

56:10-2
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2009 **CHAPTER:** 235

NJSA: 56:10-2 (Expands definition of "place of business" under Franchise Practices Act)

BILL NO: A2491 (Substituted for S1539)

SPONSOR(S) Cryan and Others

DATE INTRODUCED: March 10, 2008

COMMITTEE: **ASSEMBLY:** Commerce and Economic Development

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 11, 2010

SENATE: January 11, 2010

DATE OF APPROVAL: January 16, 2010

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

A2491

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	Yes
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LEGISLATIVE FISCAL NOTE:	No
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S1539

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: No
	SENATE: Yes

FLOOR AMENDMENT STATEMENT:	No
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LEGISLATIVE FISCAL NOTE:	No
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(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

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LAW/RWH

[First Reprint]

ASSEMBLY, No. 2491

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 10, 2008

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

Co-Sponsored by:

Senator B.Smith

SYNOPSIS

Expands definition of “place of business” under Franchise Practices Act.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 7, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning the Franchise Practices Act and amending
2 P.L.1971, c.356.

3

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

6

7 1. Section 2 of P.L.1971, c.356 (C.56:10-2) is amended to read
8 as follows:

9 2. The Legislature finds and declares that distribution and sales
10 through franchise arrangements in the State of New Jersey vitally
11 affects the general economy of the State, the public interest and the
12 public welfare. It is therefore necessary in the public interest to
13 define the relationship and responsibilities of franchisors and
14 franchisees in connection with franchise arrangements and to
15 protect franchisees from unreasonable termination by franchisors
16 that may result from a disparity of bargaining power between
17 national and regional franchisors and small franchisees. The
18 Legislature finds that these protections are necessary to protect not
19 only retail businesses, but also wholesale distribution franchisees
20 that, through their efforts, enhance the reputation and goodwill of
21 franchisors in this State. Further, the Legislature declares that the
22 courts have in some cases more narrowly construed the Franchise
23 Practices Act than was intended by the Legislature.

24 (cf: P.L.1971, c.356, s.2)

25

26 2. Section 3 of P.L.1971, c.356 (C.56:10-3) is amended to read
27 as follows:

28 3. As used in this act:

29 a. "Franchise" means a written arrangement for a definite or
30 indefinite period, in which a person grants to another person a
31 license to use a trade name, trade mark, service mark, or related
32 characteristics, and in which there is a community of interest in the
33 marketing of goods or services at wholesale, retail, by lease,
34 agreement, or otherwise.

35 b. "Person" means a natural person, corporation, partnership,
36 trust, or other entity and, in case of an entity, it shall include any
37 other entity which has a majority interest in such entity or
38 effectively controls such other entity as well as the individual
39 officers, directors, and other persons in active control of the
40 activities of each such entity.

41 c. "Franchisor" means a person who grants a franchise to
42 another person.

43 d. "Franchisee" means a person to whom a franchise is offered
44 or granted.

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 January 7, 2010.

- 1 e. "Sale, transfer or assignment" means any disposition of a
2 franchise or any interest therein, with or without consideration, to
3 include but not limited to bequest, inheritance, gift, exchange, lease
4 or license.
- 5 f. "Place of business" means a fixed geographical location at
6 which the franchisee displays for sale ~~and~~ ¹or at which or from
7 which the franchisee ¹and sells the franchisor's goods or offers for
8 sale and sells the franchisor's services. Place of business shall not
9 mean ~~an office, a warehouse,~~ ¹an office, a warehouse, ¹a place of
10 storage, a residence or a vehicle, ¹~~but shall mean~~ ¹except that
11 with respect to persons who do not make a majority of their sales
12 directly to consumers, "place of business" means a fixed
13 geographical location at which the franchisee displays for sale and
14 sells the franchisor's goods or offers for sale and sells the
15 franchisor's services, or ¹an office or a warehouse from which
16 franchisee personnel visit or call upon customers or from which the
17 franchisor's goods are delivered to customers.
18 (cf: P.L.1971, c.356, s.3)
19
20 3. This act shall take effect immediately.

ASSEMBLY, No. 2491

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MARCH 10, 2008

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

SYNOPSIS

Expands definition of “place of business” under Franchise Practices Act.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the Franchise Practices Act and amending
2 P.L.1971, c.356.

