers, contracts,
39 products, services or other transactions of the motor vehicle
40 franchisee which is not necessary for the motor vehicle franchisor
41 to meet its obligations to consumers or the motor vehicle
42 franchisee, including vehicle recalls or other requirements imposed
43 by State or federal law, or for complying with the duties or
44 obligations of the respective parties under the franchise; or (2) to
45 release such information which has been provided to it by the motor
46 vehicle franchisees to any third party.

1 j. To impose or attempt to impose any requirement, limitation
2 or regulation on, or interfere or attempt to interfere with, the
3 manner in which a motor vehicle franchisee utilizes the facilities at
4 which a motor vehicle franchise is operated, including, but not
5 limited to, requirements, limitations or regulations as to the line
6 makes of motor vehicles that may be sold or offered for sale at the
7 facility, or to take or withhold or threaten to take or withhold any
8 action, impose or threaten to impose any penalty, or deny or
9 threaten to deny any benefit, as a result of the manner in which the
10 motor vehicle franchisee utilizes his facilities, except that the motor
11 vehicle franchisor may require that the portion of the facilities
12 allocated to or used for the motor vehicle franchise meets the motor
13 vehicle franchisor's reasonable, written space and volume
14 requirements as uniformly applied by the motor vehicle franchisor.
15 The provisions of this subsection shall not apply if the motor
16 vehicle franchisor and the motor vehicle franchisee voluntarily
17 agree to the requirement and separate and valuable consideration
18 therefor is paid.

19 k. To require or attempt to require a motor vehicle franchisee,
20 or the owner or landlord of property on which a motor vehicle
21 franchise is operated, to give a motor vehicle franchisor or any
22 person under the control of the motor vehicle franchisor an interest
23 in or option with respect to the real property on which the motor
24 vehicle franchise is operated, to restrict the uses to which the
25 facility at which the motor vehicle franchise is operated may be put
26 during or after the term of the franchise, or to take or withhold or
27 threaten to take or withhold any action, impose or threaten to
28 impose any penalty, or deny or threaten to deny any benefit, as a
29 result of the failure or refusal of a motor vehicle franchisee,
30 property owner, or landlord to agree to or comply with any such
31 demand or restriction. Nothing in this subsection shall be deemed
32 to bar a voluntary agreement between a motor vehicle franchisor
33 and a motor vehicle franchisee, or the owner or landlord of property
34 on which a motor vehicle franchise is operated, to give the motor
35 vehicle franchisor or the person under the control of the motor
36 vehicle franchisor an interest in or option with respect to the real
37 property on which a motor vehicle franchise is operated, or to
38 restrict the uses to which the facility at which the motor vehicle
39 franchise is operated is put, provided that separate and valuable
40 consideration is paid for such interest, option or restriction.

41 l. To require or attempt to require a motor vehicle franchisee
42 to relocate his franchise or to implement any facility or operational
43 modification or to take or withhold or threaten to take or withhold
44 any action, impose or threaten to impose any penalty, or deny or
45 threaten to deny any benefit as a result of the failure or refusal of
46 such motor vehicle franchisee to agree to any such relocation or
47 modification, unless the motor vehicle franchisor can demonstrate

1 that: (1) funds are generally available to the franchisee for the
2 relocation or modification on reasonable terms; and (2) the motor
3 vehicle franchisee will be able, in the ordinary course of business as
4 conducted by such motor vehicle franchisee, to earn a reasonable
5 return on his total investment in such facility or from such
6 operational modification, and the full return of his total investment
7 in such facility or from such operational modifications within 10
8 years; or (3) the modification is required so that the motor vehicle
9 franchisee can effectively sell and service a motor vehicle offered
10 by the motor vehicle franchisor based on the specific technology of
11 the motor vehicle. This subsection shall not be construed as
12 requiring a motor vehicle franchisor to guarantee that the return as
13 provided in paragraph (2) of this subsection will be realized.

14 m. Directly, or through any financial institution having any
15 commonality of ownership with the motor vehicle franchisor, to
16 require or attempt to require, or to take or withhold or threaten to
17 take or withhold any action, impose or threaten to impose any
18 penalty, or deny or threaten to deny any benefit, as a result of the
19 failure or refusal of a motor vehicle franchisee to maintain working
20 capital, equity, floor plan financing or other indications of financial
21 condition, greater than the lesser of (1) the minimum required to
22 operate the motor vehicle franchise based on the operations of the
23 franchise over the prior 12-month period; or (2) an increase of no
24 more than 5% over the prior calendar year, unless the motor vehicle
25 franchisor, or the financial institution having any commonality of
26 ownership with a motor vehicle franchisor, can establish that such
27 failure or refusal prevents the franchisee from operating the
28 franchise in the ordinary course of business. This subsection shall
29 not apply if the working capital, equity, floor plan financing or
30 other indication of financial condition is the result of an
31 accommodation by the motor vehicle franchisor, or financial
32 institution with a commonality of ownership with the motor vehicle
33 franchisor, to the motor vehicle franchisee, containing specific
34 terms and deadlines for the restoration of the motor vehicle
35 franchisee's working capital, inventory, floor plan financing or
36 other indication of financial condition, which accommodation is
37 agreed to in writing by the motor vehicle franchisee.

