ASSEMBLY, No. 1271

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)
Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)

Co-Sponsored by:
Assemblywoman Jasey

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.

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

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

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

1. The Legislature hereby finds and declares the following:

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

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

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

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

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 <u>thus</u> is new matter.

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

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

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

g. The Legislature has, from time to time, sought to strengthen and clarify certain provisions in existing law in order to promote local investment in new motor vehicle franchises, to clarify and strengthen certain provisions in existing law and to strengthen the network of independent new motor vehicle franchisees.

h. Despite prior enactments, certain courts have narrowly construed and failed to apply the law to pre-existing motor vehicle franchisees, which is not what the Legislature intended.

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

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

2. Section 5 of P.L.1999, c.45 (C.56:10-7.4) is amended to read as follows:

5. It shall be a violation of P.L.1971, c.356 (C.56:10-1 et seq.) for any motor vehicle franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

a. To impose unreasonable standards of performance or unreasonable facilities, financial, operating or other requirements upon a motor vehicle franchisee.

b. To base the disapproval of the transfer, sale or assignment of a motor vehicle franchise, or any interest therein, on the ground that the proposed transferee is not a natural person.

c. To fail to compensate a motor vehicle franchisee for all reasonable costs incurred by the franchisee in complying with the requirements imposed on the franchisee by the franchisor relating to a product recall.

d. To utilize an arbitrary or unreasonable formula or other calculation or process intended to gauge performance as a basis for making any decision or taking any action governed by P.L.1971, c.356 (C.56:10-1 et seq.).

e. To own or operate or enter into an agreement with a person, other than an existing motor vehicle franchisee, to operate a retail facility for the servicing of motor vehicles, which is authorized to perform warranty service on motor vehicles manufactured or distributed by the motor vehicle franchisor. The establishment, relocation, reopening or reactivation of such a facility pursuant to an agreement with a motor vehicle franchisee shall be subject to the provisions of P.L.1982, c.156 (C.56:10-16 et seq.), except that paragraph (3) of subsection b. of section 8 of that act (C.56:10-23) shall not be applicable. Notice shall be given to motor vehicle franchisees in the same line make or makes within six miles of the proposed retail facility for the servicing of motor vehicles which is authorized to perform warranty service on motor vehicles manufactured or distributed by the motor vehicle franchisor.

f. To require an unconditional release from a motor vehicle franchisee without permitting the franchisee to except from the release any claims for outstanding financial obligations of the motor vehicle franchisor to the motor vehicle franchisee for which payment will not be made at or before the giving of the release.

g. (1) To require or attempt to require a motor vehicle franchisee to order or purchase a new or used motor vehicle, or any accessory or equipment thereof not required by law; or (2) to require or attempt to require a motor vehicle franchise to accept delivery of any motor vehicle, or any accessory or equipment thereof not required by law, which is not as ordered by the motor vehicle franchisee; or (3) to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the motor vehicle franchisee's failure or refusal to purchase, order or accept delivery of any such motor vehicle, accessory or equipment. This subsection shall not prevent a motor vehicle franchisor from requiring that a motor vehicle franchisee carry a representative inventory of models offered for sale by the motor vehicle franchisor.

h. To fail or refuse to sell or offer to sell to all motor vehicle franchisees in a line make every motor vehicle sold or offered for sale to any motor vehicle franchisee of the same line make, or to fail or refuse to sell or offer to sell such motor vehicles to all motor vehicle franchisees at the same price for a comparably equipped motor vehicle, on the same terms, **[**with no differential in discount, allowance, credit or bonus, and**]** or to utilize any device including,

sales promotion plans or programs that result in a lesser actual price. Such motor vehicles must be sold or offered for sale to all such motor vehicle franchisees on reasonable, good faith and non-discriminatory allocation and availability terms. This section shall not be deemed to prohibit the offering of any incentive, sales promotion plan or program, discount, allowance, credit or bonus that is: (1) available to all franchisees of the same line make in this State on a proportionally equal basis; (2) based on objective criteria that are reasonably achievable by the franchisee; (3) if based in whole or in part on the franchisee's new vehicle sales, is offered on a per vehicle basis and determined by the franchisee's actual or reasonably achievable sales volume; and (4) calculated based on a criteria that, upon written request to the franchisor, is made available to the franchisee. **[**However, the**]** The failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause over which the franchisor has no control. A motor vehicle franchisor shall not require a motor vehicle franchisee to purchase unreasonable quantities of advertising materials, purchase special tools not required to properly service a motor vehicle or undertake sales person or service person training unrelated to the motor vehicle or meet unreasonable display requirements as a condition of receiving a motor vehicle.