3

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

6

7 1. Section 2 of P.L.1971, c.356 (C.56:10-2) is amended to read
8 as follows:

9 2. The Legislature finds and declares that distribution and sales
10 through franchise arrangements in the State of New Jersey vitally
11 affects the general economy of the State, the public interest and the
12 public welfare. It is therefore necessary in the public interest to
13 define the relationship and responsibilities of franchisors and
14 franchisees in connection with franchise arrangements and to
15 protect franchisees from unreasonable termination by franchisors
16 that may result from a disparity of bargaining power between
17 national and regional franchisors and small franchisees. The
18 Legislature finds that these protections are necessary to protect not
19 only retail businesses, but also wholesale distribution franchisees
20 that, through their efforts, enhance the reputation and goodwill of
21 franchisors in this State. Further, the Legislature declares that the
22 courts have in some cases more narrowly construed the Franchise
23 Practices Act than was intended by the Legislature.

24 (cf: P.L.1971, c.356, s.2)

25

26 2. Section 3 of P.L.1971, c.356 (C.56:10-3) is amended to read
27 as follows:

28 3. As used in this act:

29 a. "Franchise" means a written arrangement for a definite or
30 indefinite period, in which a person grants to another person a
31 license to use a trade name, trade mark, service mark, or related
32 characteristics, and in which there is a community of interest in the
33 marketing of goods or services at wholesale, retail, by lease,
34 agreement, or otherwise.

35 b. "Person" means a natural person, corporation, partnership,
36 trust, or other entity and, in case of an entity, it shall include any
37 other entity which has a majority interest in such entity or
38 effectively controls such other entity as well as the individual
39 officers, directors, and other persons in active control of the
40 activities of each such entity.

41 c. "Franchisor" means a person who grants a franchise to
42 another person.

43 d. "Franchisee" means a person to whom a franchise is offered
44 or granted.

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 e. "Sale, transfer or assignment" means any disposition of a
2 franchise or any interest therein, with or without consideration, to
3 include but not limited to bequest, inheritance, gift, exchange, lease
4 or license.

5 f. "Place of business" means a fixed geographical location at
6 which the franchisee displays for sale **[and]** or at which or from
7 which the franchisee sells the franchisor's goods or offers for sale
8 and sells the franchisor's services. Place of business shall not mean
9 **[an office, a warehouse,]** a place of storage, a residence or a
10 vehicle, but shall mean an office or a warehouse from which
11 franchisee personnel visit or call upon customers or from which the
12 franchisor's goods are delivered to customers.

13 (cf: P.L.1971, c.356, s.3)

14

15 3. This act shall take effect immediately

16

17

18

STATEMENT

19

20 This bill would revise the definition of a "place of business"
21 under this State's Franchise Practices Act (FPA) to include an
22 office or a warehouse from which franchisee personnel visit or call
23 upon customers or from which the franchisor's goods are delivered
24 to customers.

25 The FPA defines the relationship and responsibilities of
26 franchisors and franchisees in franchise arrangements and provides
27 certain protections to franchisees. A contract between two parties
28 constitutes a franchise agreement if five conditions are met: 1) the
29 franchisor must grant the franchisee license to use a trade name,
30 trade mark, service mark, or related characteristic; 2) there must be
31 a community of interest in the marketing of goods and services; 3)
32 the franchisee must establish or maintain a place of business in the
33 State; 4) the gross sales of products or services between the
34 franchisor and franchisee must be more than \$35,000 in the prior
35 year; and 5) more than 20 percent of the franchisees sales are
36 intended to be or derived from the franchise.

37 The FPA defines a "place of business" as a fixed geographical
38 location at which the franchisee displays for sale *and* sells the
39 franchisor's goods or offers for sale and sells the franchisor's
40 services. The definition specifically excludes an office, a
41 warehouse, a place of storage, a residence, or a vehicle.

42 This bill would provide further protections to franchisees by
43 expanding the definition of a "place of business." Under the bill, a
44 place of business would include a location where a franchisee
45 displays for sale *or* at which or from which the franchisee sells the
46 franchisors goods. Place of business under the bill specifically
47 includes an office or warehouse from which franchisee personnel

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- 1 visit or call upon customers or from which the franchisor's goods
- 2 are delivered to customers.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2491

STATE OF NEW JERSEY

DATED: OCTOBER 23, 2008

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 2491.