38 n. To impose or attempt to impose any conditions on the
39 approval of the transfer of a motor vehicle franchise, except to
40 require the written agreement of the transferee to comply with all
41 requirements of the franchise then in effect as provided in section 6
42 of P.L.1971, c.356 (C.56:10-6); or to refuse to approve a transfer on
43 the basis that other motor vehicle franchises operated by the
44 transferee failed to perform satisfactorily based on a statistical
45 comparison with other franchisees.

46 o. To amend or modify the franchise of a motor vehicle
47 franchisee, or any lease or agreement ancillary or collateral to such

1 franchise, including in connection with the renewal of a franchise, if
2 such amendment or modification is not in good faith, is not for good
3 cause, or would adversely and substantially alter the rights,
4 obligations, investment or return on investment of the motor vehicle
5 franchisee.

6 p. To take or withhold or threaten to take or withhold any
7 action, impose or threaten to impose any penalty, or deny or
8 threaten to deny any benefit, because the motor vehicle franchisee
9 sold or leased a motor vehicle to a customer who exported the
10 vehicle to a foreign country or who resold the vehicle, unless the
11 motor vehicle franchisor can establish that the motor vehicle
12 franchisee knew or reasonably should have known, prior to the sale
13 or lease, that the customer intended to export or resell the motor
14 vehicle; provided, however, that it shall be presumed that the motor
15 vehicle franchisee did not know or should not have reasonably
16 known that the vehicle would be exported if the vehicle is titled or
17 registered in any state or the District of Columbia.

18 q. To require a motor vehicle franchisee, at the time of entering
19 into a franchise arrangement, any lease or agreement ancillary or
20 collateral to a motor vehicle franchise, or any amendment,
21 modification, renewal or termination thereof, to assent to a release,
22 assignment, novation, waiver or estoppel, which would relieve any
23 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
24 seq.); provided that nothing in this subsection shall be deemed to
25 prohibit a voluntary agreement between the motor vehicle
26 franchisor and the motor vehicle franchisee which contains a
27 release, assignment, novation, waiver or estoppel for which separate
28 and valuable consideration is paid by the motor vehicle franchisor
29 to the motor vehicle franchisee.

30 r. To provide any term or condition in any motor vehicle
31 franchise, in any lease or other agreement ancillary or collateral to a
32 motor vehicle franchise or in any renewal, amendment or
33 modification thereof, which term or condition directly or indirectly
34 violates P.L.1971, c.356 (C.56:10-1 et seq.).

35 s. To allocate vehicles to or evaluate the performance of a
36 motor vehicle franchise based on, or offer any discount, incentive,
37 bonus, program, allowance or credit that differentiates between
38 vehicle sales by a motor vehicle franchisee within a territory or
39 geographic area assigned to the motor vehicle franchisee and
40 vehicle sales outside of such territory or geographic area.

41 t. Either directly, or through any financial institution or other
42 person having any commonality of ownership with the motor
43 vehicle franchisor:

44 (1) to require or attempt to require a motor vehicle franchisee to
45 offer any finance, insurance, warranty, service or repair plan or
46 other product of the motor vehicle franchisor or of a financial

1 institution or other person having any commonality of ownership
2 with the motor vehicle franchisor;

3 (2) to prohibit or attempt to prohibit a motor vehicle franchisee
4 from offering a finance, insurance, warranty, service or repair plan
5 or other product of a person other than the motor vehicle franchisor
6 or a financial institution or other person having any commonality of
7 ownership with the motor vehicle franchisor;

8 (3) to take or withhold or threaten to take or withhold any
9 action, impose or threaten to impose any penalty, or deny or
10 threaten to deny any benefit to a motor vehicle franchisee that
11 offers to consumers a finance, insurance, warranty, service or repair
12 plan or other product of a person other than the motor vehicle
13 franchisor or financial institution or other person having any
14 commonality of ownership with the motor vehicle franchisor, either
15 exclusively or along with a similar product offered by the motor
16 vehicle franchisor or financial institution or other person having any
17 commonality of ownership with the motor vehicle franchisor; or

18 (4) to offer or threaten to offer any discount, allowance, credit,
19 bonus, incentive, benefit or other offer to a motor vehicle franchisee
20 or a consumer on the basis or as a result of the offer or sale by such
21 motor vehicle franchisee of a finance, insurance, warranty, service
22 or repair plan or other product offered by the motor vehicle
23 franchisor or financial institution or other person having any
24 commonality of ownership with the motor vehicle franchisor that is
25 not offered for, or is different from, any discount, allowance, credit,
26 bonus, incentive, benefit or other offer available at the same time
27 for a similar product of a person other than the motor vehicle
28 franchisor or financial institution or other person with any
29 commonality of ownership with the motor vehicle franchisor.

