

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

P.L.2011, CHAPTER 66, *approved May 4, 2011*
Assembly, No. 3722 (*First Reprint*)

1 AN ACT concerning motor vehicle franchises and 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 2 of P.L.1989, c.24 (C.56:10-7.3) is amended to read
9 as follows:

10 2. a. It shall be a violation of the "Franchise Practices Act,"
11 P.L. 1971, c.356 (C.56:10-1 et seq.) for a motor vehicle franchisor
12 to require a motor vehicle franchisee to agree to a term or condition
13 in a franchise, or in any lease or agreement ancillary or collateral to
14 a franchise, [as a condition to the offer, grant or renewal of the
15 franchise, lease or agreement,] which:

16 (1) Requires the motor vehicle franchisee to waive trial by jury
17 in actions involving the motor vehicle franchisor; or

18 (2) Specifies the jurisdictions, venues or tribunals in which
19 disputes arising with respect to the franchise, lease or agreement
20 shall or shall not be submitted for resolution or otherwise prohibits
21 a motor vehicle franchisee from bringing an action in a particular
22 forum otherwise available under the law of this State; or

23 (3) Requires that disputes between the motor vehicle franchisor
24 and motor vehicle franchisee be submitted to arbitration or to any
25 other binding alternate dispute resolution procedure; provided,
26 however, that any franchise, lease or agreement may authorize the
27 submission of a dispute to arbitration or to binding alternate dispute
28 resolution if the motor vehicle franchisor and motor vehicle
29 franchisee voluntarily agree to submit the dispute to arbitration or
30 binding alternate dispute resolution at the time the dispute arises.

31 b. For the purposes of this section, it shall be presumed that a
32 motor vehicle franchisee has been required to agree to a term or
33 condition in violation of this section as a condition of the offer,
34 grant or renewal of a franchise or of any lease or agreement
35 ancillary or collateral to a franchise, if the motor vehicle franchisee,
36 at the time of the offer, grant or renewal of the franchise, lease or
37 agreement is not offered the option of an identical franchise, lease

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted February 17, 2011.

1 or agreement without the term or condition proscribed by this
2 section.

3 c. In addition to any remedy provided in the "Franchise
4 Practices Act," any term or condition included in a franchise, or in
5 any lease or agreement ancillary or collateral to a franchise, in
6 violation of this section may be revoked by the motor vehicle
7 franchisee by written notice to the motor vehicle franchisor within
8 60 days of the motor vehicle franchisee's receipt of the fully
9 executed franchise, lease or agreement. This revocation shall not
10 otherwise affect the validity, effectiveness or enforceability of the
11 franchise, lease or agreement.

12 (cf: P.L.1989, c.24, s.2)

13

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

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

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

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

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

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

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

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

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

21 h. To fail or refuse to sell or offer to sell to all motor vehicle
22 franchisees in a line make every motor vehicle sold or offered for
23 sale to any motor vehicle franchisee of the same line make, or to
24 fail or refuse to sell or offer to sell such motor vehicles to all motor
25 vehicle franchisees at the same price for a comparably equipped
26 motor vehicle, on the same terms, with no differential in discount,
27 allowance, credit or bonus, and on reasonable, good faith and non-
28 discriminatory allocation and availability terms. However, the
29 failure to deliver any such motor vehicle shall not be considered a
30 violation of this section if the failure is not arbitrary and is due to a
31 lack of manufacturing capacity or to a strike or labor difficulty, a
32 shortage of materials, a freight embargo or other cause over which
33 the franchisor has no control. A motor vehicle franchisor shall not
34 require a motor vehicle franchisee to purchase unreasonable
35 quantities of advertising materials, purchase special tools not
36 required to properly service a motor vehicle or undertake sales
37 person or service person training unrelated to the motor vehicle or
38 meet unreasonable display requirements as a condition of receiving
39 a motor vehicle.

40 i. Unless compelled by law or legal process, (1) if the
41 customer has objected thereto in writing, to require a motor vehicle
42 franchisee to publish, release, convey or otherwise provide
43 information obtained with respect to any customers, contracts,
44 products, services or other transactions of the motor vehicle
45 franchisee which is not necessary for the motor vehicle franchisor
46 to meet its obligations to consumers or the motor vehicle
47 franchisee, including vehicle recalls or other requirements imposed
48 by State or federal law, or for complying with the duties or

1 obligations of the respective parties under the franchise; or (2) to
2 release such information which has been provided to it by the motor
3 vehicle franchisees to any third party.

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

22 k. To require or attempt to require a motor vehicle franchisee,
23 or the owner or landlord of property on which a motor vehicle
24 franchise is operated, to give a motor vehicle franchisor or any
25 person under the control of the motor vehicle franchisor an interest
26 in or option with respect to the real property on which the motor
27 vehicle franchise is operated, to restrict the uses to which the
28 facility at which the motor vehicle franchise is operated may be put
29 during or after the term of the franchise, or to take or withhold or
30 threaten to take or withhold any action, impose or threaten to
31 impose any penalty, or deny or threaten to deny any benefit, as a
32 result of the failure or refusal of a motor vehicle franchisee,
33 property owner, or landlord to agree to or comply with any such
34 demand or restriction. Nothing in this subsection shall be deemed
35 to bar a voluntary agreement between a motor vehicle franchisor
36 and a motor vehicle franchisee, or the owner or landlord of property
37 on which a motor vehicle franchise is operated, to give the motor
38 vehicle franchisor or the person under the control of the motor
39 vehicle franchisor an interest in or option with respect to the real
40 property on which a motor vehicle franchise is operated, or to
41 restrict the uses to which the facility at which the motor vehicle
42 franchise is operated is put, provided that ¹[fair value] separate and
43 valuable consideration¹ is paid for such interest, option or
44 restriction.

45 l. To require or attempt to require a motor vehicle franchisee
46 to relocate his franchise or to implement any facility or operational
47 modification or to take or withhold or threaten to take or withhold
48 any action, impose or threaten to impose any penalty, or deny or

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

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

42 n. To impose or attempt to impose any conditions on the
43 approval of the transfer of a motor vehicle franchise, except as
44 provided in section 6 of P.L. 1971, c.356 (C.56:10-6).

45 o. To amend or modify the franchise of a motor vehicle
46 franchisee, or any lease or agreement ancillary or collateral to such
47 franchise, including in connection with the renewal of a franchise, if

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

5 p. To take or withhold or threaten to take or withhold any
6 action, impose or threaten to impose any penalty, or deny or
7 threaten to deny any benefit, because the motor vehicle franchisee
8 sold or leased a motor vehicle to a customer who exported the
9 vehicle to a foreign country or who resold the vehicle, unless the
10 motor vehicle franchisor can establish that the motor vehicle
11 franchisee '[had actual knowledge] knew or reasonably should
12 have known', prior to the sale or lease, that the customer intended
13 to export or resell the motor vehicle; provided, however, that it shall
14 be '[conclusively]' presumed that the motor vehicle franchisee
15 '[had no such actual knowledge] did not know or should not have
16 reasonably known that the vehicle would be exported' if the vehicle
17 is titled or 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 (cf: P.L.1999, c.45, s.5)

42

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

45 3. Within 90 days of the termination, cancellation or
46 nonrenewal of a motor vehicle franchise as provided for in section 5
47 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or

1 nonrenewal of a motor vehicle franchise by the motor vehicle
2 franchisee or by mutual agreement of the motor vehicle franchisee
3 and motor vehicle franchisor [, or the termination, cancellation or
4 nonrenewal of a motor vehicle franchise as a result of a termination
5 or cessation of a part of the franchisor's business operations
6 throughout the United States, which is not a part of any change in
7 the ownership, operation or control of all or any part of the
8 franchisor's business], the motor vehicle franchisor shall repurchase
9 from the motor vehicle franchisee:

10 a. any unused, undamaged and unsold vehicles from current
11 and 'all' prior year [inventory] inventories' [regardless of mileage]
12 with 500 miles or less registered on the odometer, or recreational
13 vehicles that were acquired from the motor vehicle franchisor
14 within 12 months before the effective date of the termination', and
15 any unused, undamaged and unsold parts, supplies and accessories,
16 listed in the franchisor's current price catalog and acquired from the
17 franchisor or a source approved or recommended by the franchisor
18 at the franchisee's net acquisition cost therefore, including
19 transportation, delivery and similar charges paid by the franchisee,
20 plus the franchisee's cost of handling, packing, loading and
21 transporting the vehicle inventory, parts, supplies and accessories
22 for return to the franchisor. For the purposes of this subsection,
23 vehicle inventory, parts, supplies and accessories used by the
24 franchisee or its employees for display, demonstration or other
25 marketing purposes shall be deemed to be unused or unsold.

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

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

31 (2) the greater of the fair market value or 75% of the
32 franchisee's net acquisition cost if the item was acquired more than
33 12 but less than 24 months immediately preceding the effective date
34 of the termination, cancellation or nonrenewal;

35 (3) the greater of the fair market value or 50% of the
36 franchisee's net acquisition cost if the item was acquired more than
37 24 but less than 36 months immediately preceding the effective date
38 of the termination, cancellation or nonrenewal;

39 (4) the greater of the fair market value or 25% of the
40 franchisee's net acquisition cost if the item was acquired more than
41 36 but less than 60 months immediately preceding the effective date
42 of the termination, cancellation or nonrenewal; or

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

1 Payment shall be made by the motor vehicle franchisor within 30
2 days after the [tender of the property by the motor vehicle
3 franchisee free and clear of liens and encumbrances] date on which
4 the motor vehicle franchisee notifies the motor vehicle franchisor in
5 writing that the property is available for repurchase.

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

9 (c.f.: P.L.1999, c.45, s.2)

10

11 4. Section 4 of P.L.1991, c.459 (C.56:10-13.3) is amended to
12 read as follows:

13 4. a. It shall be a violation of the "Franchise Practices Act,"
14 P.L.1971, c.356 (C.56:10-1 et seq.) for any motor vehicle
15 franchisor, directly or indirectly, through any officer, agent or
16 employee, to terminate, cancel or fail to renew a motor vehicle
17 franchise as the result of:

18 (1) any change in the ownership, operation or control of all or
19 any part of the franchisor's business, whether by sale or transfer of
20 the assets, corporate stock or other equity interest; assignment;
21 merger; consolidation; combination; reorganization; restructuring;
22 redemption; operation of law or otherwise; or

23 (2) the termination, suspension or cessation of all or any part of
24 the franchisor's business operations ¹due to the discontinuance of a
25 line make or otherwise¹, [other than a termination or cessation of a
26 part of the franchisor's business operations throughout the United
27 States which is not part of any change in the ownership, operation
28 or control of all or any part of the franchisor's business;] unless the
29 franchisor complies with the provisions of subsections b., c., d. and
30 e. of this section or unless the franchisor, or another motor vehicle
31 franchisor, pursuant to an agreement with the franchisor, offers the
32 franchisee a replacement motor vehicle franchise which takes effect
33 no later than the date of the termination, cancellation or nonrenewal
34 of the franchisee's existing motor vehicle franchise.

35 b. Within 90 days of the effective date of the termination,
36 cancellation or nonrenewal, the motor vehicle franchisor shall
37 compensate the motor vehicle franchisee in an amount at least
38 equivalent to the fair market value of the motor vehicle franchise on

39 (1) the day before the date the franchisor announces the action
40 which results in the termination, cancellation or nonrenewal; or

41 (2) the date on which the notice of termination, cancellation or
42 nonrenewal is issued, whichever amount is higher.

43 c. The franchisor shall authorize the franchisee to continue
44 servicing and supplying parts, including service and parts pursuant
45 to a warranty issued by the franchisor, for any goods or services
46 marketed by the franchisee pursuant to the motor vehicle franchise
47 for a period of not less than five years from the effective date of the

1 termination, cancellation or nonrenewal and shall continue to
2 reimburse the franchisee for warranty parts and service in an
3 amount and on terms no less favorable than those in effect prior to
4 the termination, cancellation or nonrenewal and in accordance with
5 section 3 of P.L.1977, c.84 (C.56:10-15).

6 d. The franchisor shall continue to supply the franchisee with
7 replacement parts for any goods or services marketed by the
8 franchisee pursuant to the motor vehicle franchise for a period of
9 not less than five years from the effective date of the termination,
10 cancellation or nonrenewal, at the same price and terms as the
11 franchisor supplied them to the remaining franchisees of the
12 franchisor, or if there are no such remaining franchisees, at a price
13 and on terms no less favorable than those in effect prior to the
14 termination, cancellation or nonrenewal.

15 e. If the franchisee continues to service motor vehicles and sell
16 parts after the termination, cancellation or nonrenewal, as provided
17 for in subsections c. and d. of this section, the compensation paid to
18 the franchisee pursuant to subsection b. of this section shall be
19 reduced to the extent, if any, of the fair market value of such rights
20 as of the effective date of the termination, cancellation or
21 nonrenewal.

22 (cf: P.L.1991, c.459, s.4)

23
24 5. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read
25 as follows:

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

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

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

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

10 d. For the purposes of this section, the "prevailing retail price"
11 charged by ¹: (1)¹ a motor vehicle franchisee for parts means the
12 price paid by the motor vehicle franchisee for those parts, including
13 all shipping and other charges, multiplied by the sum of 1.0 and the
14 franchisee's average percentage markup over the price paid by the
15 motor vehicle franchisee for parts purchased by the motor vehicle
16 franchisee from the motor vehicle franchisor and sold at retail. The
17 motor vehicle franchisee may establish average percentage markup
18 under this section by submitting to the motor vehicle franchisor 100
19 sequential customer paid service repair orders or 90 days of
20 customer paid service repair orders, whichever is less, covering
21 repairs made no more than 180 days before the submission, and
22 declaring what the average percentage markup is. The average
23 percentage markup so declared shall go into effect 30 days
24 following the declaration subject to audit of the submitted repair
25 orders by the motor vehicle franchisor and adjustment of the
26 average percentage markup based on that audit. Only retail sales
27 not involving warranty repairs, parts covered by subsection e. of
28 this section, or parts supplied for routine vehicle maintenance, shall
29 be considered in calculating average percentage markup. No motor
30 vehicle franchisor shall require a motor vehicle franchisee to
31 establish average percentage markup by a methodology, or by
32 requiring information, that is unduly burdensome or time
33 consuming to provide, including, but not limited to, part by part or
34 transaction by transaction calculations. A motor vehicle franchisee
35 shall not request a change in the average percentage markup more
36 than twice in one calendar year ¹; (2) a recreational motor
37 vehicle franchisee for parts means actual wholesale cost, plus a
38 minimum 30% handling charge and any freight costs incurred to
39 return the removed parts to the motor vehicle franchisor¹.

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

1 franchisor shall reimburse the motor vehicle franchisee in the
2 amount of 30% of what the motor vehicle franchisee would have
3 paid the motor vehicle franchisor for the assembly if the assembly
4 had not been supplied by the franchisor other than by the sale of
5 that assembly to the motor vehicle franchisee.

6 f. The motor vehicle franchisor shall reimburse the motor
7 vehicle franchisee for parts supplied and services rendered under a
8 warranty within 30 days after approval of a claim for
9 reimbursement. All claims for reimbursement shall be approved or
10 disapproved within 30 days after receipt of the claim by the motor
11 vehicle franchisor. When a claim is disapproved, the motor vehicle
12 franchisee shall be notified in writing of the grounds for the
13 disapproval. No claim that has been approved and paid shall be
14 charged back to the motor vehicle franchisee unless it can be shown
15 that the claim was false or fraudulent, that the services were not
16 properly performed, that the parts or services were unnecessary to
17 correct the defective condition, or that the motor vehicle franchisee
18 failed to reasonably substantiate the claim in accordance with
19 reasonable written requirements of the motor vehicle franchisor,
20 provided that the motor vehicle franchisee had been notified of the
21 requirements prior to the time the claim arose and the requirements
22 were in effect at the time the claim arose. A motor vehicle
23 franchisor shall not audit a claim after the expiration of ~~two years~~
24 ¹~~six~~ 12 ¹months following the payment of the claim unless the
25 motor vehicle franchisor has reasonable grounds to believe that the
26 claim was fraudulent.