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

j. To impose or attempt to impose any requirement, limitation or regulation on, or interfere or attempt to interfere with, the manner in which a motor vehicle franchisee utilizes the facilities at which a motor vehicle franchise is operated, including, but not limited to, requirements, limitations or regulations as to the line makes of motor vehicles that may be sold or offered for sale at the facility, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the manner in which the motor vehicle franchisee utilizes his facilities, except that the motor vehicle franchisor may require that the portion of the facilities

allocated to or used for the motor vehicle franchise meets the motor vehicle franchisor's reasonable, written space and volume requirements as uniformly applied by the motor vehicle franchisor. The provisions of this subsection shall not apply if the motor vehicle franchisor and the motor vehicle franchisee voluntarily agree to the requirement and separate and valuable consideration therefor is paid.

k. To require or attempt to require a motor vehicle franchisee, or the owner or landlord of property on which a motor vehicle franchise is operated, to give a motor vehicle franchisor or any person under the control of the motor vehicle franchisor an interest in or option with respect to the real property on which the motor vehicle franchise is operated, to restrict the uses to which the facility at which the motor vehicle franchise is operated may be put during or after the term of the franchise, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the failure or refusal of a motor vehicle franchisee, property owner, or landlord to agree to or comply with any such demand or restriction. Nothing in this subsection shall be deemed to bar a voluntary agreement between a motor vehicle franchisor and a motor vehicle franchisee, or the owner or landlord of property on which a motor vehicle franchise is operated, to give the motor vehicle franchisor or the person under the control of the motor vehicle franchisor an interest in or option with respect to the real property on which a motor vehicle franchise is operated, or to restrict the uses to which the facility at which the motor vehicle franchise is operated is put, provided that separate and valuable consideration is paid for such interest, option or restriction.

l. To require or attempt to require a motor vehicle franchisee to relocate his franchise or to implement any facility or operational modification or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit as a result of the failure or refusal of such motor vehicle franchisee to agree to any such relocation or modification, unless the motor vehicle franchisor can demonstrate that: (1) funds are generally available to the franchisee for the relocation or modification on reasonable terms; and (2) the motor vehicle franchisee will be able, in the ordinary course of business as conducted by such motor vehicle franchisee, to earn a reasonable return on his total investment in such facility or from such operational modification, and the full return of his total investment in such facility or from such operational modifications within 10 years; or (3) the modification is required so that the motor vehicle franchisee can effectively sell and service a motor vehicle offered by the motor vehicle franchisor based on the specific technology of the motor vehicle. This subsection shall not be construed as requiring a motor vehicle franchisor to guarantee that the return as

provided in paragraph (2) of this subsection will be realized. This subsection shall not apply to a discount, allowance, credit or bonus: (1) which is available to a motor vehicle franchisee as of the effective date of P.L. , c. (C.)(pending before the Legislature as this bill); (2) for which the motor vehicle franchisee has entered into a written agreement with the motor vehicle franchisor with respect to facility modifications by the motor vehicle franchisee; and (3) which represents compensation to the motor vehicle franchisee in connection with such agreement for facility modifications.

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

n. To impose or attempt to impose any conditions on the approval of the transfer of a motor vehicle franchise, except to require the written agreement of the transferee to comply with all requirements of the franchise then in effect as provided in section 6 of P.L.1971, c.356 (C.56:10-6); or to refuse to approve a transfer on the basis of a statistical comparison of the proposed transferee with other franchisees, which statistical comparison is arbitrary or unreasonable.

o. To amend or modify the franchise of a motor vehicle franchisee, or any lease or agreement ancillary or collateral to such franchise, including in connection with the renewal of a franchise, if such amendment or modification is not in good faith, is not for good cause, or would adversely and substantially alter the rights,

obligations, investment or return on investment of the motor vehicle franchisee.