30 (cf: P.L. 2011, c.66, s.2)

31

32 3. Section 3 of P.L.1991, c.459 (C.56:10-13.2) is amended to
33 read as follows:

34 3. Within 90 days of the termination, cancellation or
35 nonrenewal of a motor vehicle franchise as provided for in section 5
36 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or
37 nonrenewal of a motor vehicle franchise by the motor vehicle
38 franchisee or by mutual agreement of the motor vehicle franchisee
39 and motor vehicle franchisor, the motor vehicle franchisor shall
40 repurchase from the motor vehicle franchisee:

41 a. any unused, undamaged and unsold vehicles **[from]** of the
42 current model year and all **[prior year inventories]** model years
43 prior thereto with 500 miles or less registered on the odometer, or
44 recreational vehicles that were acquired from the motor vehicle
45 franchisor within 12 months before the effective date of the
46 termination, and any unused, undamaged and unsold parts, supplies
47 and accessories, listed in the franchisor's current price catalog and

1 acquired from the franchisor or a source approved or recommended
2 by the franchisor at the franchisee's net acquisition cost therefor,
3 including transportation, delivery and similar charges paid by the
4 franchisee, plus the franchisee's cost of handling, packing, loading
5 and transporting the **【vehicle inventory】** vehicles, parts, supplies
6 and accessories for return to the franchisor. For the purposes of this
7 subsection, **【vehicle inventory】** vehicles, parts, supplies and
8 accessories used by the franchisee or its employees for display,
9 demonstration or other marketing purposes shall be deemed to be
10 unused or unsold.

11 b. any special tools and signs which were required by the
12 franchisor, at:

13 (1) the franchisee's net acquisition cost if the item was acquired
14 in the 12 months immediately preceding the effective date of the
15 termination, cancellation or nonrenewal;

16 (2) the greater of the fair market value or 75% of the
17 franchisee's net acquisition cost if the item was acquired more than
18 12 but less than 24 months immediately preceding the effective date
19 of the termination, cancellation or nonrenewal;

20 (3) the greater of the fair market value or 50% of the
21 franchisee's net acquisition cost if the item was acquired more than
22 24 but less than 36 months immediately preceding the effective date
23 of the termination, cancellation or nonrenewal;

24 (4) the greater of the fair market value or 25% of the
25 franchisee's net acquisition cost if the item was acquired more than
26 36 but less than 60 months immediately preceding the effective date
27 of the termination, cancellation or nonrenewal; or

28 (5) the fair market value if the item was acquired more than 60
29 months immediately preceding the effective date of the termination,
30 cancellation or nonrenewal; plus the franchisee's cost of handling,
31 packing, loading and transporting the item for return to the
32 franchisor.

33 Payment shall be made by the motor vehicle franchisor within 30
34 days after the date on which the motor vehicle franchisee notifies
35 the motor vehicle franchisor in writing that the property is available
36 for repurchase.

37 Nothing in this section shall prohibit the franchise from
38 containing provisions in addition to, but not inconsistent with, those
39 required by this section.

40 (cf: P.L.2011, c.66, s.3)

41

42 4. Section 5 of P.L.1993, c.189 (C.56:10-13.6) is amended to
43 read as follows:

44 5. It shall be a violation of the "Franchise Practices Act,"
45 P.L.1971, c.356 (C.56:10-1 et seq.), for a motor vehicle franchisor
46 to exercise a right of first refusal or other right to acquire a motor
47 vehicle franchise **【**from a motor vehicle franchisee as a means to

1 influence the consideration or other terms offered by a person in
2 connection with the acquisition of the motor vehicle franchise or to
3 influence a person to refrain from entering into, or to withdraw
4 from, negotiations for the acquisition of the motor vehicle
5 franchise] , except if the motor vehicle franchisor has a formal
6 written program to increase the number of minority franchisees and
7 a minority will obtain over 51% ownership and control of the motor
8 vehicle franchise upon the exercise of the right of first refusal or
9 other right to acquire a motor vehicle franchise by the motor vehicle
10 franchisor. For purposes of this subsection, "minority" shall have
11 the same meaning as in subsection c. of section 8 of P.L.1982, c.156
12 (C.56:10-23).