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

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

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

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

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

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

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

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

22 (cf: P.L.1999, c.45, s.3)

23
24 6. Section 1 of P.L.1982, c.156 (C.56:10-16) is amended to
25 read as follows:

26 1. a. "Committee" means the Motor Vehicle Franchise
27 Committee established in section 2 of this act;

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

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

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

46 e. "Motor vehicle franchisor" means a natural person,
47 corporation, partnership or entity engaged in the business of
48 manufacturing, assembling or distributing new motor vehicles, who

1 will under normal business conditions during the year, manufacture,
2 assemble or distribute at least 10 new motor vehicles;

3 f. "Relevant market area" means a geographic area **[8]** 14
4 miles in radius from a proposed franchise or business as it relates to
5 the grant, reopening or reactivation of a franchise or the
6 establishment, reopening or reactivation of a business; and a
7 geographic area 8-miles in radius from a relocated franchise or
8 business, but if there are no existing franchisees in the same line
9 make within an 8-mile radius of the **[proposed]** relocated franchise
10 or business, then the relevant market area includes the next closest
11 existing franchisee in the same line make within a 14-mile radius.
12 Determining whether an existing franchisee is within the relevant
13 market area of a proposed or relocated franchise or business, and
14 ascertaining any other measurement of distance, shall be made by
15 measuring the distance between the nearest surveyed boundary line
16 of the existing franchise and the nearest surveyed boundary line of
17 the proposed or relocated franchise or business.

18 (c.f. P.L.1982, c.156, s.1)

19

20 7. Section 3 of P.L.1982, c.156 (C.56:10-18) is amended to
21 read as follows:

22 3. **[No]** A motor vehicle franchisor **[shall]** may grant,
23 relocate, reopen or reactivate a franchise or establish, relocate,
24 reopen or reactivate a business, for the purpose of doing business on
25 the retail level, only if the franchise or business will not be
26 injurious as determined pursuant to section 8 of **[this act]** P.L.1982,
27 c.156 (C.56:10-23).

28 (cf: P.L.1982, c.156, s.3)

29

30 8. Section 4 of P.L.1982, c.156 (C.56:10-19) is amended to
31 read as follows:

32 4. A motor vehicle franchisor shall give its existing franchisees
33 in the same line make within **[the relevant market area]** 20 miles of
34 the proposed location for the proposed franchise or business as
35 calculated using the methodology set forth in subsection f. of
36 section 1 of P.L.1982, c.156 (C.56:10-16) not less than 90 days
37 advance written notice of its intention to grant, relocate, reopen or
38 reactivate a franchise of the same line make or establish, relocate,
39 reopen or reactivate a business. Any franchisee **[who is entitled to**
40 receive the written notice] in the relevant market area of the
41 proposed franchise or business may file with the committee a
42 protest to the granting, relocating, reopening or reactivation of the
43 franchise or the establishment, relocation, reopening or reactivation
44 of the business within 30 days of receipt of the notice or 30 days
45 after the end of any appeal procedure provided by the motor vehicle
46 franchisor, whichever is later. Any motor vehicle franchisee
47 entitled to file a protest that does not receive the written notice from

1 the motor vehicle franchisor and consequently does not file a
2 protest may file an action in the Superior Court against the motor
3 vehicle franchisor and the court shall enjoin and nullify the grant,
4 relocation, reopening or reactivation of the franchise or the
5 establishment, relocation, reopening or reactivation of the business,
6 regardless of whether a protest by such motor vehicle franchisee
7 would have been successful. In any such action, a successful motor
8 vehicle franchisee shall be entitled to an award of reasonable
9 attorneys' fees, court costs and expenses. A protest shall set forth
10 all reasons for objecting to the granting, reopening, or reactivation
11 of a franchise and shall be accompanied by a concise statement of
12 the facts and supporting affidavits for all issues raised in the
13 protest. When a protest is filed, the chairman of the committee
14 shall notify the motor vehicle franchisor and the franchisee in
15 writing that it has been filed and shall forthwith determine either to
16 transmit the protests to the Office of Administrative Law for
17 hearing or to conduct a hearing directly.

18 (cf: P.L.1982, c.156, s.4)

19

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

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

25 a. Permit an existing franchisee to relocate his franchise within
26 two miles of the franchisee's existing franchise location, except that
27 a franchise may not be relocated pursuant to this subsection unless
28 at least five years have elapsed since any previous relocation
29 pursuant to this subsection;

30 b. Reopen or reactivate a franchise or business which has not
31 been in operation for a period of two years or less at a site within
32 two miles of the prior site, provided that the rights accorded to the
33 franchisor herein shall not apply to a successor or assignee of the
34 franchisor of the franchise or business at the time the franchise or
35 business was closed or deactivated; or

36 c. Permit the purchaser of a controlling interest in the shares or
37 substantially all of the operating assets of an existing franchise to
38 relocate the place of business of the franchise within two miles of
39 the previously approved franchise location within 180 days of the
40 date of purchase.

41 (cf: P.L.1993, c.189, s.3)

42

43 10. Section 6 of P.L.1982, c.156 (C.56:10-21) is amended to
44 read as follows:

45 6. The hearing referred to in section 4 of **[this act]** P.L.1982,
46 c.156 (C.56:10-19) shall be conducted as a contested case in
47 accordance with the provisions of the "Administrative Procedure
48 Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and P.L.1978, c.67

1 (C.52:14F-1 et seq.). **【The committee shall make its final**
2 **determination within 120 days after the filing of the protest unless**
3 **the time is extended by the committee for good cause shown.】** The
4 franchisor shall have the burden of proving by a preponderance of
5 the evidence that the proposed franchise or business will not be
6 injurious. The testimony taken at the hearing shall be under oath
7 and recorded verbatim, but the parties shall not be bound by the
8 rules of evidence. True copies of any transcript and of any other
9 record made of or at the hearing shall be furnished to any party
10 upon request and at that party's expense. The committee may
11 subpoena witnesses and compel their attendance, administer oaths
12 and require the production for examination of any books or papers
13 relating to any matter involved in the hearing. The committee, at
14 the request of any party, may subpoena and compel the attendance of
15 such witnesses as the party may designate and require the
16 production for examination of any books or papers relating to any
17 matter involved in the hearing.

18 (cf: P.L.1982, c.156, s.6)

19

20 11. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to
21 read as follows:

22 8. a. **【In determining whether the】** The grant, **【relocation,】**
23 reopening or reactivation of a franchise or establishment,
24 **【relocation,】** or the reopening or reactivation of a business **【will】**
25 shall be deemed injurious to existing franchisees or to the public
26 interest【, the committee may consider, but shall not be limited to
27 considering the following】 unless the franchisor proves, by a
28 preponderance of the evidence, that:

29 (1) The **【effect that the】** proposed franchise or business would
30 **【have on】** materially enhance the **【provision】** availability of stable,
31 adequate and reliable sales and service to purchasers of vehicles in
32 the same line make in the **【relevant】** market area served by the
33 franchisees entitled to notice;

34 (2) The **【effect that the】** proposed franchise or business would
35 **【have on】** not affect the stability of existing franchisees in the same
36 line make **【in the relevant market area】;**

37 (3) **【Whether the】** The existing franchisees in the same line
38 make **【in the relevant market area are providing】** have not provided
39 adequate **【and convenient consumer service for motor vehicles of**
40 **the line make in the relevant market area, which shall include】**
41 representation of the line make in their market areas for a period of
42 at least two years based on the **【adequacy】** availability of motor
43 vehicle sales and service facilities, equipment, supply of motor
44 vehicle parts and qualified service personnel;

1 (4) The [effect on a relocating dealer of a denial of its
2 relocation into the relevant market area] franchisor's action is in
3 good faith.

4 b. In determining whether the grant, relocation, reopening or
5 reactivation of a franchise or establishment, relocation, reopening or
6 reactivation of a business will be injurious to existing franchisees or
7 to the public interest, it shall be conclusively presumed that the
8 proposed grant, relocation, reopening or reactivation of the
9 franchise or establishment, relocation, reopening or reactivation of
10 the business will be injurious to existing franchisees or to the public
11 interest if:

12 (1) for the 24-month period prior to notice pursuant to section 4
13 of P.L.1982, c.156 (C.56:10-19), the average market penetration of
14 the franchisees given notice pursuant to section 4 of P.L.1982,
15 c.156 (C.56:10-19), in the area of primary responsibility or territory
16 assigned to such franchises, is at least equal to the average market
17 penetration of all franchisees in the same line make in [the zone,
18 district, region or other similar geographic designation, other than a
19 national geographic designation, used by the motor vehicle
20 franchisor into which the proposed franchise or business will be
21 assigned, it being the intent of this paragraph (1) of this subsection
22 b. not to compare the franchisees given notice to the national
23 market penetration of the motor vehicle franchisor] this State;

24 (2) the proposed franchise or business is likely to cause not less
25 than a 25% reduction in new vehicle sales or not less than a 25%
26 reduction in gross income for the protesting franchisee;

27 (3) the proposed franchise or business will not operate a full
28 service franchise or business at the proposed location; or

29 (4) an owner or operator of the proposed franchise or business
30 has engaged in materially unfair or deceptive business practices
31 with respect to a motor vehicle franchise or business.

32 c. The presumption in subsection b. of this section shall not
33 apply to the grant, reopening or reactivation of a franchise or to the
34 establishment, reopening or reactivation of a business if the
35 proposed franchisee is a minority or a woman. For the purposes of
36 this subsection, "minority" means a person who is:

37 (1) Black, which is a person having origins in any of the black
38 racial groups in Africa; or

39 (2) Hispanic, which is a person of Spanish or Portuguese culture
40 with origins in Mexico, South or Central America, or the Caribbean
41 Islands, regardless of race; or

42 (3) Asian American, which is a person having origins in any of
43 the original peoples of the Far East, Southeast Asia, Indian
44 Subcontinent, Hawaii, or the Pacific Islands; or

45 (4) American Indian or Alaskan native, which is a person having
46 origins in any of the original peoples of North America.

47 d. In determining whether the relocation of an existing
48 franchise or business will be injurious to existing franchisees or the

1 public interest, the committee shall consider in making its
2 determination, whether the franchisor has proven, by a
3 preponderance of the evidence, that:

4 (1) The relocation would materially enhance the availability of
5 stable, adequate and reliable sales and service to purchasers of
6 vehicles in the same line make in the market areas served by the
7 franchisees entitled to notice;

8 (2) The relocation would not affect the stability of the existing
9 franchises in the same line make;

10 (3) The existing franchisees in the same line make have not
11 provided adequate representation of the line make in their market
12 areas for a period of at least two years based on the availability of
13 motor vehicle sales and service facilities, equipment, supply of
14 motor vehicle parts and qualified service personnel;

15 (4) The relocation is in good faith; and

16 (5) The effect on the relocating dealer of the denial of its
17 relocation outweighs the injury to an existing franchisee.

18 (cf: P.L.1999, c.45, s.4)

19

20 12. (New section) a. Upon timely institution of an action or
21 alternate dispute resolution proceeding to enjoin the termination of
22 a motor vehicle franchise on the ground that such termination would
23 be in violation of the "Franchise Practices Act," P.L.1971, c.356
24 (C.56:10-1 et. seq.), the termination shall be automatically stayed
25 pending the final disposition of such action or proceeding, and the
26 motor vehicle franchisor shall accord the motor vehicle franchisee
27 all rights and privileges of a franchisee as if notice of termination
28 had not been given.

29 b. A successful motor vehicle franchisee in an action or
30 alternate dispute resolution proceeding to enjoin the termination of
31 a motor vehicle franchise shall be entitled to an injunction barring
32 termination of the motor vehicle franchise in addition to any other
33 relief provided for in section 10 of P.L.1971, c.356 (C.56:10-10).

34 c. In any action or alternate dispute resolution proceeding with
35 respect to the termination of a motor vehicle franchise, the motor
36 vehicle franchisor shall have the burden of proving that termination
37 of the motor vehicle franchise does not violate section 5 of
38 P.L.1971, c.356 (C.56:10-5). In proving good cause for termination
39 in any such action, the motor vehicle franchisor shall be limited to
40 the grounds for termination set forth in the written notice provided
41 for in section 5 of P.L.1971, c.356 (C.56:10-5).

42 d. Notwithstanding the giving of notice of termination of a
43 motor vehicle franchise pursuant to section 5 of P.L.1971 c.356
44 (C.56:10-5), at any time prior to the date on which the termination
45 becomes effective, the motor vehicle franchisee may enter into an
46 agreement for, and submit to the motor vehicle franchisor, notice of
47 the transfer, assignment or sale of the motor vehicle franchise to
48 another person. Thereupon, the motor vehicle franchisor shall

1 proceed as provided for in section 6 of P.L.1971, c.356 (C.56:10-6).
2 Upon approval of the transfer, assignment or sale by the motor
3 vehicle franchisor and upon consummation of same, the notice of
4 termination of the motor vehicle franchise shall be deemed
5 withdrawn, and the transferee shall receive the motor vehicle
6 franchise free and clear of all grounds for termination.
7 Notwithstanding the terms of any notice, any court order or any
8 other provision of law, a motor vehicle franchise termination shall
9 not become effective while a notice of transfer, assignment or sale
10 is pending with a motor vehicle franchisor.

11

12 13. (New section) If a motor vehicle franchisor desires
13 information about a transaction or a proposed transferee, in addition
14 to that provided with the notice of intent pursuant to section 6 of
15 P.L.1971, c.356 (C.56:10-6), the motor vehicle franchisor shall
16 request all such additional information in writing within 15 days of
17 receipt of the notice of intent. A request for additional information
18 shall not extend the time within which the motor vehicle franchisor
19 must approve or disapprove the transfer, provided that the
20 additional information is submitted to the motor vehicle franchisor
21 within 30 days after the additional information is requested by the
22 motor vehicle franchisor. If the additional information is submitted
23 to the motor vehicle franchisor more than 30 days after the request
24 for that information, the time period for the motor vehicle
25 franchisor to approve or disapprove the transfer shall be extended
26 so that the motor vehicle franchisor has ¹~~15~~ 30 days to approve
27 or disapprove the transfer after receipt of the additional
28 information.

29

30 14. This act shall take effect immediately.

31

32

33

34

35 Revises provisions of “Franchise Practices Act” relating to motor
36 vehicle franchises.

ASSEMBLY, No. 3722

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 11, 2011

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman ALEX DECROCE

District 26 (Morris and Passaic)

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Co-Sponsored by:

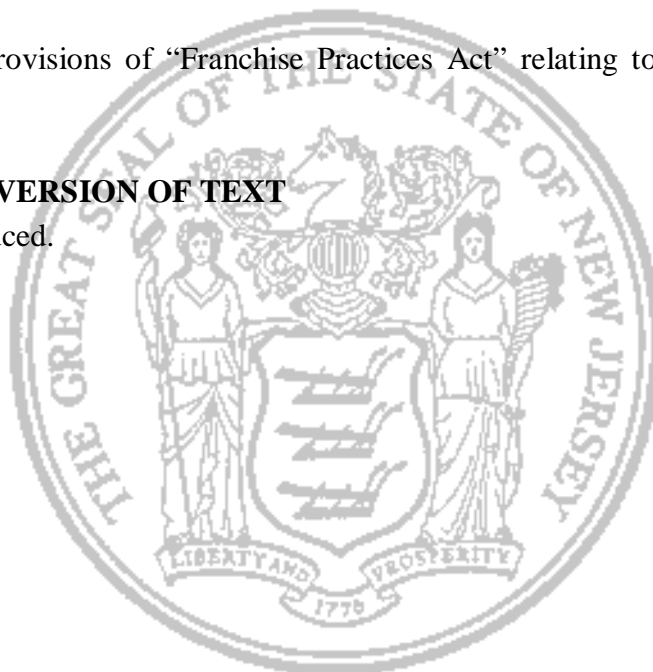
**Assemblymen Fuentes, Ribble, Wolfe, Holzapfel, Amodeo, Malone,
O'Scanlon and A.M.Bucco**

SYNOPSIS

Revises provisions of "Franchise Practices Act" relating to motor vehicle franchises.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/4/2011)

1 AN ACT concerning motor vehicle franchises and 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 2 of P.L.1989, c.24 (C.56:10-7.3) is amended to read
9 as follows:

10 2. a. It shall be a violation of the "Franchise Practices Act,"
11 P.L. 1971, c.356 (C.56:10-1 et seq.) for a motor vehicle franchisor
12 to require a motor vehicle franchisee to agree to a term or condition
13 in a franchise, or in any lease or agreement ancillary or collateral to
14 a franchise, **[as a condition to the offer, grant or renewal of the**
15 **franchise, lease or agreement,]** which:

16 (1) Requires the motor vehicle franchisee to waive trial by jury
17 in actions involving the motor vehicle franchisor; or

18 (2) Specifies the jurisdictions, venues or tribunals in which
19 disputes arising with respect to the franchise, lease or agreement
20 shall or shall not be submitted for resolution or otherwise prohibits
21 a motor vehicle franchisee from bringing an action in a particular
22 forum otherwise available under the law of this State; or

23 (3) Requires that disputes between the motor vehicle franchisor
24 and motor vehicle franchisee be submitted to arbitration or to any
25 other binding alternate dispute resolution procedure; provided,
26 however, that any franchise, lease or agreement may authorize the
27 submission of a dispute to arbitration or to binding alternate dispute
28 resolution if the motor vehicle franchisor and motor vehicle
29 franchisee voluntarily agree to submit the dispute to arbitration or
30 binding alternate dispute resolution at the time the dispute arises.