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

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

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

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

t. (1) Either directly, or through any financial institution or other person having any commonality of ownership with the motor vehicle franchisor:

(a) to require or attempt to require a motor vehicle franchisee to offer any insurance, warranty, service or repair plan or other such product of the motor vehicle franchisor or of a financial institution or other person having any commonality of ownership with the motor vehicle franchisor;

(b) to prohibit or attempt to prohibit a motor vehicle franchisee from offering an insurance, warranty, service or repair plan or other such product of a person other than the motor vehicle franchisor or

a financial institution or other person having any commonality of ownership with the motor vehicle franchisor;

(c) to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or limit or threaten to deny or limit any benefit to a motor vehicle franchisee that offers to consumers an insurance, warranty, service or repair plan or other such product of a person other than the motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor, either exclusively or along with a similar product offered by the motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor; or

(d) to offer any finance terms to a consumer for an insurance, warranty, service or repair plan or other such product offered by the motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor that is not offered for, or is different from, any finance terms available from such motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor at the same time for a similar product of a person other than the motor vehicle franchisor or financial institution or other person with any commonality of ownership with the motor vehicle franchisor.

(2) "Commonality of ownership" includes, but is not limited to, parents, subsidiaries, affiliates and persons with substantially common ownership, operational control or material coordinated business activities.

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

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

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

a. any unused, undamaged and unsold vehicles **[**from**]** of the current model year and all **[**prior year inventories**]** model years prior thereto with 500 miles or less registered on the odometer, or recreational vehicles that were acquired from the motor vehicle franchisor within 12 months before the effective date of the termination, and any unused, undamaged and unsold parts, supplies and accessories, listed in the franchisor's current price catalog and acquired from the franchisor or a source approved or recommended by the franchisor at the franchisee's net acquisition cost therefor, including transportation, delivery and similar charges paid by the

franchisee, plus the franchisee's cost of handling, packing, loading and transporting the **[**vehicle inventory**]** vehicles, parts, supplies and accessories for return to the franchisor. For the purposes of this subsection, **[**vehicle inventory**]** vehicles, parts, supplies and accessories used by the franchisee or its employees for display, demonstration or other marketing purposes shall be deemed to be unused or unsold.

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

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

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

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

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

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

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

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

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

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

5. It shall be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor vehicle franchisor to exercise a right of first refusal or other right to acquire a motor vehicle franchise **[**from a motor vehicle franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the motor vehicle franchise or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the motor vehicle

franchise】, except if the motor vehicle franchisor has a formal written program to increase the number of female or minority franchisees and a female or minority will obtain over 51% ownership and control of the motor vehicle franchise over a reasonable period of time, not to exceed 10 years, upon the exercise of the right of first refusal or other right to acquire a motor vehicle franchise by the motor vehicle franchisor. For purposes of this subsection, "minority" shall have the same meaning as in subsection c. of section 8 of P.L.1982, c.156 (C.56:10-23).
(cf: P.L.1993, c.189, s.5)

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

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

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

b. reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by him in evaluating and investigating the motor vehicle franchise and negotiating and pursuing the acquisition of the motor vehicle franchise prior to the motor vehicle franchisor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. For purposes of this subsection, expenses to evaluate and investigate the motor vehicle franchise means, in addition to any other expenses associated with the evaluation and investigation of the motor vehicle franchise, legal and accounting expenses, and expenses associated with the evaluation and investigation of any real property on which the motor vehicle franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of such real property by the acquiring transferee. Upon reimbursement, any title reports, or other reports or studies received by the acquiring transferee as a result of the evaluation or investigation of the motor vehicle franchise or the real property on which the motor vehicle franchise is conducted shall be provided to the motor vehicle franchisor. The acquiring transferee shall submit an itemized list of the expenses to be reimbursed along with supporting documents, if any, to the

motor vehicle franchisor no later than 30 days after receipt of a written request for same from the motor vehicle franchisor. The motor vehicle franchisor shall make payment within 30 days of receipt of the itemized list.

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

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

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

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

a. The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, in an amount equal to the prevailing retail price charged by such motor vehicle franchisee for such services and parts in circumstances where such services are rendered or such part supplied other than pursuant to warranty; provided that such motor vehicle franchisee's prevailing retail price is not unreasonable when compared with that of the holders of motor vehicle franchises from the same motor vehicle franchisor for identical merchandise or services in the geographic area in which the motor vehicle franchisee is engaged in business.