13 (cf: P.L.1993, c.189, s.5)

14

15 5. Section 6 of P.L.1993, c.189 (C.56:10-13.7) is amended to
16 read as follows:

17 6. It shall be a violation of the "Franchise Practices Act,"
18 P.L.1971, c.356 (C.56:10-1 et seq.), for a motor vehicle franchisor
19 to exercise a right of first refusal or other right to acquire a motor
20 vehicle franchise from a motor vehicle franchisee pursuant to
21 section 5 of P.L.1993, c.189 (C.56:10-13.6), unless the motor
22 vehicle franchisor:

23 a. at the election of the motor vehicle franchisee, assumes the
24 lease for or acquires the real property on which the motor vehicle
25 franchise is conducted on the same terms as those on which the real
26 property or lease was to be sold or transferred to the acquiring
27 transferee in connection with the sale of the motor vehicle
28 franchise, unless otherwise agreed to by the motor vehicle
29 franchisee and motor vehicle franchisor; and

30 b. reimburses the acquiring transferee of the motor vehicle
31 franchise for the reasonable expenses paid or incurred by him in
32 evaluating and investigating the motor vehicle franchise and
33 negotiating and pursuing the acquisition of the motor vehicle
34 franchise prior to the motor vehicle franchisor's exercise of the right
35 of first refusal or other right to acquire the motor vehicle franchise.
36 For purposes of this subsection, expenses to evaluate and
37 investigate the motor vehicle franchise means, in addition to any
38 other expenses associated with the evaluation and investigation of
39 the motor vehicle franchise, legal and accounting expenses, and
40 expenses associated with the evaluation and investigation of any
41 real property on which the motor vehicle franchise is conducted,
42 including, but not limited to, expenses associated with title
43 examinations, environmental assessments and other expenses
44 directly related to the acquisition or lease of such real property by
45 the acquiring transferee. Upon reimbursement, any title reports, or
46 other reports or studies received by the acquiring transferee as a
47 result of the evaluation or investigation of the motor vehicle

1 franchise or the real property on which the motor vehicle franchise
2 is conducted shall be provided to the motor vehicle franchisor. The
3 acquiring transferee shall submit an itemized list of the expenses to
4 be reimbursed along with supporting documents, if any, to the
5 motor vehicle franchisor no later than 30 days after receipt of a
6 written request for same from the motor vehicle franchisor. The
7 motor vehicle franchisor shall make payment within 30 days of
8 receipt of the itemized list.

9 c. For purposes of this section, "acquiring transferee" means the
10 person to whom the motor vehicle franchise would have been
11 transferred had the right of first refusal or other right to acquire the
12 motor vehicle franchise not been exercised by the motor vehicle
13 franchisor.

14 (cf: P.L.1993, c.189, s.6)

15

16 6. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read
17 as follows:

18 3. If any motor vehicle franchise shall require or permit motor
19 vehicle franchisees to perform services or provide parts in
20 satisfaction of a warranty issued by the motor vehicle franchisor:

21 a. The motor vehicle franchisor shall reimburse each motor
22 vehicle franchisee for such services as are rendered and for such
23 parts as are supplied, in an amount equal to the prevailing retail
24 price charged by such motor vehicle franchisee for such services
25 and parts in circumstances where such services are rendered or such
26 part supplied other than pursuant to warranty; provided that such
27 motor vehicle franchisee's prevailing retail price is not unreasonable
28 when compared with that of the holders of motor vehicle franchises
29 from the same motor vehicle franchisor for identical merchandise or
30 services in the geographic area in which the motor vehicle
31 franchisee is engaged in business. A motor vehicle franchisor shall
32 not recover or attempt to recover from a motor vehicle franchisee,
33 directly or indirectly, any costs it incurs in complying with this
34 subsection.

35 b. The motor vehicle franchisor shall not by agreement, by
36 restrictions upon reimbursement, or otherwise, restrict the nature
37 and extent of services to be rendered or parts to be provided so that
38 such restriction prevents the motor vehicle franchisee from
39 satisfying the warranty by rendering services in a good and
40 workmanlike manner and providing parts which are required in
41 accordance with generally accepted standards. Any such restriction
42 shall constitute a prohibited practice hereunder.