31 b. For the purposes of this section, it shall be presumed that a
32 motor vehicle franchisee has been required to agree to a term or
33 condition in violation of this section as a condition of the offer,
34 grant or renewal of a franchise or of any lease or agreement
35 ancillary or collateral to a franchise, if the motor vehicle franchisee,
36 at the time of the offer, grant or renewal of the franchise, lease or
37 agreement is not offered the option of an identical franchise, lease
38 or agreement without the term or condition proscribed by this
39 section.

40 c. In addition to any remedy provided in the "Franchise
41 Practices Act," any term or condition included in a franchise, or in
42 any lease or agreement ancillary or collateral to a franchise, in
43 violation of this section may be revoked by the motor vehicle
44 franchisee by written notice to the motor vehicle franchisor within
45 60 days of the motor vehicle franchisee's receipt of the fully

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 executed franchise, lease or agreement. This revocation shall not
2 otherwise affect the validity, effectiveness or enforceability of the
3 franchise, lease or agreement.
4 (cf: P.L.1989, c.24, s.2)

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

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

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

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

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

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

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

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

45 g. (1) To require or attempt to require a motor vehicle
46 franchisee to order or purchase a new or used motor vehicle, or any
47 accessory or equipment thereof not required by law; or (2) to
48 require or attempt to require a motor vehicle franchisee to accept

1 delivery of any motor vehicle, or any accessory or equipment
2 thereof not required by law, which is not as ordered by the motor
3 vehicle franchisee; or (3) to take or withhold or threaten to take or
4 withhold any action, impose or threaten to impose any penalty, or
5 deny or threaten to deny any benefit, as a result of the motor vehicle
6 franchisee's failure or refusal to purchase, order or accept delivery
7 of any such motor vehicle, accessory or equipment.

8 h. To fail or refuse to sell or offer to sell to all motor vehicle
9 franchisees in a line make every motor vehicle sold or offered for
10 sale to any motor vehicle franchisee of the same line make, or to
11 fail or refuse to sell or offer to sell such motor vehicles to all motor
12 vehicle franchisees at the same price for a comparably equipped
13 motor vehicle, on the same terms, with no differential in discount,
14 allowance, credit or bonus, and on reasonable, good faith and non-
15 discriminatory allocation and availability terms. However, the
16 failure to deliver any such motor vehicle shall not be considered a
17 violation of this section if the failure is not arbitrary and is due to a
18 lack of manufacturing capacity or to a strike or labor difficulty, a
19 shortage of materials, a freight embargo or other cause over which
20 the franchisor has no control. A motor vehicle franchisor shall not
21 require a motor vehicle franchisee to purchase unreasonable
22 quantities of advertising materials, purchase special tools not
23 required to properly service a motor vehicle or undertake sales
24 person or service person training unrelated to the motor vehicle or
25 meet unreasonable display requirements as a condition of receiving
26 a motor vehicle.

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

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

1 vehicle franchisor may require that the portion of the facilities
2 allocated to or used for the motor vehicle franchise meets the motor
3 vehicle franchisor's reasonable, written space and volume
4 requirements as uniformly applied by the motor vehicle franchisor.

5 k. To require or attempt to require a motor vehicle franchisee,
6 or the owner or landlord of property on which a motor vehicle
7 franchise is operated, to give a motor vehicle franchisor or any
8 person under the control of the motor vehicle franchisor an interest
9 in or option with respect to the real property on which the motor
10 vehicle franchise is operated, to restrict the uses to which the
11 facility at which the motor vehicle franchise is operated may be put
12 during or after the term of the franchise, or to take or withhold or
13 threaten to take or withhold any action, impose or threaten to
14 impose any penalty, or deny or threaten to deny any benefit, as a
15 result of the failure or refusal of a motor vehicle franchisee,
16 property owner, or landlord to agree to or comply with any such
17 demand or restriction. Nothing in this subsection shall be deemed
18 to bar a voluntary agreement between a motor vehicle franchisor
19 and a motor vehicle franchisee, or the owner or landlord of property
20 on which a motor vehicle franchise is operated, to give the motor
21 vehicle franchisor or the person under the control of the motor
22 vehicle franchisor an interest in or option with respect to the real
23 property on which a motor vehicle franchise is operated, or to
24 restrict the uses to which the facility at which the motor vehicle
25 franchise is operated is put, provided that fair value is paid for such
26 interest, option or restriction.

27 l. To require or attempt to require a motor vehicle franchisee
28 to relocate his franchise or to implement any facility or operational
29 modification or to take or withhold or threaten to take or withhold
30 any action, impose or threaten to impose any penalty, or deny or
31 threaten to deny any benefit as a result of the failure or refusal of
32 such motor vehicle franchisee to agree to any such relocation or
33 modification, unless the motor vehicle franchisor can demonstrate
34 that: (1) funds are readily available to the franchisee for the
35 relocation or modification on reasonable terms; and (2) the motor
36 vehicle franchisee will be able, in the ordinary course of business as
37 conducted by such motor vehicle franchisee, to earn a reasonable
38 return on his total investment in such facility or from such
39 operational modification, and the full return of his total investment
40 in such facility or from such operational modifications within 10
41 years.

42 m. Directly, or through any financial institution having any
43 commonality of ownership with the motor vehicle franchisor, to
44 require or attempt to require, or to take or withhold or threaten to
45 take or withhold any action, impose or threaten to impose any
46 penalty, or deny or threaten to deny any benefit, as a result of the
47 failure or refusal of a motor vehicle franchisee to maintain working
48 capital, equity, floor plan financing or other indications of financial

1 condition, greater than the lesser of (1) the minimum required to
2 operate the motor vehicle franchise based on the operations of the
3 franchise over the prior 12 month period; or (2) an increase of no
4 more than 5% over the prior calendar year, unless the motor vehicle
5 franchisor, or the financial institution having any commonality of
6 ownership with a motor vehicle franchisor, can establish that such
7 failure or refusal prevents the franchisee from operating the
8 franchise in the ordinary course of business.

9 n. To impose or attempt to impose any conditions on the
10 approval of the transfer of a motor vehicle franchise, except as
11 provided in section 6 of P.L. 1971, c.356 (C.56:10-6).

12 o. To amend or modify the franchise of a motor vehicle
13 franchisee, or any lease or agreement ancillary or collateral to such
14 franchise, including in connection with the renewal of a franchise, if
15 such amendment or modification is not in good faith, is not for good
16 cause, or would adversely and substantially alter the rights,
17 obligations, investment or return on investment of the motor vehicle
18 franchisee.

19 p. To take or withhold or threaten to take or withhold any
20 action, impose or threaten to impose any penalty, or deny or
21 threaten to deny any benefit, because the motor vehicle franchisee
22 sold or leased a motor vehicle to a customer who exported the
23 vehicle to a foreign country or who resold the vehicle, unless the
24 motor vehicle franchisor can establish that the motor vehicle
25 franchisee had actual knowledge, prior to the sale or lease, that the
26 customer intended to export or resell the motor vehicle; provided,
27 however, that it shall be conclusively presumed that the motor
28 vehicle franchisee had no such actual knowledge if the vehicle is
29 titled or registered in any state or the District of Columbia.

30 q. To require a motor vehicle franchisee, at the time of entering
31 into a franchise arrangement, any lease or agreement ancillary or
32 collateral to a motor vehicle franchise, or any amendment,
33 modification, renewal or termination thereof, to assent to a release,
34 assignment, novation, waiver or estoppel, which would relieve any
35 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
36 seq.).

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

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

48 (cf: P.L.1999, c.45, s.5)

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

3 3. Within 90 days of the termination, cancellation or
4 nonrenewal of a motor vehicle franchise as provided for in section 5
5 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or
6 nonrenewal of a motor vehicle franchise by the motor vehicle
7 franchisee or by mutual agreement of the motor vehicle franchisee
8 and motor vehicle franchisor **[**, or the termination, cancellation or
9 nonrenewal of a motor vehicle franchise as a result of a termination
10 or cessation of a part of the franchisor's business operations
11 throughout the United States, which is not a part of any change in
12 the ownership, operation or control of all or any part of the
13 franchisor's business**]**, the motor vehicle franchisor shall repurchase
14 from the motor vehicle franchisee:

15 a. any unused, undamaged and unsold vehicles from current
16 and prior year [inventory] inventories regardless of mileage, and
17 any unused, undamaged and unsold parts, supplies and accessories,
18 listed in the franchisor's current price catalog and acquired from the
19 franchisor or a source approved or recommended by the franchisor
20 at the franchisee's net acquisition cost therefore, including
21 transportation, delivery and similar charges paid by the franchisee,
22 plus the franchisee's cost of handling, packing, loading and
23 transporting the vehicle inventory, parts, supplies and accessories
24 for return to the franchisor. For the purposes of this subsection,
25 vehicle inventory, parts, supplies and accessories used by the
26 franchisee or its employees for display, demonstration or other
27 marketing purposes shall be deemed to be unused or unsold.

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

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

33 (2) the greater of the fair market value or 75% of the
34 franchisee's net acquisition cost if the item was acquired more than
35 12 but less than 24 months immediately preceding the effective date
36 of the termination, cancellation or nonrenewal;

37 (3) the greater of the fair market value or 50% of the
38 franchisee's net acquisition cost if the item was acquired more than
39 24 but less than 36 months immediately preceding the effective date
40 of the termination, cancellation or nonrenewal;

41 (4) the greater of the fair market value or 25% of the
42 franchisee's net acquisition cost if the item was acquired more than
43 36 but less than 60 months immediately preceding the effective date
44 of the termination, cancellation or nonrenewal; or

45 (5) the fair market value if the item was acquired more than 60
46 months immediately preceding the effective date of the termination,
47 cancellation or nonrenewal; plus the franchisee's cost of handling,

1 packing, loading and transporting the item for return to the
2 franchisor.

3 Payment shall be made by the motor vehicle franchisor within 30
4 days after the [tender of the property by the motor vehicle
5 franchisee free and clear of liens and encumbrances] date on which
6 the motor vehicle franchisee notifies the motor vehicle franchisor in
7 writing that the property is available for repurchase.

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

11 (c.f.: P.L.1999, c.45, s.2)

12

13 4. Section 4 of P.L.1991, c.459 (C.56:10-13.3) is amended to
14 read as follows:

15 4. a. It shall be a violation of the "Franchise Practices Act,"
16 P.L.1971, c.356 (C.56:10-1 et seq.) for any motor vehicle
17 franchisor, directly or indirectly, through any officer, agent or
18 employee, to terminate, cancel or fail to renew a motor vehicle
19 franchise as the result of:

20 (1) any change in the ownership, operation or control of all or
21 any part of the franchisor's business, whether by sale or transfer of
22 the assets, corporate stock or other equity interest; assignment;
23 merger; consolidation; combination; reorganization; restructuring;
24 redemption; operation of law or otherwise; or

25 (2) the termination, suspension or cessation of all or any part of
26 the franchisor's business operations, [other than a termination or
27 cessation of a part of the franchisor's business operations
28 throughout the United States which is not part of any change in the
29 ownership, operation or control of all or any part of the franchisor's
30 business;] unless the franchisor complies with the provisions of
31 subsections b., c., d. and e. of this section or unless the franchisor,
32 or another motor vehicle franchisor, pursuant to an agreement with
33 the franchisor, offers the franchisee a replacement motor vehicle
34 franchise which takes effect no later than the date of the
35 termination, cancellation or nonrenewal of the franchisee's existing
36 motor vehicle franchise.

37 b. Within 90 days of the effective date of the termination,
38 cancellation or nonrenewal, the motor vehicle franchisor shall
39 compensate the motor vehicle franchisee in an amount at least
40 equivalent to the fair market value of the motor vehicle franchise on

41 (1) the day before the date the franchisor announces the action
42 which results in the termination, cancellation or nonrenewal; or

43 (2) the date on which the notice of termination, cancellation or
44 nonrenewal is issued, whichever amount is higher.

45 c. The franchisor shall authorize the franchisee to continue
46 servicing and supplying parts, including service and parts pursuant
47 to a warranty issued by the franchisor, for any goods or services
48 marketed by the franchisee pursuant to the motor vehicle franchise

1 for a period of not less than five years from the effective date of the
2 termination, cancellation or nonrenewal and shall continue to
3 reimburse the franchisee for warranty parts and service in an
4 amount and on terms no less favorable than those in effect prior to
5 the termination, cancellation or nonrenewal and in accordance with
6 section 3 of P.L.1977, c.84 (C.56:10-15).

7 d. The franchisor shall continue to supply the franchisee with
8 replacement parts for any goods or services marketed by the
9 franchisee pursuant to the motor vehicle franchise for a period of
10 not less than five years from the effective date of the termination,
11 cancellation or nonrenewal, at the same price and terms as the
12 franchisor supplied them to the remaining franchisees of the
13 franchisor, or if there are no such remaining franchisees, at a price
14 and on terms no less favorable than those in effect prior to the
15 termination, cancellation or nonrenewal.

16 e. If the franchisee continues to service motor vehicles and sell
17 parts after the termination, cancellation or nonrenewal, as provided
18 for in subsections c. and d. of this section, the compensation paid to
19 the franchisee pursuant to subsection b. of this section shall be
20 reduced to the extent, if any, of the fair market value of such rights
21 as of the effective date of the termination, cancellation or
22 nonrenewal.

23 (cf: P.L.1991, c.459, s.4)

24

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

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

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

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

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

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

37 e. If a motor vehicle franchisor supplies a part or parts for use
38 in a repair rendered under a warranty other than by sale of that part
39 or parts to the motor vehicle franchisee, the motor vehicle
40 franchisee shall be entitled to compensation equivalent to the motor
41 vehicle franchisee's average percentage markup on the part or parts,
42 as if the part or parts had been sold to the motor vehicle franchisee
43 by the motor vehicle franchisor. The requirements of this section
44 shall not apply to entire engine assemblies and entire transmission
45 assemblies. In the case of those assemblies, the motor vehicle
46 franchisor shall reimburse the motor vehicle franchisee in the
47 amount of 30% of what the motor vehicle franchisee would have
48 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 **two years**
21 six months following the payment of the claim unless the motor
22 vehicle franchisor has reasonable grounds to believe that the claim
23 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.

47 With respect to franchisor administered service or repair plans
48 covering only routine maintenance service, this section applies only

1 to those plans sold to customers on or after the effective date of
2 P.L.1999, c.45.

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

17 (cf: P.L.1999, c.45, s.3)

18

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

21 1. a. "Committee" means the Motor Vehicle Franchise
22 Committee established in section 2 of this act;

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

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

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

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

46 f. "Relevant market area" means a geographic area **[8]** 14
47 miles in radius from a proposed franchise or business as it relates to
48 the grant, reopening or reactivation of a franchise or the

1 establishment, reopening or reactivation of a business; and a
2 geographic area 8-miles in radius from a relocated franchise or
3 business, but if there are no existing franchisees in the same line
4 make within an 8-mile radius of the **【proposed】** relocated franchise
5 or business, then the relevant market area includes the next closest
6 existing franchisee in the same line make within a 14-mile radius.
7 Determining whether an existing franchisee is within the relevant
8 market area of a proposed or relocated franchise or business, and
9 ascertaining any other measurement of distance, shall be made by
10 measuring the distance between the nearest surveyed boundary line
11 of the existing franchise and the nearest surveyed boundary line of
12 the proposed or relocated franchise or business.