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

c. The motor vehicle franchisor shall reimburse the motor vehicle franchisee pursuant to subsection a. of this section, without deduction, for services performed on, and parts supplied for, a motor vehicle by the motor vehicle franchisee in good faith and in accordance with generally accepted standards, notwithstanding any requirement that the motor vehicle franchisor accept the return of the motor vehicle or make payment to a consumer with respect to the motor vehicle pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).

d. For the purposes of this section, the "prevailing retail price" charged by: (1) a motor vehicle franchisee for parts means the price paid by the motor vehicle franchisee for those parts, including all shipping and other charges, multiplied by the sum of 1.0 and the

franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchisor and sold at retail. The motor vehicle franchisee may establish average percentage markup under this section by submitting to the motor vehicle franchisor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration subject to audit of the submitted repair orders by the motor vehicle franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, parts covered by subsection e. of this section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchisor shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year; and (2) a recreational motor vehicle franchisee for parts means actual wholesale cost, plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the motor vehicle franchisor.

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

f. The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and services rendered under a warranty within 30 days after approval of a claim for reimbursement. All claims for reimbursement shall be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee shall be notified in writing of the grounds for the disapproval. No claim that has been approved and paid shall be

charged back to the motor vehicle franchisee unless it can be shown that the claim was false or fraudulent, that the services were not properly performed, that the parts or services were unnecessary to correct the defective condition, or that the motor vehicle franchisee failed to reasonably substantiate the claim in accordance with reasonable written requirements of the motor vehicle franchisor, provided that the motor vehicle franchisee had been notified of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose. A motor vehicle franchisor shall not audit a claim after the expiration of 12 months following the **[**payment**]** receipt of the claim unless the motor vehicle franchisor has reasonable grounds to believe that the claim was fraudulent.

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

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

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

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

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

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

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

i. A motor vehicle franchisor shall make payment to a motor vehicle franchisee pursuant to incentive, bonus, sales, performance or other programs within 30 days after receipt of a claim from the motor vehicle franchisee. When a claim is disapproved, the motor vehicle franchisee shall be notified in writing of the grounds for disapproval. No claim shall be disapproved unless it can be shown that the claim was false or fraudulent, or that the motor vehicle franchisee failed to reasonably substantiate the claim in accordance

with reasonable written requirements of the motor vehicle franchisor, provided that the motor vehicle franchisee had been notified of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose. A motor vehicle franchisor shall not audit a claim after the expiration of 12 months following ⟦the payment⟧ receipt of the claim.

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

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

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

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

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

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

d. "Motor vehicle" or "new motor vehicle" means only a newly manufactured motor vehicle, except a nonconventional type of motor vehicle, and includes all such vehicles propelled otherwise than by muscular power, and motorcycles, trailers and tractors, excepting such vehicles as run only upon rails or tracks and motorized bicycles; a "nonconventional type of motor vehicle" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway;

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

f. "Relevant market area" means a geographic area 14 miles in radius from a proposed franchise or business as it relates to the

grant, reopening or reactivation of a franchise or the establishment, reopening or reactivation of a business; and a geographic area 8 miles in radius from a relocated franchise or business, but if there are no existing franchisees in the same line make within an 8-mile radius of the relocated franchise or business, then the relevant market area includes the next closest existing franchisee in the same line make within a 14-mile radius and, if such franchisee files a protest, or has any commonality of ownership with the franchise to be relocated, then the relevant market area includes the two closest existing franchisees in the same line make within such 14-mile radius. Determining whether an existing franchisee is within the relevant market area of a proposed or relocated franchise or business, and ascertaining any other measurement of distance, shall be made by measuring the distance between the nearest surveyed boundary line of the existing franchise and the nearest surveyed boundary line of the proposed or relocated franchise or business.
(cf: P.L.2011, c.66, s.6)

8. (New section) a. An action may be maintained in the Superior Court to prevent, restrain or enjoin a violation of R.S.39:10-19, or any regulation promulgated thereunder, by any person who is engaged in the business of buying, selling or dealing in motor vehicles in this State, including engaging in brokering or activity as a leasing dealer. An action brought pursuant to this section may be instituted by any dealer injured by a violation. If, in that action, a violation is established, the court shall enjoin and restrain, or otherwise prohibit, that violation. In that action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by that plaintiff.

b. In the event that no injunctive relief is sought or required, any dealer injured by a violation may maintain an action in the Superior Court for damages and costs of suit, including reasonable attorneys fees.

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

b. In any such action, the court may:

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

(2) award damages to the motor vehicle franchisee; and

(3) provided that the motor vehicle franchisee has given pre-action notice of the violation to its franchisor and a period of not

less than 30 days to cure or cease the violation, the franchisor fails to cease the violation and effectuate a cure within that period of time without good cause, and the violation results in injury to the business or competitiveness of the motor vehicle franchisee, award up to threefold the damages sustained by the motor vehicle franchisee.