43 c. The motor vehicle franchisor shall reimburse the motor
44 vehicle franchisee pursuant to subsection a. of this section, without
45 deduction, for services performed on, and parts supplied for, a
46 motor vehicle by the motor vehicle franchisee in good faith and in
47 accordance with generally accepted standards, notwithstanding any

1 requirement that the motor vehicle franchisor accept the return of
2 the motor vehicle or make payment to a consumer with respect to
3 the motor vehicle pursuant to the provisions of P.L.1988, c.123
4 (C.56:12-29 et seq.).

5 d. For the purposes of this section, the "prevailing retail price"
6 charged by: (1) a motor vehicle franchisee for parts means the price
7 paid by the motor vehicle franchisee for those parts, including all
8 shipping and other charges, multiplied by the sum of 1.0 and the
9 franchisee's average percentage markup over the price paid by the
10 motor vehicle franchisee for parts purchased by the motor vehicle
11 franchisee from the motor vehicle franchisor and sold at retail. The
12 motor vehicle franchisee may establish average percentage markup
13 under this section by submitting to the motor vehicle franchisor 100
14 sequential customer paid service repair orders or 90 days of
15 customer paid service repair orders, whichever is less, covering
16 repairs made no more than 180 days before the submission, and
17 declaring what the average percentage markup is. The average
18 percentage markup so declared shall go into effect 30 days
19 following the declaration subject to audit of the submitted repair
20 orders by the motor vehicle franchisor and adjustment of the
21 average percentage markup based on that audit. Only retail sales
22 not involving warranty repairs, parts covered by subsection e. of
23 this section, or parts supplied for routine vehicle maintenance, shall
24 be considered in calculating average percentage markup. No motor
25 vehicle franchisor shall require a motor vehicle franchisee to
26 establish average percentage markup by a methodology, or by
27 requiring information, that is unduly burdensome or time
28 consuming to provide, including, but not limited to, part by part or
29 transaction by transaction calculations. A motor vehicle franchisee
30 shall not request a change in the average percentage markup more
31 than twice in one calendar year; and (2) a recreational motor vehicle
32 franchisee for parts means actual wholesale cost, plus a minimum
33 30% handling charge and any freight costs incurred to return the
34 removed parts to the motor vehicle franchisor.

35 e. If a motor vehicle franchisor supplies a part or parts for use
36 in a repair rendered under a warranty other than by sale of that part
37 or parts to the motor vehicle franchisee, the motor vehicle
38 franchisee shall be entitled to compensation equivalent to the motor
39 vehicle franchisee's average percentage markup on the part or parts,
40 as if the part or parts had been sold to the motor vehicle franchisee
41 by the motor vehicle franchisor. The requirements of this section
42 shall not apply to entire engine assemblies and entire transmission
43 assemblies. In the case of those assemblies, the motor vehicle
44 franchisor shall reimburse the motor vehicle franchisee in the
45 amount of 30% of what the motor vehicle franchisee would have
46 paid the motor vehicle franchisor for the assembly if the assembly

1 had not been supplied by the franchisor other than by the sale of
2 that assembly to the motor vehicle franchisee.

3 f. The motor vehicle franchisor shall reimburse the motor
4 vehicle franchisee for parts supplied and services rendered under a
5 warranty within 30 days after approval of a claim for
6 reimbursement. All claims for reimbursement shall be approved or
7 disapproved within 30 days after receipt of the claim by the motor
8 vehicle franchisor. When a claim is disapproved, the motor vehicle
9 franchisee shall be notified in writing of the grounds for the
10 disapproval. No claim that has been approved and paid shall be
11 charged back to the motor vehicle franchisee unless it can be shown
12 that the claim was false or fraudulent, that the services were not
13 properly performed, that the parts or services were unnecessary to
14 correct the defective condition, or that the motor vehicle franchisee
15 failed to reasonably substantiate the claim in accordance with
16 reasonable written requirements of the motor vehicle franchisor,
17 provided that the motor vehicle franchisee had been notified of the
18 requirements prior to the time the claim arose and the requirements
19 were in effect at the time the claim arose. A motor vehicle
20 franchisor shall not audit a claim after the expiration of **[12]** six
21 months following the **[payment]** receipt of the claim unless the
22 motor vehicle franchisor has reasonable grounds to believe that the
23 claim was fraudulent.

24 g. The obligations imposed on motor vehicle franchisors by
25 this section shall apply to any parent, subsidiary, affiliate or agent
26 of the motor vehicle franchisor, any person under common
27 ownership or control, any employee of the motor vehicle franchisor
28 and any person holding 1% or more of the shares of any class of
29 securities or other ownership interest in the motor vehicle
30 franchisor, if a warranty or service or repair plan is issued by that
31 person instead of or in addition to one issued by the motor vehicle
32 franchisor.