13 (c.f. P.L.1982, c.156, s.1)

14

15 7. Section 3 of P.L.1982, c.156 (C.56:10-18) is amended to
16 read as follows:

17 3. **【No】** A motor vehicle franchisor **【shall】** may grant,
18 relocate, reopen or reactivate a franchise or establish, relocate,
19 reopen or reactivate a business, for the purpose of doing business on
20 the retail level, only if the franchise or business will not be
21 injurious as determined pursuant to section 8 of **【this act】** P.L.1982,
22 c.156 (C.56:10-23).

23 (cf: P.L.1982, c.156, s.3)

24

25 8. Section 4 of P.L.1982, c.156 (C.56:10-19) is amended to
26 read as follows:

27 4. A motor vehicle franchisor shall give its existing franchisees
28 in the same line make within **【the relevant market area】** 20 miles of
29 the proposed location for the proposed franchise or business as
30 calculated using the methodology set forth in subsection f. of
31 section 1 of P.L.1982, c.156 (C.56:10-16) not less than 90 days
32 advance written notice of its intention to grant, relocate, reopen or
33 reactivate a franchise of the same line make or establish, relocate,
34 reopen or reactivate a business. Any franchisee **【who is entitled to**
35 **receive the written notice】** in the relevant market area of the
36 proposed franchise or business may file with the committee a
37 protest to the granting, relocating, reopening or reactivation of the
38 franchise or the establishment, relocation, reopening or reactivation
39 of the business within 30 days of receipt of the notice or 30 days
40 after the end of any appeal procedure provided by the motor vehicle
41 franchisor, whichever is later. Any motor vehicle franchisee
42 entitled to file a protest that does not receive the written notice from
43 the motor vehicle franchisor and consequently does not file a
44 protest may file an action in the Superior Court against the motor
45 vehicle franchisor and the court shall enjoin and nullify the grant,
46 relocation, reopening or reactivation of the franchise or the
47 establishment, relocation, reopening or reactivation of the business,

1 regardless of whether a protest by such motor vehicle franchisee
2 would have been successful. In any such action, a successful motor
3 vehicle franchisee shall be entitled to an award of reasonable
4 attorneys' fees, court costs and expenses. A protest shall set forth
5 all reasons for objecting to the granting, reopening, or reactivation
6 of a franchise and shall be accompanied by a concise statement of
7 the facts and supporting affidavits for all issues raised in the
8 protest. When a protest is filed, the chairman of the committee
9 shall notify the motor vehicle franchisor and the franchisee in
10 writing that it has been filed and shall forthwith determine either to
11 transmit the protests to the Office of Administrative Law for
12 hearing or to conduct a hearing directly.

13 (cf: P.L.1982, c.156, s.4)

14

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

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

20 a. Permit an existing franchisee to relocate his franchise within
21 two miles of the franchisee's existing franchise location, except that
22 a franchise may not be relocated pursuant to this subsection unless
23 at least five years have elapsed since any previous relocation
24 pursuant to this subsection;

25 b. Reopen or reactivate a franchise or business which has not
26 been in operation for a period of two years or less at a site within
27 two miles of the prior site, provided that the rights accorded to the
28 franchisor herein shall not apply to a successor or assignee of the
29 franchisor of the franchise or business at the time the franchise or
30 business was closed or deactivated; or

31 c. Permit the purchaser of a controlling interest in the shares or
32 substantially all of the operating assets of an existing franchise to
33 relocate the place of business of the franchise within two miles of
34 the previously approved franchise location within 180 days of the
35 date of purchase.

36 (cf: P.L.1993, c.189, s.3)

37

38 10. Section 6 of P.L.1982, c.156 (C.56:10-21) is amended to
39 read as follows:

40 6. The hearing referred to in section 4 of **[this act]** P.L.1982,
41 c.156 (C.56:10-19) shall be conducted as a contested case in
42 accordance with the provisions of the "Administrative Procedure
43 Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and P.L.1978, c.67
44 (C.52:14F-1 et seq.). **[The committee shall make its final**
45 **determination within 120 days after the filing of the protest unless**
46 **the time is extended by the committee for good cause shown.]** The
47 franchisor shall have the burden of proving by a preponderance of
48 the evidence that the proposed franchise or business will not be

1 injurious. The testimony taken at the hearing shall be under oath
2 and recorded verbatim, but the parties shall not be bound by the
3 rules of evidence. True copies of any transcript and of any other
4 record made of or at the hearing shall be furnished to any party
5 upon request and at that party's expense. The committee may
6 subpoena witnesses and compel their attendance, administer oaths
7 and require the production for examination of any books or papers
8 relating to any matter involved in the hearing. The committee, at
9 the request of any party, may subpoena and compel the attendance of
10 such witnesses as the party may designate and require the
11 production for examination of any books or papers relating to any
12 matter involved in the hearing.

13 (cf: P.L.1982, c.156, s.6)

14

15 11. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to
16 read as follows:

17 8. a. **[In determining whether the]** The grant, **[relocation,]**
18 reopening or reactivation of a franchise or establishment,
19 **[relocation,]** or the reopening or reactivation of a business **[will]**
20 shall be deemed injurious to existing franchisees or to the public
21 interest**[, the committee may consider, but shall not be limited to**
22 **considering the following]** unless the franchisor proves, by a
23 preponderance of the evidence, that:

24 (1) The **[effect that the]** proposed franchise or business would
25 **[have on]** materially enhance the **[provision]** availability of stable,
26 adequate and reliable sales and service to purchasers of vehicles in
27 the same line make in the **[relevant]** market area served by the
28 franchisees entitled to notice;

29 (2) The **[effect that the]** proposed franchise or business would
30 **[have on]** not affect the stability of existing franchisees in the same
31 line make **[in the relevant market area];**

32 (3) **[Whether the]** The existing franchisees in the same line
33 make **[in the relevant market area are providing]** have not provided
34 adequate **[and convenient consumer service for motor vehicles of**
35 **the line make in the relevant market area, which shall include]**
36 representation of the line make in their market areas for a period of
37 at least two years based on the **[adequacy]** availability of motor
38 vehicle sales and service facilities, equipment, supply of motor
39 vehicle parts and qualified service personnel;

40 (4) The **[effect on a relocating dealer of a denial of its**
41 **relocation into the relevant market area]** franchisor's action is in
42 good faith.

43 b. In determining whether the grant, relocation, reopening or
44 reactivation of a franchise or establishment, relocation, reopening or
45 reactivation of a business will be injurious to existing franchisees or
46 to the public interest, it shall be conclusively presumed that the

1 proposed grant, relocation, reopening or reactivation of the
2 franchise or establishment, relocation, reopening or reactivation of
3 the business will be injurious to existing franchisees or to the public
4 interest if:

5 (1) for the 24-month period prior to notice pursuant to section 4
6 of P.L.1982, c.156 (C.56:10-19), the average market penetration of
7 the franchisees given notice pursuant to section 4 of P.L.1982,
8 c.156 (C.56:10-19), in the area of primary responsibility or territory
9 assigned to such franchisees, is at least equal to the average market
10 penetration of all franchisees in the same line make in [the zone,
11 district, region or other similar geographic designation, other than a
12 national geographic designation, used by the motor vehicle
13 franchisor into which the proposed franchise or business will be
14 assigned, it being the intent of this paragraph (1) of this subsection
15 b. not to compare the franchisees given notice to the national
16 market penetration of the motor vehicle franchisor] this State;

17 (2) the proposed franchise or business is likely to cause not less
18 than a 25% reduction in new vehicle sales or not less than a 25%
19 reduction in gross income for the protesting franchisee;

20 (3) the proposed franchise or business will not operate a full
21 service franchise or business at the proposed location; or

22 (4) an owner or operator of the proposed franchise or business
23 has engaged in materially unfair or deceptive business practices
24 with respect to a motor vehicle franchise or business.

25 c. The presumption in subsection b. of this section shall not
26 apply to the grant, reopening or reactivation of a franchise or to the
27 establishment, reopening or reactivation of a business if the
28 proposed franchisee is a minority or a woman. For the purposes of
29 this subsection, "minority" means a person who is:

30 (1) Black, which is a person having origins in any of the black
31 racial groups in Africa; or

32 (2) Hispanic, which is a person of Spanish or Portuguese culture
33 with origins in Mexico, South or Central America, or the Caribbean
34 Islands, regardless of race; or

35 (3) Asian American, which is a person having origins in any of
36 the original peoples of the Far East, Southeast Asia, Indian
37 Subcontinent, Hawaii, or the Pacific Islands; or

38 (4) American Indian or Alaskan native, which is a person having
39 origins in any of the original peoples of North America.

40 d. In determining whether the relocation of an existing
41 franchise or business will be injurious to existing franchisees or the
42 public interest, the committee shall consider in making its
43 determination, whether the franchisor has proven, by a
44 preponderance of the evidence, that:

45 (1) The relocation would materially enhance the availability of
46 stable, adequate and reliable sales and service to purchasers of
47 vehicles in the same line make in the market areas served by the
48 franchisees entitled to notice;

1 (2) The relocation would not affect the stability of the existing
2 franchises in the same line make;

3 (3) The existing franchisees in the same line make have not
4 provided adequate representation of the line make in their market
5 areas for a period of at least two years based on the availability of
6 motor vehicle sales and service facilities, equipment, supply of
7 motor vehicle parts and qualified service personnel;

8 (4) The relocation is in good faith; and

9 (5) The effect on the relocating dealer of the denial of its
10 relocation outweighs the injury to an existing franchisee.

11 (cf: P.L.1999, c.45, s.4)

12

13 12. (New section) a. Upon timely institution of an action or
14 alternate dispute resolution proceeding to enjoin the termination of
15 a motor vehicle franchise on the ground that such termination would
16 be in violation of the "Franchise Practices Act," P.L.1971, c.356
17 (C.56:10-1 et. seq.), the termination shall be automatically stayed
18 pending the final disposition of such action or proceeding, and the
19 motor vehicle franchisor shall accord the motor vehicle franchisee
20 all rights and privileges of a franchisee as if notice of termination
21 had not been given.

22 b. A successful motor vehicle franchisee in an action or
23 alternate dispute resolution proceeding to enjoin the termination of
24 a motor vehicle franchise shall be entitled to an injunction barring
25 termination of the motor vehicle franchise in addition to any other
26 relief provided for in section 10 of P.L.1971, c.356 (C.56:10-10).

27 c. In any action or alternate dispute resolution proceeding with
28 respect to the termination of a motor vehicle franchise, the motor
29 vehicle franchisor shall have the burden of proving that termination
30 of the motor vehicle franchise does not violate section 5 of
31 P.L.1971, c.356 (C.56:10-5). In proving good cause for termination
32 in any such action, the motor vehicle franchisor shall be limited to
33 the grounds for termination set forth in the written notice provided
34 for in section 5 of P.L.1971, c.356 (C.56:10-5).

35 d. Notwithstanding the giving of notice of termination of a
36 motor vehicle franchise pursuant to section 5 of P.L.1971 c.356
37 (C.56:10-5), at any time prior to the date on which the termination
38 becomes effective, the motor vehicle franchisee may enter into an
39 agreement for, and submit to the motor vehicle franchisor, notice of
40 the transfer, assignment or sale of the motor vehicle franchise to
41 another person. Thereupon, the motor vehicle franchisor shall
42 proceed as provided for in section 6 of P.L.1971, c.356 (C.56:10-6).
43 Upon approval of the transfer, assignment or sale by the motor
44 vehicle franchisor and upon consummation of same, the notice of
45 termination of the motor vehicle franchise shall be deemed
46 withdrawn, and the transferee shall receive the motor vehicle
47 franchise free and clear of all grounds for termination.
48 Notwithstanding the terms of any notice, any court order or any

1 other provision of law, a motor vehicle franchise termination shall
2 not become effective while a notice of transfer, assignment or sale
3 is pending with a motor vehicle franchisor.

4
5 13. (New section) If a motor vehicle franchisor desires
6 information about a transaction or a proposed transferee, in addition
7 to that provided with the notice of intent pursuant to section 6 of
8 P.L.1971, c.356 (C.56:10-6), the motor vehicle franchisor shall
9 request all such additional information in writing within 15 days of
10 receipt of the notice of intent. A request for additional information
11 shall not extend the time within which the motor vehicle franchisor
12 must approve or disapprove the transfer, provided that the
13 additional information is submitted to the motor vehicle franchisor
14 within 30 days after the additional information is requested by the
15 motor vehicle franchisor. If the additional information is submitted
16 to the motor vehicle franchisor more than 30 days after the request
17 for that information, the time period for the motor vehicle
18 franchisor to approve or disapprove the transfer shall be extended
19 so that the motor vehicle franchisor has 15 days to approve or
20 disapprove the transfer after receipt of the additional information.

21
22 14. This act shall take effect immediately.

23 24 25 STATEMENT

26
27 This bill revises New Jersey's "Franchise Practices Act,"
28 P.L.1971, c.356 (C.56:10-1 et seq.), which, in part, defines the
29 relationship and responsibilities between motor vehicle franchisors
30 (manufacturers) and motor vehicle franchisees (dealers).
31 Specifically, this bill clarifies and reinforces provisions of the
32 existing law as it relates to:

- 33 • Unreasonable facilities, capital or inventory requirements
34 imposed on auto retailers by automakers.
- 35 • Manufacturer demands on dealers to sign side agreements or
36 addenda, which force dealers to give up essential franchise
37 rights.
- 38 • Unreasonable charge backs levied by manufacturers against
39 dealers in connection with the exportation of motor vehicles,
40 sales incentive or warranty audits.
- 41 • Repurchase obligations on the part of an auto manufacturer in
42 the case of a voluntary dealer termination, and a dealer's rights
43 in the case of an involuntary termination, in the event of a sale
44 or transfer of a franchise, and when a manufacturer seeks to
45 establish or relocate a new or competing franchise in the
46 dealer's relevant market area.

47 Over the years, the "Franchise Practices Act" has been amended
48 to keep pace with changing market conditions and to address new

1 threats to the consumer and the public interest in the franchise
2 system. Recent developments in the auto industry have highlighted
3 the unequal bargaining position of dealers' vis-à-vis manufacturers.
4 Dozens of New Jersey new car dealerships and thousands of
5 dealership jobs have been lost. New Jersey consumers and the
6 economy have suffered as a result.

7 This bill is intended to protect New Jersey new car dealerships
8 and their employees from further economic dislocation imposed by
9 automakers. The bill is designed to level the playing field on which
10 auto franchisees and auto franchisors do business, and to protect the
11 consumer and the public interest in a strong and secure franchise
12 system of responsible local businesses.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3722

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 3722.

This bill revises New Jersey's "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), which, in part, defines the relationship and responsibilities between motor vehicle franchisors (manufacturers) and motor vehicle franchisees (dealers). Specifically, this bill clarifies and reinforces provisions of the existing law as it relates to:

- Unreasonable facilities, capital or inventory requirements imposed on auto retailers by automakers.
- Manufacturer demands on dealers to sign side agreements or addenda, which force dealers to give up essential franchise rights.
- Unreasonable charge backs levied by manufacturers against dealers in connection with the exportation of motor vehicles, sales incentive or warranty audits.
- Repurchase obligations on the part of an auto manufacturer in the case of a voluntary dealer termination, and a dealer's rights in the case of an involuntary termination, in the event of a sale or transfer of a franchise, and when a manufacturer seeks to establish or relocate a new or competing franchise in the dealer's relevant market area.

Over the years, the "Franchise Practices Act" has been amended to keep pace with changing market conditions and to address new threats to the consumer and the public interest in the franchise system. Recent developments in the auto industry have highlighted the unequal bargaining position of dealers vis-à-vis manufacturers. Dozens of New Jersey new car dealerships and thousands of dealership jobs have been lost. New Jersey consumers and the economy have suffered as a result.

This bill is intended to protect New Jersey new car dealerships and their employees from further economic dislocation imposed by automakers. The bill is designed to level the playing field on which auto franchisees and auto franchisors do business, and to protect the consumer and the public interest in a strong and secure franchise system of responsible local businesses.

