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[Second Reprint]  
**SENATE, No. 2553**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 9, 2009

**Sponsored by:**

**Senator GERALD CARDINALE**

**District 39 (Bergen)**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblyman RUBEN J. RAMOS, JR.**

**District 33 (Hudson)**

**Co-Sponsored by:**

**Assemblyman Prieto, Assemblywomen Rodriguez, Vainieri Huttle,  
Assemblymen Johnson, Vas and Burzichelli**

**SYNOPSIS**

Concerns franchisors' assignment of interest relating to franchisees engaged in the retail sale of motor fuel.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on May 18, 2009, with amendments.

**(Sponsorship Updated As Of: 5/22/2009)**

1 AN ACT concerning the assignment of certain franchise interests  
2 and supplementing P.L.1971, c.356 (C.56:10-1 et seq.).

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. It shall be a violation of the "Franchise Practices Act,"  
8 P.L.1971, c.356 (C.56:10-1 et seq.):

9 a. For a franchisor to transfer, assign <sup>2</sup>, <sup>2</sup> or sell an interest in  
10 one or more franchise premises <sup>1</sup>[that is a retail dealer, as defined  
11 by section 101 of P.L.1938, c.163 (C.56:6-1), engaged] <sup>2</sup>[where]  
12 which<sup>2</sup> a franchisee <sup>2</sup>who purchases motor fuels and<sup>2</sup> engages<sup>1</sup> in  
13 the 'retail' sale <sup>2</sup>[of motor fuel, and that <sup>1</sup>[a] the<sup>1</sup> franchisee]  
14 thereof<sup>2</sup> has occupied under a lease <sup>1</sup>[, sublease or other grant of  
15 authority] agreement or agreements for a period of at least three  
16 consecutive years, or <sup>2</sup>[has] occupies under<sup>2</sup> a lease agreement for  
17 a term of at least three years<sup>1</sup>, unless the franchisor:

18 (1) makes a bona fide offer to transfer, assign <sup>2</sup>, <sup>2</sup> or sell to the  
19 franchisee all of the franchisor's interest in the <sup>1</sup>franchise<sup>1</sup> premises,  
20 <sup>2</sup>[for]<sup>2</sup> which <sup>2</sup>offer<sup>2</sup> the franchisee shall have 60 days <sup>2</sup>[in  
21 which]<sup>2</sup> to accept or reject <sup>2</sup>[the offer]<sup>2</sup>; and

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

**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:

<sup>1</sup>Senate SCM committee amendments adopted February 26, 2009.

<sup>2</sup>Assembly AAP committee amendments adopted May 18, 2009.

1 except that nothing contained herein shall require the franchisor,  
2 having made a bona fide offer or offer under a right of first refusal  
3 to transfer, assign, or sell to the franchisee the franchisor's interest  
4 in the premises pursuant to paragraph (1) or paragraph (2),  
5 respectively, of this subsection, which offer the franchisee has  
6 rejected or failed to accept timely, to make a new offer upon the  
7 occurrence of a legitimate subsequent change at closing<sup>2, 1</sup>.

8 b. For any successor owner, following a transfer, assignment  
9 <sup>2, 2</sup> or sale subsequent to the franchisee's rejection of <sup>2</sup>[offers] , or  
10 failure to accept timely, an offer<sup>2</sup> made by the franchisor pursuant  
11 to <sup>2</sup>[paragraphs] paragraph<sup>2</sup> (1) <sup>2</sup>[and] or paragraph<sup>2</sup> (2) of  
12 subsection a. <sup>2</sup>of this section<sup>2</sup>:

13 (1) not to maintain the requirements of the franchise  
14 <sup>2</sup>arrangement<sup>2</sup> in effect at the time of the transfer, assignment <sup>2, 2</sup> or  
15 sale for each premises, unless <sup>2</sup>that arrangement is<sup>2</sup> changed only  
16 by mutual agreement of the franchisee and the successor owner;

17 (2) not to renew, at the expiration of the franchise <sup>1</sup>[agreement]  
18 arrangement<sup>1</sup> in effect at the time of the transfer, assignment, or  
19 sale, the franchise <sup>1</sup>[agreement] arrangement<sup>1</sup> of the franchisee for  
20 the same number of years as the franchise <sup>1</sup>[agreement]  
21 arrangement<sup>1</sup> in effect at the time of the transfer, assignment <sup>2, 2</sup> or  
22 sale, provided the renewal shall not exceed five years; and

23 (3) to require the franchisee to:

24 (a) participate in promotional campaigns of the successor  
25 owner's products;

26 (b) meet sales quotas;

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

29 (d) keep the premises open and operating during hours which  
30 are documented by the franchisee to be unprofitable to the  
31 franchisee; or

32 (e) disclose to the successor owner or successor owner's  
33 supplier any financial records of the operation of the franchisee's  
34 premises which are not related or necessary to the franchisee's  
35 obligations under the franchise <sup>1</sup>[agreement] arrangement<sup>1</sup>.

36 Nothing in this subsection shall affect the successor owner's  
37 ability to terminate, cancel <sup>2, 2</sup> or fail to renew a franchise  
38 <sup>2</sup>arrangement<sup>2</sup> for good cause shown in accordance with the  
39 provisions of the "Franchise Practices Act," P.L.1971, c.356  
40 (C.56:10-1 et seq.).