33 h. The provisions of this section shall also apply to franchisor
34 administered service and repair plans:

35 (1) if the motor vehicle franchisee offers for sale only the
36 franchisor administered service or repair plan; or

37 (2) if the motor vehicle franchisee is paid its prevailing retail
38 price for all service or repair plans the motor vehicle franchisee
39 offers for sale to purchasers of new motor vehicles; or

40 (3) for the first 36,000 miles of coverage under the franchisor
41 administered service or repair plan, if the warranty offered by the
42 motor vehicle franchisor on the motor vehicle provides coverage for
43 less than 36,000 miles; or

44 (4) for motor vehicles covered by a franchisor administered
45 service or repair plan, if the motor vehicle franchisee does not offer
46 for sale the franchisor administered service or repair plan.

1 With respect to franchisor administered service or repair plans
2 covering only routine maintenance service, this section applies only
3 to those plans sold to customers on or after the effective date of
4 P.L.1999, c.45.

5 i. A motor vehicle franchisor shall make payment to a motor
6 vehicle franchisee pursuant to incentive, bonus, sales, performance
7 or other programs within 30 days after receipt of a claim from the
8 motor vehicle franchisee. When a claim is disapproved, the motor
9 vehicle franchisee shall be notified in writing of the grounds for
10 disapproval. No claim shall be disapproved unless it can be shown
11 that the claim was false or fraudulent, or that the motor vehicle
12 franchisee failed to reasonably substantiate the claim in accordance
13 with reasonable written requirements of the motor vehicle
14 franchisor, provided that the motor vehicle franchisee had been
15 notified of the requirements prior to the time the claim arose and the
16 requirements were in effect at the time the claim arose. A motor
17 vehicle franchisor shall not audit a claim after the expiration of
18 **【12】** six months following **【the payment】** receipt of the claim.

19 j. No charge back to a motor vehicle franchisee pursuant to
20 subsections f. or i. of this section shall be made except upon no less
21 than 30 days written notice to the motor vehicle franchisee of the
22 motor vehicle franchisor's intent to make that charge back. If, prior
23 to the expiration of that 30 days, the motor vehicle franchisee
24 institutes a proceeding contesting the proposed charge back, either
25 pursuant to a dispute resolution process created by the motor
26 vehicle franchisor or in court, no charge back shall be made until
27 and unless a final, non-appealable decision is rendered in favor of
28 the motor vehicle franchisor.

29 (cf: P.L.2011, c.66, s.5)

30
31 7. Section 1 of P.L.1982, c.156 (C.56:10-16) is amended to
32 read as follows:

33 1. a. "Committee" means the Motor Vehicle Franchise
34 Committee established in section 2 of **【this act】** P.L.1982, c.156
35 (C.56:10-17);

36 b. "Franchise" means a written arrangement for a definite or
37 indefinite period in which a motor vehicle franchisor grants a right
38 or license to use a trade name, trademark, service mark or related
39 characteristics and in which there is a community of interest in the
40 marketing of new motor vehicles at retail, by lease agreement or
41 otherwise;

42 c. "Franchisee" means a natural person, corporation,
43 partnership or entity to whom a franchise is granted by a motor
44 vehicle franchisor;

45 d. "Motor vehicle" or "new motor vehicle" means only a newly
46 manufactured motor vehicle, except a nonconventional type of
47 motor vehicle, and includes all such vehicles propelled otherwise

1 than by muscular power, and motorcycles, trailers and tractors,
2 excepting such vehicles as run only upon rails or tracks and
3 motorized bicycles; a "nonconventional type of motor vehicle"
4 means every vehicle not designed or used primarily for the
5 transportation of persons or property and only incidentally operated
6 or moved over a highway;

7 e. "Motor vehicle franchisor" means a natural person,
8 corporation, partnership or entity engaged in the business of
9 manufacturing, assembling or distributing new motor vehicles, who
10 will under normal business conditions during the year, manufacture,
11 assemble or distribute at least 10 new motor vehicles;

12 f. "Relevant market area" means a geographic area 14 miles in
13 radius from a proposed franchise or business as it relates to the
14 grant, reopening or reactivation of a franchise or the establishment,
15 reopening or reactivation of a business; and a geographic area 8
16 miles in radius from a relocated franchise or business, but if there
17 are no existing franchisees in the same line make within an 8-mile
18 radius of the relocated franchise or business, then the relevant
19 market area includes the next closest existing franchisee in the same
20 line make within a 14-mile radius and, if such franchisee files a
21 protest, or has any commonality of ownership with the franchise to
22 be relocated, then the relevant market area includes any other
23 existing franchisee in the same line make within such 14-mile
24 radius. Determining whether an existing franchisee is within the
25 relevant market area of a proposed or relocated franchise or
26 business, and ascertaining any other measurement of distance, shall
27 be made by measuring the distance between the nearest surveyed
28 boundary line of the existing franchise and the nearest surveyed
29 boundary line of the proposed or relocated franchise or business.