STATEMENT TO
ASSEMBLY, No. 3722

with Assembly Floor Amendments
(Proposed by Assemblyman COUTINHO)

ADOPTED: FEBRUARY 17, 2011

These amendments make various changes in the bill in defining the relationship and responsibilities between motor vehicle franchisors and motor vehicle franchisees.

SENATE, No. 2704

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 17, 2011

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Co-Sponsored by:

Senator Vitale and Assemblyman A.M.Bucco

SYNOPSIS

Makes various changes to the “Franchise Practices Act” regarding motor vehicle franchises.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/4/2011)

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 2 of P.L.1989, c.24 (C.56:10-7.3) is amended to read
9 as follows:

10 2. a. It shall be a violation of the "Franchise Practices Act,"
11 P.L. 1971, c.356 (C.56:10-1 et seq.) for a motor vehicle franchisor
12 to require a motor vehicle franchisee to agree to a term or condition
13 in a franchise, or in any lease or agreement ancillary or collateral to
14 a franchise, **[as a condition to the offer, grant or renewal of the**
15 **franchise, lease or agreement,]** which:

16 (1) Requires the motor vehicle franchisee to waive trial by jury
17 in actions involving the motor vehicle franchisor; or

18 (2) Specifies the jurisdictions, venues or tribunals in which
19 disputes arising with respect to the franchise, lease or agreement
20 shall or shall not be submitted for resolution or otherwise prohibits
21 a motor vehicle franchisee from bringing an action in a particular
22 forum otherwise available under the law of this State; or

23 (3) Requires that disputes between the motor vehicle franchisor
24 and motor vehicle franchisee be submitted to arbitration or to any
25 other binding alternate dispute resolution procedure; provided,
26 however, that any franchise, lease or agreement may authorize the
27 submission of a dispute to arbitration or to binding alternate dispute
28 resolution if the motor vehicle franchisor and motor vehicle
29 franchisee voluntarily agree to submit the dispute to arbitration or
30 binding alternate dispute resolution at the time the dispute arises.

31 b. For the purposes of this section, it shall be presumed that a
32 motor vehicle franchisee has been required to agree to a term or
33 condition in violation of this section as a condition of the offer,
34 grant or renewal of a franchise or of any lease or agreement
35 ancillary or collateral to a franchise, if the motor vehicle franchisee,
36 at the time of the offer, grant or renewal of the franchise, lease or
37 agreement is not offered the option of an identical franchise, lease
38 or agreement without the term or condition proscribed by this
39 section.

40 c. In addition to any remedy provided in the "Franchise
41 Practices Act," any term or condition included in a franchise, or in
42 any lease or agreement ancillary or collateral to a franchise, in
43 violation of this section may be revoked by the motor vehicle
44 franchisee by written notice to the motor vehicle franchisor within
45 60 days of the motor vehicle franchisee's receipt of the fully

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 executed franchise, lease or agreement. This revocation shall not
2 otherwise affect the validity, effectiveness or enforceability of the
3 franchise, lease or agreement.

4 (cf: P.L.1989, c.24, s.2)

5

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

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

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

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

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

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

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

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

45 g. (1) To require or attempt to require a motor vehicle
46 franchisee to order or purchase a new or used motor vehicle, or any
47 accessory or equipment thereof not required by law; or (2) to
48 require or attempt to require a motor vehicle franchisee to accept

1 delivery of any motor vehicle, or any accessory or equipment
2 thereof not required by law, which is not as ordered by the motor
3 vehicle franchisee; or (3) to take or withhold or threaten to take or
4 withhold any action, impose or threaten to impose any penalty, or
5 deny or threaten to deny any benefit, as a result of the motor vehicle
6 franchisee's failure or refusal to purchase, order or accept delivery
7 of any such motor vehicle, accessory or equipment.

8 h. To fail or refuse to sell or offer to sell to all motor vehicle
9 franchisees in a line make every motor vehicle sold or offered for
10 sale to any motor vehicle franchisee of the same line make, or to
11 fail or refuse to sell or offer to sell such motor vehicles to all motor
12 vehicle franchisees at the same price for a comparably equipped
13 motor vehicle, on the same terms, with no differential in discount,
14 allowance, credit or bonus, and on reasonable, good faith and non-
15 discriminatory allocation and availability terms. However, the
16 failure to deliver any such motor vehicle shall not be considered a
17 violation of this section if the failure is not arbitrary and is due to a
18 lack of manufacturing capacity or to a strike or labor difficulty, a
19 shortage of materials, a freight embargo or other cause over which
20 the franchisor has no control. A motor vehicle franchisor shall not
21 require a motor vehicle franchisee to purchase unreasonable
22 quantities of advertising materials, purchase special tools not
23 required to properly service a motor vehicle or undertake sales
24 person or service person training unrelated to the motor vehicle or
25 meet unreasonable display requirements as a condition of receiving
26 a motor vehicle.

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

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

1 vehicle franchisor may require that the portion of the facilities
2 allocated to or used for the motor vehicle franchise meets the motor
3 vehicle franchisor's reasonable, written space and volume
4 requirements as uniformly applied by the motor vehicle franchisor.

5 k. To require or attempt to require a motor vehicle franchisee,
6 or the owner or landlord of property on which a motor vehicle
7 franchise is operated, to give a motor vehicle franchisor or any
8 person under the control of the motor vehicle franchisor an interest
9 in or option with respect to the real property on which the motor
10 vehicle franchise is operated, to restrict the uses to which the
11 facility at which the motor vehicle franchise is operated may be put
12 during or after the term of the franchise, or to take or withhold or
13 threaten to take or withhold any action, impose or threaten to
14 impose any penalty, or deny or threaten to deny any benefit, as a
15 result of the failure or refusal of a motor vehicle franchisee,
16 property owner, or landlord to agree to or comply with any such
17 demand or restriction. Nothing in this subsection shall be deemed
18 to bar a voluntary agreement between a motor vehicle franchisor
19 and a motor vehicle franchisee, or the owner or landlord of property
20 on which a motor vehicle franchise is operated, to give the motor
21 vehicle franchisor or the person under the control of the motor
22 vehicle franchisor an interest in or option with respect to the real
23 property on which a motor vehicle franchise is operated, or to
24 restrict the uses to which the facility at which the motor vehicle
25 franchise is operated is put, provided that fair value is paid for such
26 interest, option or restriction.

27 l. To require or attempt to require a motor vehicle franchisee
28 to relocate his franchise or to implement any facility or operational
29 modification or to take or withhold or threaten to take or withhold
30 any action, impose or threaten to impose any penalty, or deny or
31 threaten to deny any benefit as a result of the failure or refusal of
32 such motor vehicle franchisee to agree to any such relocation or
33 modification, unless the motor vehicle franchisor can demonstrate
34 that: (1) funds are readily available to the franchisee for the
35 relocation or modification on reasonable terms; and (2) the motor
36 vehicle franchisee will be able, in the ordinary course of business as
37 conducted by such motor vehicle franchisee, to earn a reasonable
38 return on his total investment in such facility or from such
39 operational modification, and the full return of his total investment
40 in such facility or from such operational modifications within 10
41 years.

42 m. Directly, or through any financial institution having any
43 commonality of ownership with the motor vehicle franchisor, to
44 require or attempt to require, or to take or withhold or threaten to
45 take or withhold any action, impose or threaten to impose any
46 penalty, or deny or threaten to deny any benefit, as a result of the
47 failure or refusal of a motor vehicle franchisee to maintain working
48 capital, equity, floor plan financing or other indications of financial

1 condition, greater than the lesser of (1) the minimum required to
2 operate the motor vehicle franchise based on the operations of the
3 franchise over the prior 12 month period; or (2) an increase of no
4 more than 5% over the prior calendar year, unless the motor vehicle
5 franchisor, or the financial institution having any commonality of
6 ownership with a motor vehicle franchisor, can establish that such
7 failure or refusal prevents the franchisee from operating the
8 franchise in the ordinary course of business.

9 n. To impose or attempt to impose any conditions on the
10 approval of the transfer of a motor vehicle franchise, except as
11 provided in section 6 of P.L. 1971, c.356 (C.56:10-6).

12 o. To amend or modify the franchise of a motor vehicle
13 franchisee, or any lease or agreement ancillary or collateral to such
14 franchise, including in connection with the renewal of a franchise, if
15 such amendment or modification is not in good faith, is not for good
16 cause, or would adversely and substantially alter the rights,
17 obligations, investment or return on investment of the motor vehicle
18 franchisee.

19 p. To take or withhold or threaten to take or withhold any
20 action, impose or threaten to impose any penalty, or deny or
21 threaten to deny any benefit, because the motor vehicle franchisee
22 sold or leased a motor vehicle to a customer who exported the
23 vehicle to a foreign country or who resold the vehicle, unless the
24 motor vehicle franchisor can establish that the motor vehicle
25 franchisee had actual knowledge, prior to the sale or lease, that the
26 customer intended to export or resell the motor vehicle; provided,
27 however, that it shall be conclusively presumed that the motor
28 vehicle franchisee had no such actual knowledge if the vehicle is
29 titled or registered in any state or the District of Columbia.

30 q. To require a motor vehicle franchisee, at the time of entering
31 into a franchise arrangement, any lease or agreement ancillary or
32 collateral to a motor vehicle franchise, or any amendment,
33 modification, renewal or termination thereof, to assent to a release,
34 assignment, novation, waiver or estoppel, which would relieve any
35 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
36 seq.).

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

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

48 (cf: P.L.1999, c.45, s.5)

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

3 3. Within 90 days of the termination, cancellation or
4 nonrenewal of a motor vehicle franchise as provided for in section 5
5 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or
6 nonrenewal of a motor vehicle franchise by the motor vehicle
7 franchisee or by mutual agreement of the motor vehicle franchisee
8 and motor vehicle franchisor **[**, or the termination, cancellation or
9 nonrenewal of a motor vehicle franchise as a result of a termination
10 or cessation of a part of the franchisor's business operations
11 throughout the United States, which is not a part of any change in
12 the ownership, operation or control of all or any part of the
13 franchisor's business**]**, the motor vehicle franchisor shall repurchase
14 from the motor vehicle franchisee:

15 a. any unused, undamaged and unsold vehicles from current
16 and prior year [inventory] inventories regardless of mileage, and
17 any unused, undamaged and unsold parts, supplies and accessories,
18 listed in the franchisor's current price catalog and acquired from the
19 franchisor or a source approved or recommended by the franchisor
20 at the franchisee's net acquisition cost therefore, including
21 transportation, delivery and similar charges paid by the franchisee,
22 plus the franchisee's cost of handling, packing, loading and
23 transporting the vehicle inventory, parts, supplies and accessories
24 for return to the franchisor. For the purposes of this subsection,
25 vehicle inventory, parts, supplies and accessories used by the
26 franchisee or its employees for display, demonstration or other
27 marketing purposes shall be deemed to be unused or unsold.

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

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

33 (2) the greater of the fair market value or 75% of the
34 franchisee's net acquisition cost if the item was acquired more than
35 12 but less than 24 months immediately preceding the effective date
36 of the termination, cancellation or nonrenewal;

37 (3) the greater of the fair market value or 50% of the
38 franchisee's net acquisition cost if the item was acquired more than
39 24 but less than 36 months immediately preceding the effective date
40 of the termination, cancellation or nonrenewal;

41 (4) the greater of the fair market value or 25% of the
42 franchisee's net acquisition cost if the item was acquired more than
43 36 but less than 60 months immediately preceding the effective date
44 of the termination, cancellation or nonrenewal; or

45 (5) the fair market value if the item was acquired more than 60
46 months immediately preceding the effective date of the termination,
47 cancellation or nonrenewal; plus the franchisee's cost of handling,

1 packing, loading and transporting the item for return to the
2 franchisor.

3 Payment shall be made by the motor vehicle franchisor within 30
4 days after the [tender of the property by the motor vehicle
5 franchisee free and clear of liens and encumbrances] date on which
6 the motor vehicle franchisee notifies the motor vehicle franchisor in
7 writing that the property is available for repurchase.

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

11 (c.f.: P.L.1999, c.45, s.2)

12

13 4. Section 4 of P.L.1991, c.459 (C.56:10-13.3) is amended to
14 read as follows:

15 4. a. It shall be a violation of the "Franchise Practices Act,"
16 P.L.1971, c.356 (C.56:10-1 et seq.) for any motor vehicle
17 franchisor, directly or indirectly, through any officer, agent or
18 employee, to terminate, cancel or fail to renew a motor vehicle
19 franchise as the result of:

20 (1) any change in the ownership, operation or control of all or
21 any part of the franchisor's business, whether by sale or transfer of
22 the assets, corporate stock or other equity interest; assignment;
23 merger; consolidation; combination; reorganization; restructuring;
24 redemption; operation of law or otherwise; or

25 (2) the termination, suspension or cessation of all or any part of
26 the franchisor's business operations, [other than a termination or
27 cessation of a part of the franchisor's business operations
28 throughout the United States which is not part of any change in the
29 ownership, operation or control of all or any part of the franchisor's
30 business;] unless the franchisor complies with the provisions of
31 subsections b., c., d. and e. of this section or unless the franchisor,
32 or another motor vehicle franchisor, pursuant to an agreement with
33 the franchisor, offers the franchisee a replacement motor vehicle
34 franchise which takes effect no later than the date of the
35 termination, cancellation or nonrenewal of the franchisee's existing
36 motor vehicle franchise.

37 b. Within 90 days of the effective date of the termination,
38 cancellation or nonrenewal, the motor vehicle franchisor shall
39 compensate the motor vehicle franchisee in an amount at least
40 equivalent to the fair market value of the motor vehicle franchise on

41 (1) the day before the date the franchisor announces the action
42 which results in the termination, cancellation or nonrenewal; or

43 (2) the date on which the notice of termination, cancellation or
44 nonrenewal is issued, whichever amount is higher.

45 c. The franchisor shall authorize the franchisee to continue
46 servicing and supplying parts, including service and parts pursuant
47 to a warranty issued by the franchisor, for any goods or services
48 marketed by the franchisee pursuant to the motor vehicle franchise

1 for a period of not less than five years from the effective date of the
2 termination, cancellation or nonrenewal and shall continue to
3 reimburse the franchisee for warranty parts and service in an
4 amount and on terms no less favorable than those in effect prior to
5 the termination, cancellation or nonrenewal and in accordance with
6 section 3 of P.L.1977, c.84 (C.56:10-15).

7 d. The franchisor shall continue to supply the franchisee with
8 replacement parts for any goods or services marketed by the
9 franchisee pursuant to the motor vehicle franchise for a period of
10 not less than five years from the effective date of the termination,
11 cancellation or nonrenewal, at the same price and terms as the
12 franchisor supplied them to the remaining franchisees of the
13 franchisor, or if there are no such remaining franchisees, at a price
14 and on terms no less favorable than those in effect prior to the
15 termination, cancellation or nonrenewal.

16 e. If the franchisee continues to service motor vehicles and sell
17 parts after the termination, cancellation or nonrenewal, as provided
18 for in subsections c. and d. of this section, the compensation paid to
19 the franchisee pursuant to subsection b. of this section shall be
20 reduced to the extent, if any, of the fair market value of such rights
21 as of the effective date of the termination, cancellation or
22 nonrenewal.

23 (cf: P.L.1991, c.459, s.4)

24

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

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

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

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

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

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

37 e. If a motor vehicle franchisor supplies a part or parts for use
38 in a repair rendered under a warranty other than by sale of that part
39 or parts to the motor vehicle franchisee, the motor vehicle
40 franchisee shall be entitled to compensation equivalent to the motor
41 vehicle franchisee's average percentage markup on the part or parts,
42 as if the part or parts had been sold to the motor vehicle franchisee
43 by the motor vehicle franchisor. The requirements of this section
44 shall not apply to entire engine assemblies and entire transmission
45 assemblies. In the case of those assemblies, the motor vehicle
46 franchisor shall reimburse the motor vehicle franchisee in the
47 amount of 30% of what the motor vehicle franchisee would have
48 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 **two years**
21 12 months following the payment of the claim unless the motor
22 vehicle franchisor has reasonable grounds to believe that the claim
23 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.

47 With respect to franchisor administered service or repair plans
48 covering only routine maintenance service, this section applies only

1 to those plans sold to customers on or after the effective date of
2 P.L.1999, c.45.