This bill would revise the definition of a “place of business” under this State’s Franchise Practices Act “(FPA)” N.J.S.A. 56:10-1 et seq., to include an office or a warehouse from which franchisee personnel visit or call upon customers or from which the franchisor’s goods are delivered to customers.

The FPA defines the relationship and responsibilities of franchisors and franchisees in franchise arrangements and provides certain protections to franchisees. For a contract between two parties to constitute a franchise agreement, the franchise must establish or maintain a place of business in the State.

The FPA currently defines a “place of business” as a fixed geographical location at which the franchisee displays for sale *and* sells the franchisor’s goods or offers for sale and sells the franchisor’s services. The definition specifically excludes an office, a warehouse, a place of storage, a residence, or a vehicle.

This bill would provide further protections to franchisees by expanding the definition of a “place of business.” Under the bill, a place of business would include a location where a franchisee displays for sale *or* at which or from which the franchisee sells the franchisor’s goods. Place of business under the bill specifically includes an office or warehouse from which franchisee personnel visit or call upon customers or from which the franchisor’s goods are delivered to customers.

STATEMENT TO
ASSEMBLY, No. 2491

with Assembly Floor Amendments
(Proposed by Assemblyman CRYAN)

ADOPTED: JANUARY 7, 2010

Assembly Bill No. 2491 revises the definition of a “place of business” under this State’s Franchise Practices Act “(FPA),” N.J.S.A. 56:10-1 et seq., to include an office or a warehouse from which franchisee personnel visit or call upon customers or from which the franchisor’s goods are delivered to customers.

These Assembly amendments further clarify the definition of “place of business” to specify that the current definition of “place of business” continues to apply to persons who sell directly to consumers, including most “business format” franchises regulated under federal law by 16 C.F.R. Part 436.

However, if the majority of sales are not made directly to consumers, “place of business” is defined under these amendments as a fixed geographical location at which the franchisee displays for sale and sells the franchisor’s goods or offers for sale and sells the franchisor’s services or an office or a warehouse from which franchisee personnel visit or call upon customers or from which the franchisor's goods are delivered to customers.

These Assembly amendments afford wholesale distribution businesses the protections of the New Jersey Franchise Practices Act, rectifying the anomaly that exists under current law, where a distribution business that requires its customers to come to its place of business to buy goods is treated as a franchise, while one that incurs the extra burden of providing the service of going to its customers to deliver its products and make sales does not receive the act’s protections.

Under these amendments, mobile “business format” franchises selling to consumers will continue to be subject to the regulation of the Federal Trade Commission, while “bricks-and-mortar” franchises will continue to be subject to the New Jersey Franchise Practices Act as they have been since 1971.

SENATE, No. 1539

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 17, 2008

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Expands definition of “place of business” under Franchise Practices Act.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the Franchise Practices Act and amending
2 P.L.1971, c.356.

3

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

6

7 1. Section 2 of P.L.1971, c.356 (C.56:10-2) is amended to read
8 as follows:

9 2. The Legislature finds and declares that distribution and sales
10 through franchise arrangements in the State of New Jersey vitally
11 affects the general economy of the State, the public interest and the
12 public welfare. It is therefore necessary in the public interest to
13 define the relationship and responsibilities of franchisors and
14 franchisees in connection with franchise arrangements and to
15 protect franchisees from unreasonable termination by franchisors
16 that may result from a disparity of bargaining power between
17 national and regional franchisors and small franchisees. The
18 Legislature finds that these protections are necessary to protect not
19 only retail businesses, but also wholesale distribution franchisees
20 that, through their efforts, enhance the reputation and goodwill of
21 franchisors in this State. Further, the Legislature declares that the
22 courts have in some cases more narrowly construed the Franchise
23 Practices Act than was intended by the Legislature.

24 (cf: P.L.1971, c.356, s.2)

25

26 2. Section 3 of P.L.1971, c.356 (C.56:10-3) is amended to read
27 as follows:

28 3. As used in this act:

29 a. "Franchise" means a written arrangement for a definite or
30 indefinite period, in which a person grants to another person a
31 license to use a trade name, trade mark, service mark, or related
32 characteristics, and in which there is a community of interest in the
33 marketing of goods or services at wholesale, retail, by lease,
34 agreement, or otherwise.