30 (cf: P.L.2011, c.66, s.6)

31

32 8. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to
33 read as follows:

34 5. The provisions of sections 3 and 4 of P.L.1982, c.156
35 (C.56:10-18 and 56:10-19) notwithstanding, a motor vehicle
36 franchisor may:

37 a. Permit an existing franchisee to relocate his franchise within
38 two miles of the franchisee's existing franchise location, so long as
39 the relocation does not result in the relocating franchise being
40 closer than five miles to the location of another franchise in the
41 same line make, except that a franchise may not be relocated
42 pursuant to this subsection unless at least five years have elapsed
43 since any previous relocation pursuant to this subsection;

44 b. Reopen or reactivate a franchise or business which has not
45 been in operation for a period of two years or less at a site within
46 two miles of the prior site, provided that the rights accorded to the
47 franchisor herein shall not apply to a successor or assignee of the

1 franchisor of the franchise or business at the time the franchise or
2 business was closed or deactivated; or

3 c. Permit the purchaser of a controlling interest in the shares or
4 substantially all of the operating assets of an existing franchise to
5 relocate the place of business of the franchise within two miles of
6 the previously approved franchise location within 180 days of the
7 date of purchase.

8 (cf: P.L. 2011, c.66, s.9)

9

10 9. (New section) a. A motor vehicle franchisee may bring an
11 action against its franchisor for violation of the “Franchise Practices
12 Act,” P.L.1971, c.356 (C.56:10-1 et seq.) in the Superior Court of
13 the State of New Jersey.

14 b. In any such action, the court may:

15 (1) in addition to any other appropriate legal or equitable relief,
16 and, regardless of the availability of monetary damages, where it is
17 an appropriate remedy for a violation, grant injunctive relief; and

18 (2) provided that the motor vehicle franchisee has given pre-
19 action notice of the violation to its franchisor and a period of not
20 less than 30 days to cure or cease the violation, award up to
21 threefold the damages sustained by the motor vehicle franchisee.

22 c. The motor vehicle franchisee, if successful in whole or in
23 part, shall also be entitled to the costs of the action, including, but
24 not limited to, reasonable attorneys’ fees and costs, expert witness
25 fees and costs of suit.

26

27 10. This act shall take effect immediately and shall apply to all
28 motor vehicle franchise agreements in effect on or after the
29 effective date of this act.

30

31

32

STATEMENT

33

34 This bill revises New Jersey’s “Franchise Practices Act,”
35 P.L.1971, c.356 (C.56:10-1 et seq.), which serves to protect
36 consumers, motor vehicle franchisees (dealers) and the public from
37 arbitrary conduct by motor vehicle franchisors (manufacturers).
38 The law is designed to provide a level playing field on which
39 dealers and manufacturers can do business, and on which
40 consumers and the public interest in a strong and secure franchise
41 system of responsible local businesses can be safeguarded. The bill
42 includes extensive legislative findings stating that it is in the public
43 interest to encourage investment in the franchise system in order to
44 promote competition and advance highway safety.

45 The “Franchise Practices Act” prohibits motor vehicle
46 franchisors from engaging in various business practices in their
47 dealings with their motor vehicle franchisees. In regard to a

1 transfer of a motor vehicle franchise, the bill clarifies that the
2 franchisor is prohibited from imposing or attempting to impose any
3 conditions on the approval of the transfer of a motor vehicle
4 franchise, except to require the written agreement of the transferee
5 to comply with all requirements of the franchise then in effect as
6 provided in section 6 of P.L.1971, c.356 (C.56:10-6). The bill also
7 prohibits the franchisor from refusing to approve a transfer on the
8 basis that other motor vehicle franchises operated by the transferee
9 failed to perform satisfactorily based on a statistical comparison
10 with other franchisees.

11 The bill prohibits a motor vehicle franchisor from:

12 (1) requiring or attempting to require a motor vehicle franchisee
13 to offer any finance, insurance, warranty, service or repair plan or
14 other product of the motor vehicle franchisor or of a financial
15 institution or other person having any commonality of ownership
16 with the motor vehicle franchisor;

17 (2) prohibiting or attempting to prohibit a motor vehicle
18 franchisee from offering a finance, insurance, warranty, service or
19 repair plan or other product of a person other than the motor vehicle
20 franchisor or a financial institution or other person having any
21 commonality of ownership with the motor vehicle franchisor;