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

17 (cf: P.L.1999, c.45, s.3)

18

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

21 1. a. "Committee" means the Motor Vehicle Franchise
22 Committee established in section 2 of this act;

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

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

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

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

46 f. "Relevant market area" means a geographic area **[8]** 14
47 miles in radius from a proposed franchise or business as it relates to
48 the grant, reopening or reactivation of a franchise or the

1 establishment, reopening or reactivation of a business; and a
2 geographic area 8-miles in radius from a relocated franchise or
3 business, but if there are no existing franchisees in the same line
4 make within an 8-mile radius of the **【proposed】** relocated franchise
5 or business, then the relevant market area includes the next closest
6 existing franchisee in the same line make within a 14-mile radius.
7 Determining whether an existing franchisee is within the relevant
8 market area of a proposed or relocated franchise or business, and
9 ascertaining any other measurement of distance, shall be made by
10 measuring the distance between the nearest surveyed boundary line
11 of the existing franchise and the nearest surveyed boundary line of
12 the proposed or relocated franchise or business.

13 (c.f. P.L.1982, c.156, s.1)

14

15 7. Section 3 of P.L.1982, c.156 (C.56:10-18) is amended to
16 read as follows:

17 3. **【No】** A motor vehicle franchisor **【shall】** may grant,
18 relocate, reopen or reactivate a franchise or establish, relocate,
19 reopen or reactivate a business, for the purpose of doing business on
20 the retail level, only if the franchise or business will not be
21 injurious as determined pursuant to section 8 of **【this act】** P.L.1982,
22 c.156 (C.56:10-23).

23 (cf: P.L.1982, c.156, s.3)

24

25 8. Section 4 of P.L.1982, c.156 (C.56:10-19) is amended to
26 read as follows:

27 4. A motor vehicle franchisor shall give its existing franchisees
28 in the same line make within **【the relevant market area】** 20 miles of
29 the proposed location for the proposed franchise or business as
30 calculated using the methodology set forth in subsection f. of
31 section 1 of P.L.1982, c.156 (C.56:10-16) not less than 90 days
32 advance written notice of its intention to grant, relocate, reopen or
33 reactivate a franchise of the same line make or establish, relocate,
34 reopen or reactivate a business. Any franchisee **【who is entitled to**
35 **receive the written notice】** in the relevant market area of the
36 proposed franchise or business may file with the committee a
37 protest to the granting, relocating, reopening or reactivation of the
38 franchise or the establishment, relocation, reopening or reactivation
39 of the business within 30 days of receipt of the notice or 30 days
40 after the end of any appeal procedure provided by the motor vehicle
41 franchisor, whichever is later. Any motor vehicle franchisee
42 entitled to file a protest that does not receive the written notice from
43 the motor vehicle franchisor and consequently does not file a
44 protest may file an action in the Superior Court against the motor
45 vehicle franchisor and the court shall enjoin and nullify the grant,
46 relocation, reopening or reactivation of the franchise or the
47 establishment, relocation, reopening or reactivation of the business,

1 regardless of whether a protest by such motor vehicle franchisee
2 would have been successful. In any such action, a successful motor
3 vehicle franchisee shall be entitled to an award of reasonable
4 attorneys' fees, court costs and expenses. A protest shall set forth
5 all reasons for objecting to the granting, reopening, or reactivation
6 of a franchise and shall be accompanied by a concise statement of
7 the facts and supporting affidavits for all issues raised in the
8 protest. When a protest is filed, the chairman of the committee
9 shall notify the motor vehicle franchisor and the franchisee in
10 writing that it has been filed and shall forthwith determine either to
11 transmit the protests to the Office of Administrative Law for
12 hearing or to conduct a hearing directly.

13 (cf: P.L.1982, c.156, s.4)

14

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

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

20 a. Permit an existing franchisee to relocate his franchise within
21 two miles of the franchisee's existing franchise location, except that
22 a franchise may not be relocated pursuant to this subsection unless
23 at least five years have elapsed since any previous relocation
24 pursuant to this subsection;

25 b. Reopen or reactivate a franchise or business which has not
26 been in operation for a period of two years or less at a site within
27 two miles of the prior site, provided that the rights accorded to the
28 franchisor herein shall not apply to a successor or assignee of the
29 franchisor of the franchise or business at the time the franchise or
30 business was closed or deactivated; or

31 c. Permit the purchaser of a controlling interest in the shares or
32 substantially all of the operating assets of an existing franchise to
33 relocate the place of business of the franchise within two miles of
34 the previously approved franchise location within 180 days of the
35 date of purchase.

36 (cf: P.L.1993, c.189, s.3)

37

38 10. Section 6 of P.L.1982, c.156 (C.56:10-21) is amended to
39 read as follows:

40 6. The hearing referred to in section 4 of **[this act]** P.L.1982,
41 c.156 (C.56:10-19) shall be conducted as a contested case in
42 accordance with the provisions of the "Administrative Procedure
43 Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and P.L.1978, c.67
44 (C.52:14F-1 et seq.). **[The committee shall make its final**
45 **determination within 120 days after the filing of the protest unless**
46 **the time is extended by the committee for good cause shown.]** The
47 franchisor shall have the burden of proving by a preponderance of
48 the evidence that the proposed franchise or business will not be

1 injurious. The testimony taken at the hearing shall be under oath
2 and recorded verbatim, but the parties shall not be bound by the
3 rules of evidence. True copies of any transcript and of any other
4 record made of or at the hearing shall be furnished to any party
5 upon request and at that party's expense. The committee may
6 subpoena witnesses and compel their attendance, administer oaths
7 and require the production for examination of any books or papers
8 relating to any matter involved in the hearing. The committee, at
9 the request of any party, may subpoena and compel the attendance of
10 such witnesses as the party may designate and require the
11 production for examination of any books or papers relating to any
12 matter involved in the hearing.

13 (cf: P.L.1982, c.156, s.6)

14

15 11. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to
16 read as follows:

17 8. a. **[In determining whether the] The grant, [relocation,]**
18 reopening or reactivation of a franchise or establishment,
19 **[relocation,] or the reopening or reactivation of a business [will]**
20 **shall be deemed injurious to existing franchisees or to the public**
21 **interest[, the committee may consider, but shall not be limited to**
22 **considering the following] unless the franchisor proves, by a**
23 **preponderance of the evidence, that:**

24 (1) The **[effect that the] proposed franchise or business would**
25 **[have on] materially enhance the [provision] availability** of stable,
26 adequate and reliable sales and service to purchasers of vehicles in
27 the same line make in the **[relevant] market area served by the**
28 **franchisees entitled to notice;**

29 (2) The **[effect that the] proposed franchise or business would**
30 **[have on] not affect** the stability of existing franchisees in the same
31 line make **[in the relevant market area];**

32 (3) **[Whether the] The existing franchisees in the same line**
33 **make [in the relevant market area are providing] have not provided**
34 **adequate [and convenient consumer service for motor vehicles of**
35 **the line make in the relevant market area, which shall include]**
36 **representation of the line make in their market areas for a period of**
37 **at least two years based on the [adequacy] availability** of motor
38 vehicle sales and service facilities, equipment, supply of motor
39 vehicle parts and qualified service personnel;

40 (4) The **[effect on a relocating dealer of a denial of its**
41 **relocation into the relevant market area] franchisor's action is in**
42 **good faith.**

43 b. In determining whether the grant, relocation, reopening or
44 reactivation of a franchise or establishment, relocation, reopening or
45 reactivation of a business will be injurious to existing franchisees or
46 to the public interest, it shall be conclusively presumed that the

1 proposed grant, relocation, reopening or reactivation of the
2 franchise or establishment, relocation, reopening or reactivation of
3 the business will be injurious to existing franchisees or to the public
4 interest if:

5 (1) for the 24-month period prior to notice pursuant to section 4
6 of P.L.1982, c.156 (C.56:10-19), the average market penetration of
7 the franchisees given notice pursuant to section 4 of P.L.1982,
8 c.156 (C.56:10-19), in the area of primary responsibility or territory
9 assigned to such franchisees, is at least equal to the average market
10 penetration of all franchisees in the same line make in [the zone,
11 district, region or other similar geographic designation, other than a
12 national geographic designation, used by the motor vehicle
13 franchisor into which the proposed franchise or business will be
14 assigned, it being the intent of this paragraph (1) of this subsection
15 b. not to compare the franchisees given notice to the national
16 market penetration of the motor vehicle franchisor] this State;

17 (2) the proposed franchise or business is likely to cause not less
18 than a 25% reduction in new vehicle sales or not less than a 25%
19 reduction in gross income for the protesting franchisee;

20 (3) the proposed franchise or business will not operate a full
21 service franchise or business at the proposed location; or

22 (4) an owner or operator of the proposed franchise or business
23 has engaged in materially unfair or deceptive business practices
24 with respect to a motor vehicle franchise or business.

25 c. The presumption in subsection b. of this section shall not
26 apply to the grant, reopening or reactivation of a franchise or to the
27 establishment, reopening or reactivation of a business if the
28 proposed franchisee is a minority or a woman. For the purposes of
29 this subsection, "minority" means a person who is:

30 (1) Black, which is a person having origins in any of the black
31 racial groups in Africa; or

32 (2) Hispanic, which is a person of Spanish or Portuguese culture
33 with origins in Mexico, South or Central America, or the Caribbean
34 Islands, regardless of race; or

35 (3) Asian American, which is a person having origins in any of
36 the original peoples of the Far East, Southeast Asia, Indian
37 Subcontinent, Hawaii, or the Pacific Islands; or

38 (4) American Indian or Alaskan native, which is a person having
39 origins in any of the original peoples of North America.

40 d. In determining whether the relocation of an existing
41 franchise or business will be injurious to existing franchisees or the
42 public interest, the committee shall consider in making its
43 determination, whether the franchisor has proven, by a
44 preponderance of the evidence, that:

45 (1) The relocation would materially enhance the availability of
46 stable, adequate and reliable sales and service to purchasers of
47 vehicles in the same line make in the market areas served by the
48 franchisees entitled to notice;

1 (2) The relocation would not affect the stability of the existing
2 franchises in the same line make;

3 (3) The existing franchisees in the same line make have not
4 provided adequate representation of the line make in their market
5 areas for a period of at least two years based on the availability of
6 motor vehicle sales and service facilities, equipment, supply of
7 motor vehicle parts and qualified service personnel;

8 (4) The relocation is in good faith; and

9 (5) The effect on the relocating dealer of the denial of its
10 relocation outweighs the injury to an existing franchisee.

11 (cf: P.L.1999, c.45, s.4)

12

13 12. (New section) a. Upon timely institution of an action or
14 alternate dispute resolution proceeding to enjoin the termination of
15 a motor vehicle franchise on the ground that such termination would
16 be in violation of the "Franchise Practices Act," P.L.1971, c.356
17 (C.56:10-1 et. seq.), the termination shall be automatically stayed
18 pending the final disposition of such action or proceeding, and the
19 motor vehicle franchisor shall accord the motor vehicle franchisee
20 all rights and privileges of a franchisee as if notice of termination
21 had not been given.

22 b. A successful motor vehicle franchisee in an action or
23 alternate dispute resolution proceeding to enjoin the termination of
24 a motor vehicle franchise shall be entitled to an injunction barring
25 termination of the motor vehicle franchise in addition to any other
26 relief provided for in section 10 of P.L.1971, c.356 (C.56:10-10).

27 c. In any action or alternate dispute resolution proceeding with
28 respect to the termination of a motor vehicle franchise, the motor
29 vehicle franchisor shall have the burden of proving that termination
30 of the motor vehicle franchise does not violate section 5 of
31 P.L.1971, c.356 (C.56:10-5). In proving good cause for termination
32 in any such action, the motor vehicle franchisor shall be limited to
33 the grounds for termination set forth in the written notice provided
34 for in section 5 of P.L.1971, c.356 (C.56:10-5).

35 d. Notwithstanding the giving of notice of termination of a
36 motor vehicle franchise pursuant to section 5 of P.L.1971 c.356
37 (C.56:10-5), at any time prior to the date on which the termination
38 becomes effective, the motor vehicle franchisee may enter into an
39 agreement for, and submit to the motor vehicle franchisor, notice of
40 the transfer, assignment or sale of the motor vehicle franchise to
41 another person. Thereupon, the motor vehicle franchisor shall
42 proceed as provided for in section 6 of P.L.1971, c.356 (C.56:10-6).
43 Upon approval of the transfer, assignment or sale by the motor
44 vehicle franchisor and upon consummation of same, the notice of
45 termination of the motor vehicle franchise shall be deemed
46 withdrawn, and the transferee shall receive the motor vehicle
47 franchise free and clear of all grounds for termination.
48 Notwithstanding the terms of any notice, any court order or any

1 other provision of law, a motor vehicle franchise termination shall
2 not become effective while a notice of transfer, assignment or sale
3 is pending with a motor vehicle franchisor.

4
5 13. (New section) If a motor vehicle franchisor desires
6 information about a transaction or a proposed transferee, in addition
7 to that provided with the notice of intent pursuant to section 6 of
8 P.L.1971, c.356 (C.56:10-6), the motor vehicle franchisor shall
9 request all such additional information in writing within 30 days of
10 receipt of the notice of intent. A request for additional information
11 shall not extend the time within which the motor vehicle franchisor
12 must approve or disapprove the transfer, provided that the
13 additional information is submitted to the motor vehicle franchisor
14 within 30 days after the additional information is requested by the
15 motor vehicle franchisor. If the additional information is submitted
16 to the motor vehicle franchisor more than 30 days after the request
17 for that information, the time period for the motor vehicle
18 franchisor to approve or disapprove the transfer shall be extended
19 so that the motor vehicle franchisor has 30 days to approve or
20 disapprove the transfer after receipt of the additional information.

21
22 14. This act shall take effect immediately.

23 24 25 STATEMENT

26
27 This bill revises New Jersey's "Franchise Practices Act,"
28 P.L.1971, c.356 (C.56:10-1 et seq.), which, in part, defines the
29 relationship and responsibilities between motor vehicle franchisors
30 (manufacturers) and motor vehicle franchisees (dealers).
31 Specifically, this bill clarifies and reinforces provisions of the
32 existing law as it relates to:

- 33 • Unreasonable facilities, capital or inventory requirements
34 imposed on auto retailers by automakers.
- 35 • Manufacturer demands on dealers to sign side agreements or
36 addenda, which force dealers to give up essential franchise
37 rights.
- 38 • Unreasonable charge backs levied by manufacturers against
39 dealers in connection with the exportation of motor vehicles,
40 sales incentives or warranty audits.
- 41 • Repurchase obligations on the part of an auto manufacturer in
42 the case of a voluntary dealer termination, and a dealer's rights
43 in the case of an involuntary termination, in the event of a sale
44 or transfer of a franchise, and when a manufacturer seeks to
45 establish or relocate a new or competing franchise in the
46 dealer's relevant market area.

47 Over the years, the "Franchise Practices Act" has been amended
48 to keep pace with changing market conditions and to address new

1 threats to the consumer and the public interest in the franchise
2 system. Recent developments in the auto industry have highlighted
3 the unequal bargaining position of dealers vis-à-vis manufacturers.
4 Dozens of New Jersey new car dealerships and thousands of
5 dealership jobs have been lost. New Jersey consumers and the
6 economy have suffered as a result.

7 This bill is intended to protect New Jersey new car dealerships
8 and their employees from further economic dislocation imposed by
9 automakers. The bill is designed to level the playing field on which
10 auto franchisees and auto franchisors do business, and to protect the
11 consumer and the public interest in a strong and secure franchise
12 system of responsible local businesses.

13 Some of the proposed revisions to the “Franchise Practices Act”
14 include amending section 3 of P.L.1977, c.84 (C.56:10-15), which
15 concerns reimbursement of motor vehicle franchisees by motor
16 vehicle franchisors for furnishing various services and programs.
17 This bill amends that section to stipulate that a motor vehicle
18 franchisor shall not audit a claim after the expiration of 12 months
19 following the payment of the claim, except under certain
20 circumstances as stipulated in the section. Also, section 13 of this
21 bill provides that, if a motor vehicle franchisor desires information
22 about a transaction or a proposed transferee, in addition to that
23 provided with a notice of intent for a transfer of a franchise, as
24 contained in section 6 of P.L.1971, c.356 (C.56:10-6), the motor
25 vehicle franchisor shall request all such additional information in
26 writing within 30 days of receipt of the notice of intent.