35 b. "Person" means a natural person, corporation, partnership,
36 trust, or other entity and, in case of an entity, it shall include any
37 other entity which has a majority interest in such entity or
38 effectively controls such other entity as well as the individual
39 officers, directors, and other persons in active control of the
40 activities of each such entity.

41 c. "Franchisor" means a person who grants a franchise to
42 another person.

43 d. "Franchisee" means a person to whom a franchise is offered
44 or granted.

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 e. "Sale, transfer or assignment" means any disposition of a
2 franchise or any interest therein, with or without consideration, to
3 include but not limited to bequest, inheritance, gift, exchange, lease
4 or license.

5 f. "Place of business" means a fixed geographical location at
6 which the franchisee displays for sale **[and]** or at which or from
7 which the franchisee sells the franchisor's goods or offers for sale
8 and sells the franchisor's services. Place of business shall not mean
9 **[an office, a warehouse,]** a place of storage, a residence or a
10 vehicle, but shall mean an office or a warehouse from which
11 franchisee personnel visit or call upon customers or from which the
12 franchisor's goods are delivered to customers.

13 (cf: P.L.1971, c.356, s.3)

14

15 3. This act shall take effect immediately

16

17

18

STATEMENT

19

20 This bill would revise the definition of a "place of business"
21 under this State's Franchise Practices Act (FPA) to include an
22 office or a warehouse from which franchisee personnel visit or call
23 upon customers or from which the franchisor's goods are delivered
24 to customers.

25 The FPA defines the relationship and responsibilities of
26 franchisors and franchisees in franchise arrangements and provides
27 certain protections to franchisees. A contract between two parties
28 constitutes a franchise agreement if five conditions are met: 1) the
29 franchisor must grant the franchisee license to use a trade name,
30 trade mark, service mark, or related characteristic; 2) there must be
31 a community of interest in the marketing of goods and services; 3)
32 the franchisee must establish or maintain a place of business in the
33 State; 4) the gross sales of products or services between the
34 franchisor and franchisee must be more than \$35,000 in the prior
35 year; and 5) more than 20 percent of the franchisees sales are
36 intended to be or derived from the franchise.

37 The FPA defines a "place of business" as a fixed geographical
38 location at which the franchisee displays for sale *and* sells the
39 franchisor's goods or offers for sale and sells the franchisor's
40 services. The definition specifically excludes an office, a
41 warehouse, a place of storage, a residence, or a vehicle.

42 This bill would provide further protections to franchisees by
43 expanding the definition of a "place of business." Under the bill, a
44 place of business would include a location where a franchisee
45 displays for sale *or* at which or from which the franchisee sells the
46 franchisors goods. Place of business under the bill specifically
47 includes an office or warehouse from which franchisee personnel

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4

- 1 visit or call upon customers or from which the franchisor's goods
- 2 are delivered to customers.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1539

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 7, 2010

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1539.

This bill, as amended, revises the definition of a “place of business” under the State’s “Franchise Practices Act,” P.L.1971, c.356 (C.56:10-1 et seq.).

Under the act currently, “place of business” is defined as “a fixed geographical location at which the franchisee displays for sale and sells the franchisor's goods or offers for sale and sells the franchisor's services”; however, it shall not mean “an office, a warehouse, a place of storage, a residence or a vehicle.” P.L.1971, c.356, s.3 (C.56:10-3).

The bill modifies this definition, but only with respect to any person who does not make a majority of sales directly to consumers. For such persons, “place of business” means “a fixed geographic location at which the franchisee displays for sale and sells the franchisor’s goods or offers for sale and sells the franchisor’s services, or an office or a warehouse from which franchisee personnel visit or call upon customers or from which the franchisor’s goods are delivered to customers.” [emphasis supplied]

The intent of changing the definition is to modify the scope of the “Franchise Practices Act” with respect to a wholesaler or distributor business. Currently, any such business that requires its customers to come to its place of business to buy goods may be treated as a franchisee, while one that provides the service of going to its customers to deliver products and make sales may not be considered a franchisee under the act. Under the bill, both businesses may be treated as franchisees.

The amendments to the bill:

- reinstate the existing definition of “place of business” under the “Franchise Practices Act”; and
- provide a modification of this definition, but only with respect to any person who does not make a majority of sales directly to consumers, as explained above.