22 (3) taking or withholding or threatening to take or withhold any
23 action, impose or threaten to impose any penalty, or deny or
24 threaten to deny any benefit to a motor vehicle franchisee that
25 offers to consumers a finance, insurance, warranty, service or repair
26 plan or other product of a person other than the motor vehicle
27 franchisor or financial institution or other person having any
28 commonality of ownership with the motor vehicle franchisor, either
29 exclusively or along with a similar product offered by the motor
30 vehicle franchisor or financial institution or other person having any
31 commonality of ownership with the motor vehicle franchisor; or

32 (4) offering or threatening to offer any discount, allowance,
33 credit, bonus, incentive, benefit or other offer to a motor vehicle
34 franchisee or a consumer on the basis or as a result of the offer or
35 sale by such motor vehicle franchisee of a finance, insurance,
36 warranty, service or repair plan or other product offered by the
37 motor vehicle franchisor or financial institution or other person
38 having any commonality of ownership with the motor vehicle
39 franchisor that is not offered for, or is different from, any discount,
40 allowance, credit, bonus, incentive, benefit or other offer available
41 at the same time for a similar product of a person other than the
42 motor vehicle franchisor or financial institution or other person with
43 any commonality of ownership with the motor vehicle franchisor.

44 Under current law, a franchisor may, under certain
45 circumstances, exercise a right of first refusal for a motor vehicle
46 dealer to acquire a motor vehicle franchise. This bill revises current
47 law and specifies that the only circumstance under which a

1 franchisor may exercise a right of first refusal is if the motor
2 vehicle franchisor has a formal written program to increase the
3 number of minority franchisees and a minority will obtain over 51%
4 ownership and control of the motor vehicle franchise upon the
5 exercise of the right of first refusal or other right to acquire a motor
6 vehicle franchise by the motor vehicle franchisor.

7 The bill also stipulates that a franchisor shall not recover or
8 attempt to recover from a franchisee any costs it incurs as a result of
9 reimbursing a franchisee for performing warranty services or
10 providing warranty parts if the motor vehicle franchise shall require
11 or permit motor vehicle franchisees to perform services or provide
12 parts in satisfaction of a warranty issued by the motor vehicle
13 franchisor.

14 This bill prohibits a franchisor from auditing a claim for:
15 payment of incentive, bonus, sales, performance or other programs
16 due the franchisee following six months of receipt of the claim; or
17 for parts supplied and services rendered under a warranty following
18 six months of receipt of the claim. Under current law, the
19 franchisor is not permitted to audit such claims after the expiration
20 of 12 months following the payment of the claim. Furthermore, as
21 to the aforementioned payments, the bill prohibits a franchisor from
22 charging back monies to a franchisee without first notifying the
23 franchisee of its intent by giving at least 30 days written notice of
24 that intent, and by giving the franchisee an opportunity to contest
25 the proposed charge back.

26 The bill provides that, upon the termination, cancellation or
27 nonrenewal of a motor vehicle franchise, the franchisor is required
28 to buy back new vehicles held by the franchisee for all prior years.
29 Under current law, the franchisee is required to buy back such
30 vehicles only for the current year and one prior year.

31 This bill revises situations in which a franchisee may protest a
32 new or relocated dealership facility within or adjacent to the
33 franchisee's market area. Current law allows a dealer to protest a
34 new or relocated facility within 8-miles or, if there is no franchisee
35 in the same line make within 8 miles, the closest franchisee within
36 14 miles has a right of protest. The bill provides that, if such
37 franchisee within 14 miles files a protest, or has any commonality
38 of ownership with the franchise to be relocated, then the relevant
39 market area includes any other existing franchisee in the same line
40 make within such 14-mile radius.

41 As provided in the bill, a limitation is placed on a franchisor's
42 ability to permit an existing franchisee's relocation within two
43 miles of the franchisee's current location, with the stipulation that
44 the relocation does not result in the relocating franchise being
45 closer than fives miles to the location of another franchise in the
46 same line make.

1 The bill allows a franchisee to bring an action against a
2 franchisor for violation of the “Franchise Practices Act” in the
3 Superior Court of the State of New Jersey. In any such action, the
4 court may:

5 (1) in addition to any other appropriate legal or equitable relief,
6 and regardless of the availability of monetary damages, where it is
7 an appropriate remedy for a violation, grant injunctive relief ; and

8 (2) provided that the motor vehicle franchisee has given pre-
9 action notice of the violation to its franchisor and a period of not
10 less than 30 days to cure or cease the violation, award up to
11 threefold the damages sustained by the motor vehicle franchisee.

12 The motor vehicle franchisee, if successful in whole or in part, shall
13 also be entitled to the costs of the action, including, but not limited
14 to, reasonable attorneys’ fees and costs, expert witness fees and
15 costs of suit.