SENATE, No. 2693

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED FEBRUARY 7, 2011

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

SYNOPSIS

Revises provisions of “Franchise Practices Act” relating to motor vehicle franchises.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning motor vehicle franchises and 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 2 of P.L.1989, c.24 (C.56:10-7.3) is amended to read
9 as follows:

10 2. a. It shall be a violation of the "Franchise Practices Act,"
11 P.L. 1971, c.356 (C.56:10-1 et seq.) for a motor vehicle franchisor
12 to require a motor vehicle franchisee to agree to a term or condition
13 in a franchise, or in any lease or agreement ancillary or collateral to
14 a franchise, **[as a condition to the offer, grant or renewal of the**
15 **franchise, lease or agreement,]** which:

16 (1) Requires the motor vehicle franchisee to waive trial by jury
17 in actions involving the motor vehicle franchisor; or

18 (2) Specifies the jurisdictions, venues or tribunals in which
19 disputes arising with respect to the franchise, lease or agreement
20 shall or shall not be submitted for resolution or otherwise prohibits
21 a motor vehicle franchisee from bringing an action in a particular
22 forum otherwise available under the law of this State; or

23 (3) Requires that disputes between the motor vehicle franchisor
24 and motor vehicle franchisee be submitted to arbitration or to any
25 other binding alternate dispute resolution procedure; provided,
26 however, that any franchise, lease or agreement may authorize the
27 submission of a dispute to arbitration or to binding alternate dispute
28 resolution if the motor vehicle franchisor and motor vehicle
29 franchisee voluntarily agree to submit the dispute to arbitration or
30 binding alternate dispute resolution at the time the dispute arises.

31 b. For the purposes of this section, it shall be presumed that a
32 motor vehicle franchisee has been required to agree to a term or
33 condition in violation of this section as a condition of the offer,
34 grant or renewal of a franchise or of any lease or agreement
35 ancillary or collateral to a franchise, if the motor vehicle franchisee,
36 at the time of the offer, grant or renewal of the franchise, lease or
37 agreement is not offered the option of an identical franchise, lease
38 or agreement without the term or condition proscribed by this
39 section.

40 c. In addition to any remedy provided in the "Franchise
41 Practices Act," any term or condition included in a franchise, or in
42 any lease or agreement ancillary or collateral to a franchise, in
43 violation of this section may be revoked by the motor vehicle
44 franchisee by written notice to the motor vehicle franchisor within
45 60 days of the motor vehicle franchisee's receipt of the fully

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 executed franchise, lease or agreement. This revocation shall not
2 otherwise affect the validity, effectiveness or enforceability of the
3 franchise, lease or agreement.

4 (cf: P.L.1989, c.24, s.2)

5

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

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

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

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

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

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

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

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

45 g. (1) To require or attempt to require a motor vehicle
46 franchisee to order or purchase a new or used motor vehicle, or any
47 accessory or equipment thereof not required by law; or (2) to
48 require or attempt to require a motor vehicle franchisee to accept

1 delivery of any motor vehicle, or any accessory or equipment
2 thereof not required by law, which is not as ordered by the motor
3 vehicle franchisee; or (3) to take or withhold or threaten to take or
4 withhold any action, impose or threaten to impose any penalty, or
5 deny or threaten to deny any benefit, as a result of the motor vehicle
6 franchisee's failure or refusal to purchase, order or accept delivery
7 of any such motor vehicle, accessory or equipment.

8 h. To fail or refuse to sell or offer to sell to all motor vehicle
9 franchisees in a line make every motor vehicle sold or offered for
10 sale to any motor vehicle franchisee of the same line make, or to
11 fail or refuse to sell or offer to sell such motor vehicles to all motor
12 vehicle franchisees at the same price for a comparably equipped
13 motor vehicle, on the same terms, with no differential in discount,
14 allowance, credit or bonus, and on reasonable, good faith and non-
15 discriminatory allocation and availability terms. However, the
16 failure to deliver any such motor vehicle shall not be considered a
17 violation of this section if the failure is not arbitrary and is due to a
18 lack of manufacturing capacity or to a strike or labor difficulty, a
19 shortage of materials, a freight embargo or other cause over which
20 the franchisor has no control. A motor vehicle franchisor shall not
21 require a motor vehicle franchisee to purchase unreasonable
22 quantities of advertising materials, purchase special tools not
23 required to properly service a motor vehicle or undertake sales
24 person or service person training unrelated to the motor vehicle or
25 meet unreasonable display requirements as a condition of receiving
26 a motor vehicle.

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

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

1 vehicle franchisor may require that the portion of the facilities
2 allocated to or used for the motor vehicle franchise meets the motor
3 vehicle franchisor's reasonable, written space and volume
4 requirements as uniformly applied by the motor vehicle franchisor.

5 k. To require or attempt to require a motor vehicle franchisee,
6 or the owner or landlord of property on which a motor vehicle
7 franchise is operated, to give a motor vehicle franchisor or any
8 person under the control of the motor vehicle franchisor an interest
9 in or option with respect to the real property on which the motor
10 vehicle franchise is operated, to restrict the uses to which the
11 facility at which the motor vehicle franchise is operated may be put
12 during or after the term of the franchise, or to take or withhold or
13 threaten to take or withhold any action, impose or threaten to
14 impose any penalty, or deny or threaten to deny any benefit, as a
15 result of the failure or refusal of a motor vehicle franchisee,
16 property owner, or landlord to agree to or comply with any such
17 demand or restriction. Nothing in this subsection shall be deemed
18 to bar a voluntary agreement between a motor vehicle franchisor
19 and a motor vehicle franchisee, or the owner or landlord of property
20 on which a motor vehicle franchise is operated, to give the motor
21 vehicle franchisor or the person under the control of the motor
22 vehicle franchisor an interest in or option with respect to the real
23 property on which a motor vehicle franchise is operated, or to
24 restrict the uses to which the facility at which the motor vehicle
25 franchise is operated is put, provided that fair value is paid for such
26 interest, option or restriction.

27 l. To require or attempt to require a motor vehicle franchisee
28 to relocate his franchise or to implement any facility or operational
29 modification or to take or withhold or threaten to take or withhold
30 any action, impose or threaten to impose any penalty, or deny or
31 threaten to deny any benefit as a result of the failure or refusal of
32 such motor vehicle franchisee to agree to any such relocation or
33 modification, unless the motor vehicle franchisor can demonstrate
34 that: (1) funds are readily available to the franchisee for the
35 relocation or modification on reasonable terms; and (2) the motor
36 vehicle franchisee will be able, in the ordinary course of business as
37 conducted by such motor vehicle franchisee, to earn a reasonable
38 return on his total investment in such facility or from such
39 operational modification, and the full return of his total investment
40 in such facility or from such operational modifications within 10
41 years.

42 m. Directly, or through any financial institution having any
43 commonality of ownership with the motor vehicle franchisor, to
44 require or attempt to require, or to take or withhold or threaten to
45 take or withhold any action, impose or threaten to impose any
46 penalty, or deny or threaten to deny any benefit, as a result of the
47 failure or refusal of a motor vehicle franchisee to maintain working
48 capital, equity, floor plan financing or other indications of financial

1 condition, greater than the lesser of (1) the minimum required to
2 operate the motor vehicle franchise based on the operations of the
3 franchise over the prior 12 month period; or (2) an increase of no
4 more than 5% over the prior calendar year, unless the motor vehicle
5 franchisor, or the financial institution having any commonality of
6 ownership with a motor vehicle franchisor, can establish that such
7 failure or refusal prevents the franchisee from operating the
8 franchise in the ordinary course of business.

9 n. To impose or attempt to impose any conditions on the
10 approval of the transfer of a motor vehicle franchise, except as
11 provided in section 6 of P.L. 1971, c.356 (C.56:10-6).

12 o. To amend or modify the franchise of a motor vehicle
13 franchisee, or any lease or agreement ancillary or collateral to such
14 franchise, including in connection with the renewal of a franchise, if
15 such amendment or modification is not in good faith, is not for good
16 cause, or would adversely and substantially alter the rights,
17 obligations, investment or return on investment of the motor vehicle
18 franchisee.

19 p. To take or withhold or threaten to take or withhold any
20 action, impose or threaten to impose any penalty, or deny or
21 threaten to deny any benefit, because the motor vehicle franchisee
22 sold or leased a motor vehicle to a customer who exported the
23 vehicle to a foreign country or who resold the vehicle, unless the
24 motor vehicle franchisor can establish that the motor vehicle
25 franchisee had actual knowledge, prior to the sale or lease, that the
26 customer intended to export or resell the motor vehicle; provided,
27 however, that it shall be conclusively presumed that the motor
28 vehicle franchisee had no such actual knowledge if the vehicle is
29 titled or registered in any state or the District of Columbia.

30 q. To require a motor vehicle franchisee, at the time of entering
31 into a franchise arrangement, any lease or agreement ancillary or
32 collateral to a motor vehicle franchise, or any amendment,
33 modification, renewal or termination thereof, to assent to a release,
34 assignment, novation, waiver or estoppel, which would relieve any
35 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
36 seq.).

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

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

48 (cf: P.L.1999, c.45, s.5)

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

3 3. Within 90 days of the termination, cancellation or
4 nonrenewal of a motor vehicle franchise as provided for in section 5
5 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or
6 nonrenewal of a motor vehicle franchise by the motor vehicle
7 franchisee or by mutual agreement of the motor vehicle franchisee
8 and motor vehicle franchisor [, or the termination, cancellation or
9 nonrenewal of a motor vehicle franchise as a result of a termination
10 or cessation of a part of the franchisor's business operations
11 throughout the United States, which is not a part of any change in
12 the ownership, operation or control of all or any part of the
13 franchisor's business], the motor vehicle franchisor shall repurchase
14 from the motor vehicle franchisee:

15 a. any unused, undamaged and unsold vehicles from current
16 and prior year [inventory] inventories regardless of mileage, and
17 any unused, undamaged and unsold parts, supplies and accessories,
18 listed in the franchisor's current price catalog and acquired from the
19 franchisor or a source approved or recommended by the franchisor
20 at the franchisee's net acquisition cost therefore, including
21 transportation, delivery and similar charges paid by the franchisee,
22 plus the franchisee's cost of handling, packing, loading and
23 transporting the vehicle inventory, parts, supplies and accessories
24 for return to the franchisor. For the purposes of this subsection,
25 vehicle inventory, parts, supplies and accessories used by the
26 franchisee or its employees for display, demonstration or other
27 marketing purposes shall be deemed to be unused or unsold.

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

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

33 (2) the greater of the fair market value or 75% of the
34 franchisee's net acquisition cost if the item was acquired more than
35 12 but less than 24 months immediately preceding the effective date
36 of the termination, cancellation or nonrenewal;

37 (3) the greater of the fair market value or 50% of the
38 franchisee's net acquisition cost if the item was acquired more than
39 24 but less than 36 months immediately preceding the effective date
40 of the termination, cancellation or nonrenewal;

41 (4) the greater of the fair market value or 25% of the
42 franchisee's net acquisition cost if the item was acquired more than
43 36 but less than 60 months immediately preceding the effective date
44 of the termination, cancellation or nonrenewal; or

45 (5) the fair market value if the item was acquired more than 60
46 months immediately preceding the effective date of the termination,
47 cancellation or nonrenewal; plus the franchisee's cost of handling,

1 packing, loading and transporting the item for return to the
2 franchisor.

3 Payment shall be made by the motor vehicle franchisor within 30
4 days after the [tender of the property by the motor vehicle
5 franchisee free and clear of liens and encumbrances] date on which
6 the motor vehicle franchisee notifies the motor vehicle franchisor in
7 writing that the property is available for repurchase.

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

11 (c.f.: P.L.1999, c.45, s.2)

12

13 4. Section 4 of P.L.1991, c.459 (C.56:10-13.3) is amended to
14 read as follows:

15 4. a. It shall be a violation of the "Franchise Practices Act,"
16 P.L.1971, c.356 (C.56:10-1 et seq.) for any motor vehicle
17 franchisor, directly or indirectly, through any officer, agent or
18 employee, to terminate, cancel or fail to renew a motor vehicle
19 franchise as the result of:

20 (1) any change in the ownership, operation or control of all or
21 any part of the franchisor's business, whether by sale or transfer of
22 the assets, corporate stock or other equity interest; assignment;
23 merger; consolidation; combination; reorganization; restructuring;
24 redemption; operation of law or otherwise; or

25 (2) the termination, suspension or cessation of all or any part of
26 the franchisor's business operations, [other than a termination or
27 cessation of a part of the franchisor's business operations
28 throughout the United States which is not part of any change in the
29 ownership, operation or control of all or any part of the franchisor's
30 business;] unless the franchisor complies with the provisions of
31 subsections b., c., d. and e. of this section or unless the franchisor,
32 or another motor vehicle franchisor, pursuant to an agreement with
33 the franchisor, offers the franchisee a replacement motor vehicle
34 franchise which takes effect no later than the date of the
35 termination, cancellation or nonrenewal of the franchisee's existing
36 motor vehicle franchise.

37 b. Within 90 days of the effective date of the termination,
38 cancellation or nonrenewal, the motor vehicle franchisor shall
39 compensate the motor vehicle franchisee in an amount at least
40 equivalent to the fair market value of the motor vehicle franchise on

41 (1) the day before the date the franchisor announces the action
42 which results in the termination, cancellation or nonrenewal; or

43 (2) the date on which the notice of termination, cancellation or
44 nonrenewal is issued, whichever amount is higher.

45 c. The franchisor shall authorize the franchisee to continue
46 servicing and supplying parts, including service and parts pursuant
47 to a warranty issued by the franchisor, for any goods or services
48 marketed by the franchisee pursuant to the motor vehicle franchise

1 for a period of not less than five years from the effective date of the
2 termination, cancellation or nonrenewal and shall continue to
3 reimburse the franchisee for warranty parts and service in an
4 amount and on terms no less favorable than those in effect prior to
5 the termination, cancellation or nonrenewal and in accordance with
6 section 3 of P.L.1977, c.84 (C.56:10-15).

7 d. The franchisor shall continue to supply the franchisee with
8 replacement parts for any goods or services marketed by the
9 franchisee pursuant to the motor vehicle franchise for a period of
10 not less than five years from the effective date of the termination,
11 cancellation or nonrenewal, at the same price and terms as the
12 franchisor supplied them to the remaining franchisees of the
13 franchisor, or if there are no such remaining franchisees, at a price
14 and on terms no less favorable than those in effect prior to the
15 termination, cancellation or nonrenewal.

16 e. If the franchisee continues to service motor vehicles and sell
17 parts after the termination, cancellation or nonrenewal, as provided
18 for in subsections c. and d. of this section, the compensation paid to
19 the franchisee pursuant to subsection b. of this section shall be
20 reduced to the extent, if any, of the fair market value of such rights
21 as of the effective date of the termination, cancellation or
22 nonrenewal.

23 (cf: P.L.1991, c.459, s.4)

24
25 5. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read
26 as follows:

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

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

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

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

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

37 e. If a motor vehicle franchisor supplies a part or parts for use
38 in a repair rendered under a warranty other than by sale of that part
39 or parts to the motor vehicle franchisee, the motor vehicle
40 franchisee shall be entitled to compensation equivalent to the motor
41 vehicle franchisee's average percentage markup on the part or parts,
42 as if the part or parts had been sold to the motor vehicle franchisee
43 by the motor vehicle franchisor. The requirements of this section
44 shall not apply to entire engine assemblies and entire transmission
45 assemblies. In the case of those assemblies, the motor vehicle
46 franchisor shall reimburse the motor vehicle franchisee in the
47 amount of 30% of what the motor vehicle franchisee would have
48 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 **two years**
21 six months following the payment of the claim unless the motor
22 vehicle franchisor has reasonable grounds to believe that the claim
23 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.

47 With respect to franchisor administered service or repair plans
48 covering only routine maintenance service, this section applies only

1 to those plans sold to customers on or after the effective date of
2 P.L.1999, c.45.