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

10. This act shall take effect immediately and shall apply to all motor vehicle franchise agreements in effect on or after the effective date of this act, but shall not apply retroactively to any cause of action that shall have arisen prior to that effective date.

STATEMENT

This bill, revises New Jersey's "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), which serves to protect consumers, motor vehicle franchisees (dealers) and the public from arbitrary conduct by motor vehicle franchisors (manufacturers). The bill also allows a manufacturer, or a "franchisor" as defined in the "Franchise Practices Act," to buy from or sell directly to consumers a zero emission vehicle (ZEV) at a maximum of four locations in New Jersey.

The "Franchise Practices Act" prohibits motor vehicle franchisors from engaging in various business practices in their dealings with their motor vehicle franchisees. The bill prohibits a franchisor from utilizing any device including sales promotion plans or programs that result in a lesser actual price to franchisees. The bill clarifies that this provision shall not prohibit the offering of any incentive, sales promotion plan or program, discount, allowance, credit or bonus that is: (1) available to all franchisees of the same line make in this State on a proportionally equal basis; (2) based on objective criteria that are reasonably achievable by the franchisee; (3) if based in whole or in part on the franchisee's new vehicle sales, is offered on a per vehicle basis or determined by the franchisee's actual or reasonably achievable sales volume; and (4) calculated based on a criteria that, upon written request to the franchisor, is made available to the franchisee.

In regard to a transfer of a motor vehicle franchise, the bill clarifies that the franchisor is prohibited from imposing or attempting to impose any conditions on the approval of the transfer of a motor vehicle franchise, except to require the written agreement of the transferee to comply with all requirements of the franchise then in effect as provided in section 6 of P.L.1971, c.356 (C.56:10-6). The bill also prohibits the franchisor from refusing to approve a transfer on the

basis of a statistical comparison of the proposed transferee with other franchisees, which statistical comparison is arbitrary or unreasonable.

The bill prohibits a motor vehicle franchisor from:

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

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

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

(4) offering any finance terms to a consumer for an insurance, warranty, service or repair plan or other product offered by the motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor, that is not offered for, or is different from, any finance terms available from such motor vehicle franchisor or financial institution or other person having any commonality of ownership with the motor vehicle franchisor at the same time for a similar product of a person other than the motor vehicle franchisor or financial institution or other person with any commonality of ownership with the motor vehicle franchisor; or

(5) failing to prevent any person, other than a motor vehicle franchisee or a bona fide employee of a motor vehicle franchisee employed at the franchisee's licensed business premises, from selling, offering to sell, or participating in the sale or offer to sell of the motor vehicle franchisor's new motor vehicles.

Under current law, a franchisor may, under certain circumstances, exercise a right of first refusal for a motor vehicle dealer to acquire a motor vehicle franchise. This bill revises current law and specifies that the only circumstance under which a franchisor may exercise a right of first refusal is if the motor vehicle franchisor has a formal written program to increase the number of minority franchisees and a minority will obtain over 51% ownership and control of the motor vehicle franchise over a reasonable period of time, not to exceed 10

years, upon the exercise of the right of first refusal or other right to acquire a motor vehicle franchise by the motor vehicle franchisor.

The bill prohibits a franchisor from charging back monies to a franchisee without first notifying the franchisee of its intent by giving at least 30 days written notice of that intent, and by giving the franchisee an opportunity to contest the proposed charge back.

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

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

The bill provides for a cause of action in the Superior Court to prevent, restrain or enjoin a violation of R.S. 39:10-19, or any regulation promulgated thereunder, by any person who is engaged in the business of buying, selling or dealing in motor vehicles in this State, including engaging in brokering or activity as a leasing dealer.

The bill clarifies that a court may award damages to a motor vehicle franchisee in an action instituted by the franchisee against a franchisor for violation of the "Franchise Practices Act" in the Superior Court of the State of New Jersey. The bill further revises the circumstances in which treble damages may be awarded to a franchisee to allow treble damages when: (1) the motor vehicle franchisee has given pre-action notice of the violation to its franchisor and a period of not less than 30 days to cure or cease the violation; (2) the franchisor fails to cease the violation and effectuate a cure within that period of time without good cause; and (3) the violation results in injury to the business or competitiveness of the motor vehicle franchisee.

The effective date specifies that the bill's provisions will not apply retroactively to any cause of action that arose prior to the effective date.