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

17 (cf: P.L.1999, c.45, s.3)

18

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

21 1. a. "Committee" means the Motor Vehicle Franchise
22 Committee established in section 2 of this act;

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

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

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

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

46 f. "Relevant market area" means a geographic area **[8]** 14
47 miles in radius from a proposed franchise or business as it relates to
48 the grant, reopening or reactivation of a franchise or the

1 establishment, reopening or reactivation of a business; and a
2 geographic area 8-miles in radius from a relocated franchise or
3 business, but if there are no existing franchisees in the same line
4 make within an 8-mile radius of the **【proposed】** relocated franchise
5 or business, then the relevant market area includes the next closest
6 existing franchisee in the same line make within a 14-mile radius.
7 Determining whether an existing franchisee is within the relevant
8 market area of a proposed or relocated franchise or business, and
9 ascertaining any other measurement of distance, shall be made by
10 measuring the distance between the nearest surveyed boundary line
11 of the existing franchise and the nearest surveyed boundary line of
12 the proposed or relocated franchise or business.

13 (c.f. P.L.1982, c.156, s.1)

14

15 7. Section 3 of P.L.1982, c.156 (C.56:10-18) is amended to
16 read as follows:

17 3. **【No】** A motor vehicle franchisor **【shall】** may grant,
18 relocate, reopen or reactivate a franchise or establish, relocate,
19 reopen or reactivate a business, for the purpose of doing business on
20 the retail level, only if the franchise or business will not be
21 injurious as determined pursuant to section 8 of **【this act】** P.L.1982,
22 c.156 (C.56:10-23).

23 (cf: P.L.1982, c.156, s.3)

24

25 8. Section 4 of P.L.1982, c.156 (C.56:10-19) is amended to
26 read as follows:

27 4. A motor vehicle franchisor shall give its existing franchisees
28 in the same line make within **【the relevant market area】** 20 miles of
29 the proposed location for the proposed franchise or business as
30 calculated using the methodology set forth in subsection f. of
31 section 1 of P.L.1982, c.156 (C.56:10-16) not less than 90 days
32 advance written notice of its intention to grant, relocate, reopen or
33 reactivate a franchise of the same line make or establish, relocate,
34 reopen or reactivate a business. Any franchisee **【who is entitled to**
35 **receive the written notice】** in the relevant market area of the
36 proposed franchise or business may file with the committee a
37 protest to the granting, relocating, reopening or reactivation of the
38 franchise or the establishment, relocation, reopening or reactivation
39 of the business within 30 days of receipt of the notice or 30 days
40 after the end of any appeal procedure provided by the motor vehicle
41 franchisor, whichever is later. Any motor vehicle franchisee
42 entitled to file a protest that does not receive the written notice from
43 the motor vehicle franchisor and consequently does not file a
44 protest may file an action in the Superior Court against the motor
45 vehicle franchisor and the court shall enjoin and nullify the grant,
46 relocation, reopening or reactivation of the franchise or the
47 establishment, relocation, reopening or reactivation of the business,

1 regardless of whether a protest by such motor vehicle franchisee
2 would have been successful. In any such action, a successful motor
3 vehicle franchisee shall be entitled to an award of reasonable
4 attorneys' fees, court costs and expenses. A protest shall set forth
5 all reasons for objecting to the granting, reopening, or reactivation
6 of a franchise and shall be accompanied by a concise statement of
7 the facts and supporting affidavits for all issues raised in the
8 protest. When a protest is filed, the chairman of the committee
9 shall notify the motor vehicle franchisor and the franchisee in
10 writing that it has been filed and shall forthwith determine either to
11 transmit the protests to the Office of Administrative Law for
12 hearing or to conduct a hearing directly.
13 (cf: P.L.1982, c.156, s.4)

14

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

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

20 a. Permit an existing franchisee to relocate his franchise within
21 two miles of the franchisee's existing franchise location, except that
22 a franchise may not be relocated pursuant to this subsection unless
23 at least five years have elapsed since any previous relocation
24 pursuant to this subsection;

25 b. Reopen or reactivate a franchise or business which has not
26 been in operation for a period of two years or less at a site within
27 two miles of the prior site, provided that the rights accorded to the
28 franchisor herein shall not apply to a successor or assignee of the
29 franchisor of the franchise or business at the time the franchise or
30 business was closed or deactivated; or

31 c. Permit the purchaser of a controlling interest in the shares or
32 substantially all of the operating assets of an existing franchise to
33 relocate the place of business of the franchise within two miles of
34 the previously approved franchise location within 180 days of the
35 date of purchase.

36 (cf: P.L.1993, c.189, s.3)

37

38 10. Section 6 of P.L.1982, c.156 (C.56:10-21) is amended to
39 read as follows:

40 6. The hearing referred to in section 4 of **[this act]** P.L.1982,
41 c.156 (C.56:10-19) shall be conducted as a contested case in
42 accordance with the provisions of the "Administrative Procedure
43 Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and P.L.1978, c.67
44 (C.52:14F-1 et seq.). **[The committee shall make its final**
45 **determination within 120 days after the filing of the protest unless**
46 **the time is extended by the committee for good cause shown.]** The
47 franchisor shall have the burden of proving by a preponderance of
48 the evidence that the proposed franchise or business will not be

1 injurious. The testimony taken at the hearing shall be under oath
2 and recorded verbatim, but the parties shall not be bound by the
3 rules of evidence. True copies of any transcript and of any other
4 record made of or at the hearing shall be furnished to any party
5 upon request and at that party's expense. The committee may
6 subpoena witnesses and compel their attendance, administer oaths
7 and require the production for examination of any books or papers
8 relating to any matter involved in the hearing. The committee, at
9 the request of any party, may subpoena and compel the attendance of
10 such witnesses as the party may designate and require the
11 production for examination of any books or papers relating to any
12 matter involved in the hearing.

13 (cf: P.L.1982, c.156, s.6)

14

15 11. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to
16 read as follows:

17 8. a. **[In determining whether the]** The grant, **[relocation,]**
18 reopening or reactivation of a franchise or establishment,
19 **[relocation,]** or the reopening or reactivation of a business **[will]**
20 shall be deemed injurious to existing franchisees or to the public
21 interest**[, the committee may consider, but shall not be limited to**
22 **considering the following]** unless the franchisor proves, by a
23 preponderance of the evidence, that:

24 (1) The **[effect that the]** proposed franchise or business would
25 **[have on]** materially enhance the **[provision]** availability of stable,
26 adequate and reliable sales and service to purchasers of vehicles in
27 the same line make in the **[relevant]** market area served by the
28 franchisees entitled to notice;

29 (2) The **[effect that the]** proposed franchise or business would
30 **[have on]** not affect the stability of existing franchisees in the same
31 line make **[in the relevant market area];**

32 (3) **[Whether the]** The existing franchisees in the same line
33 make **[in the relevant market area are providing]** have not provided
34 adequate **[and convenient consumer service for motor vehicles of**
35 **the line make in the relevant market area, which shall include]**
36 representation of the line make in their market areas for a period of
37 at least two years based on the **[adequacy]** availability of motor
38 vehicle sales and service facilities, equipment, supply of motor
39 vehicle parts and qualified service personnel;

40 (4) The **[effect on a relocating dealer of a denial of its**
41 **relocation into the relevant market area]** franchisor's action is in
42 good faith.

43 b. In determining whether the grant, relocation, reopening or
44 reactivation of a franchise or establishment, relocation, reopening or
45 reactivation of a business will be injurious to existing franchisees or
46 to the public interest, it shall be conclusively presumed that the

1 proposed grant, relocation, reopening or reactivation of the
2 franchise or establishment, relocation, reopening or reactivation of
3 the business will be injurious to existing franchisees or to the public
4 interest if:

5 (1) for the 24-month period prior to notice pursuant to section 4
6 of P.L.1982, c.156 (C.56:10-19), the average market penetration of
7 the franchisees given notice pursuant to section 4 of P.L.1982,
8 c.156 (C.56:10-19), in the area of primary responsibility or territory
9 assigned to such franchisees, is at least equal to the average market
10 penetration of all franchisees in the same line make in [the zone,
11 district, region or other similar geographic designation, other than a
12 national geographic designation, used by the motor vehicle
13 franchisor into which the proposed franchise or business will be
14 assigned, it being the intent of this paragraph (1) of this subsection
15 b. not to compare the franchisees given notice to the national
16 market penetration of the motor vehicle franchisor] this State;

17 (2) the proposed franchise or business is likely to cause not less
18 than a 25% reduction in new vehicle sales or not less than a 25%
19 reduction in gross income for the protesting franchisee;

20 (3) the proposed franchise or business will not operate a full
21 service franchise or business at the proposed location; or

22 (4) an owner or operator of the proposed franchise or business
23 has engaged in materially unfair or deceptive business practices
24 with respect to a motor vehicle franchise or business.

25 c. The presumption in subsection b. of this section shall not
26 apply to the grant, reopening or reactivation of a franchise or to the
27 establishment, reopening or reactivation of a business if the
28 proposed franchisee is a minority or a woman. For the purposes of
29 this subsection, "minority" means a person who is:

30 (1) Black, which is a person having origins in any of the black
31 racial groups in Africa; or

32 (2) Hispanic, which is a person of Spanish or Portuguese culture
33 with origins in Mexico, South or Central America, or the Caribbean
34 Islands, regardless of race; or

35 (3) Asian American, which is a person having origins in any of
36 the original peoples of the Far East, Southeast Asia, Indian
37 Subcontinent, Hawaii, or the Pacific Islands; or

38 (4) American Indian or Alaskan native, which is a person having
39 origins in any of the original peoples of North America.

40 d. In determining whether the relocation of an existing
41 franchise or business will be injurious to existing franchisees or the
42 public interest, the committee shall consider in making its
43 determination, whether the franchisor has proven, by a
44 preponderance of the evidence, that:

45 (1) The relocation would materially enhance the availability of
46 stable, adequate and reliable sales and service to purchasers of
47 vehicles in the same line make in the market areas served by the
48 franchisees entitled to notice;

1 (2) The relocation would not affect the stability of the existing
2 franchises in the same line make;

3 (3) The existing franchisees in the same line make have not
4 provided adequate representation of the line make in their market
5 areas for a period of at least two years based on the availability of
6 motor vehicle sales and service facilities, equipment, supply of
7 motor vehicle parts and qualified service personnel;

8 (4) The relocation is in good faith; and

9 (5) The effect on the relocating dealer of the denial of its
10 relocation outweighs the injury to an existing franchisee.

11 (cf: P.L.1999, c.45, s.4)

12

13 12. (New section) a. Upon timely institution of an action or
14 alternate dispute resolution proceeding to enjoin the termination of
15 a motor vehicle franchise on the ground that such termination would
16 be in violation of the "Franchise Practices Act," P.L.1971, c.356
17 (C.56:10-1 et. seq.), the termination shall be automatically stayed
18 pending the final disposition of such action or proceeding, and the
19 motor vehicle franchisor shall accord the motor vehicle franchisee
20 all rights and privileges of a franchisee as if notice of termination
21 had not been given.

22 b. A successful motor vehicle franchisee in an action or
23 alternate dispute resolution proceeding to enjoin the termination of
24 a motor vehicle franchise shall be entitled to an injunction barring
25 termination of the motor vehicle franchise in addition to any other
26 relief provided for in section 10 of P.L.1971, c.356 (C.56:10-10).

27 c. In any action or alternate dispute resolution proceeding with
28 respect to the termination of a motor vehicle franchise, the motor
29 vehicle franchisor shall have the burden of proving that termination
30 of the motor vehicle franchise does not violate section 5 of
31 P.L.1971, c.356 (C.56:10-5). In proving good cause for termination
32 in any such action, the motor vehicle franchisor shall be limited to
33 the grounds for termination set forth in the written notice provided
34 for in section 5 of P.L.1971, c.356 (C.56:10-5).

35 d. Notwithstanding the giving of notice of termination of a
36 motor vehicle franchise pursuant to section 5 of P.L.1971 c.356
37 (C.56:10-5), at any time prior to the date on which the termination
38 becomes effective, the motor vehicle franchisee may enter into an
39 agreement for, and submit to the motor vehicle franchisor, notice of
40 the transfer, assignment or sale of the motor vehicle franchise to
41 another person. Thereupon, the motor vehicle franchisor shall
42 proceed as provided for in section 6 of P.L.1971, c.356 (C.56:10-6).
43 Upon approval of the transfer, assignment or sale by the motor
44 vehicle franchisor and upon consummation of same, the notice of
45 termination of the motor vehicle franchise shall be deemed
46 withdrawn, and the transferee shall receive the motor vehicle
47 franchise free and clear of all grounds for termination.
48 Notwithstanding the terms of any notice, any court order or any

1 other provision of law, a motor vehicle franchise termination shall
2 not become effective while a notice of transfer, assignment or sale
3 is pending with a motor vehicle franchisor.

4
5 13. (New section) If a motor vehicle franchisor desires
6 information about a transaction or a proposed transferee, in addition
7 to that provided with the notice of intent pursuant to section 6 of
8 P.L.1971, c.356 (C.56:10-6), the motor vehicle franchisor shall
9 request all such additional information in writing within 15 days of
10 receipt of the notice of intent. A request for additional information
11 shall not extend the time within which the motor vehicle franchisor
12 must approve or disapprove the transfer, provided that the
13 additional information is submitted to the motor vehicle franchisor
14 within 30 days after the additional information is requested by the
15 motor vehicle franchisor. If the additional information is submitted
16 to the motor vehicle franchisor more than 30 days after the request
17 for that information, the time period for the motor vehicle
18 franchisor to approve or disapprove the transfer shall be extended
19 so that the motor vehicle franchisor has 15 days to approve or
20 disapprove the transfer after receipt of the additional information.

21
22 14. This act shall take effect immediately.

23 24 25 STATEMENT

26
27 This bill revises New Jersey's "Franchise Practices Act,"
28 P.L.1971, c.356 (C.56:10-1 et seq.), which, in part, defines the
29 relationship and responsibilities between motor vehicle franchisors
30 (manufacturers) and motor vehicle franchisees (dealers).
31 Specifically, this bill clarifies and reinforces provisions of the
32 existing law as it relates to:

- 33 • Unreasonable facilities, capital or inventory requirements
34 imposed on auto retailers by automakers.
- 35 • Manufacturer demands on dealers to sign side agreements or
36 addenda, which force dealers to give up essential franchise
37 rights.
- 38 • Unreasonable charge backs levied by manufacturers against
39 dealers in connection with the exportation of motor vehicles,
40 sales incentive or warranty audits.
- 41 • Repurchase obligations on the part of an auto manufacturer in
42 the case of a voluntary dealer termination, and a dealer's rights
43 in the case of an involuntary termination, in the event of a sale
44 or transfer of a franchise, and when a manufacturer seeks to
45 establish or relocate a new or competing franchise in the
46 dealer's relevant market area.

47 Over the years, the "Franchise Practices Act" has been amended
48 to keep pace with changing market conditions and to address new

1 threats to the consumer and the public interest in the franchise
2 system. Recent developments in the auto industry have highlighted
3 the unequal bargaining position of dealers' vis-à-vis manufacturers.
4 Dozens of New Jersey new car dealerships and thousands of
5 dealership jobs have been lost. New Jersey consumers and the
6 economy have suffered as a result.

7 This bill is intended to protect New Jersey new car dealerships
8 and their employees from further economic dislocation imposed by
9 automakers. The bill is designed to level the playing field on which
10 auto franchisees and auto franchisors do business, and to protect the
11 consumer and the public interest in a strong and secure franchise
12 system of responsible local businesses.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2704 and 2693**

STATE OF NEW JERSEY

DATED: MARCH 3, 2011

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate, Nos. 2704 and 2693.

This committee substitute revises New Jersey's "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), which, in part, defines the relationship and responsibilities between motor vehicle franchisors (manufacturers) and motor vehicle franchisees (dealers). Specifically, this bill clarifies and reinforces provisions of the existing law as it relates to:

- Unreasonable facilities, capital or inventory requirements imposed on dealers by manufacturers.
- Manufacturer demands on dealers to sign side agreements or addenda, which force dealers to give up essential franchise rights.
- Unreasonable charge backs levied by manufacturers against dealers in connection with the exportation of motor vehicles, sales incentives or warranty audits.
- Repurchase obligations on the part of a manufacturer in the case of a voluntary dealer termination, and a dealer's rights in the case of an involuntary termination, in the event of a sale or transfer of a franchise, and when a manufacturer seeks to establish or relocate a new or competing franchise in the dealer's relevant market area.

As reported, this committee substitute is identical to A-3722 (1R).