41 c. For any successor owner, as set forth in subsection b. of this  
42 section, to transfer, assign <sup>2, 2</sup> or sell an interest in a single franchise  
43 premises <sup>1</sup>[that is a retail dealer] where a franchisee has<sup>1</sup> engaged  
44 in the <sup>1</sup>retail<sup>1</sup> sale of motor fuel that is not part of two or more  
45 franchise premises <sup>1</sup>[retail dealers]<sup>1</sup>, presented by the successor  
46 owner as a package to transfer, assign <sup>2, 2</sup> or sell, and that <sup>1</sup>[a] the<sup>1</sup>

1 franchisee has occupied under a lease <sup>1</sup>[, sublease or other grant of  
2 authority] agreement or agreements for a period of three  
3 consecutive years, or <sup>2</sup>[has] occupies under<sup>2</sup> a lease agreement for  
4 a term of at least three years<sup>1</sup>, unless the successor owner makes an  
5 offer to transfer, assign <sup>2,2</sup> or sell to the franchisee the successor  
6 owner's interest, or offers the franchisee a right of first refusal on  
7 an offer presented by another person acceptable to the successor  
8 owner as a new successor to the interest, in accordance with the  
9 provisions of subsection a. of this section.

10  
11 <sup>2</sup>2. The provisions of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) pertaining to franchisors shall not apply to  
13 any distributor which owns or otherwise controls through lease,  
14 fewer than 40 premises. For purposes of this section, "distributor"  
15 means any person, including any affiliate of such person, who: (1)  
16 purchases motor fuel for sale, consignment, or distribution to  
17 another; or (2) receives motor fuel for consignment or distribution  
18 to the person's or affiliate's own motor fuel accounts, but shall not  
19 include a person who merely serves as a common carrier providing  
20 transportation services for another.<sup>2</sup>

21  
22 <sup>2</sup>3. The provisions of P.L. , c. (C. ) (pending before the  
23 Legislature as this bill) shall not apply to the sale, transfer, or  
24 assignment of one or more franchise premises from one family  
25 member to another family member. For the purposes of this  
26 section, "family member" means a spouse, child, parent, sibling,  
27 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,  
28 father-in-law, mother-in-law, son-in-law, daughter-in-law,  
29 stepparent, stepchild, stepbrother, stepsister, half brother, or half  
30 sister, whether the individual is related by blood, marriage, or  
31 adoption.<sup>2</sup>

32  
33 <sup>2</sup>4. If any provision of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill) or the application of any such provision to  
35 any person or circumstance should be held invalid by a court of  
36 competent jurisdiction, the remainder of P.L. , c. (C. )  
37 (pending before the Legislature as this bill) and the application of  
38 its provisions to persons or circumstances other than those with  
39 respect to whom or which it is held invalid shall not be affected  
40 thereby.<sup>2</sup>

41  
42 <sup>2</sup>[2.] <sup>5,2</sup> This act shall take effect <sup>2</sup>[on the first day of the first  
43 month next following] upon<sup>2</sup> enactment, and shall apply to <sup>1</sup>any<sup>1</sup>  
44 franchise <sup>1</sup>[agreements entered into] arrangement in effect<sup>1</sup> on  
45 <sup>1</sup>[or after]<sup>1</sup> <sup>2</sup>[that effective date and shall also apply to any  
46 franchise]<sup>2</sup> <sup>1</sup>[agreement] <sup>2</sup>[arrangement<sup>1</sup> entered into]<sup>2</sup> <sup>1</sup>[prior

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5

1 to] <sup>2</sup>[on or after<sup>1</sup> the effective date] February 2, 2009 or becoming  
2 effective thereafter<sup>2</sup>.

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

5 c. For any successor owner, as set forth in subsection b. of this  
6 section, to transfer, assign or sell an interest in a single franchise  
7 premises that is a retail dealer engaged in the sale of motor fuel that  
8 is not part of two or more franchise premises retail dealers,  
9 presented by the successor owner as a package to transfer, assign or  
10 sell, and that a franchisee has occupied under a lease, sublease or  
11 other grant of authority, unless the successor owner makes an offer  
12 to transfer, assign or sell to the franchisee the successor owner's  
13 interest, or offers the franchisee a right of first refusal on an offer  
14 presented by another person acceptable to the successor owner as a  
15 new successor to the interest, in accordance with the provisions of  
16 subsection a. of this section.

17

18 2. This act shall take effect on the first day of the first month  
19 next following enactment, and shall apply to franchise agreements  
20 entered into on or after that effective date and shall also apply to  
21 any franchise agreement entered into prior to the effective date.

22

23

24 *SPONSORS* STATEMENT

25

26 This bill establishes certain limitations on a franchisor's  
27 assignment of interest relating to franchisees engaged in the retail  
28 sale of motor fuel.

29 The first limitation set forth under the bill prevents a franchisor  
30 from transferring, assigning or selling an interest in one or more  
31 franchise premises that a franchisee has occupied under a lease,  
32 sublease or other grant of authority, unless the franchisor: (1) makes  
33 a bona fide offer to transfer, assign or sell the interest to the  
34 franchisee; and (2) if applicable, offers the franchisee a right of first  
35 refusal on any offer presented by another person acceptable to  
36 succeed the franchisor to the interest. In both cases, the franchisee  
37 shall have 60 days in which to accept or reject the offer.

38 The next limitation concerns successor owners. Any successor  
39 owner, following a transfer, assignment or sale: shall maintain the  
40 requirements of the franchise in effect at the time of the transfer,  
41 assignment or sale, unless changed by mutual agreement of the  
42 franchisee and successor owner; shall renew the franchise  
43 agreement at its expiration for the same number of years as the  
44 previously effective agreement, provided the renewal shall not  
45 exceed five years; and shall not require the franchisee to adhere to  
46 certain business practices, such as sales quotas, selling products at  
47 the successor owner's suggested prices, and keeping the premises  
48 open and operating during hours documented to be unprofitable.

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1 The final limitation prevents the above described successor  
2 owner from then transferring, assigning or selling an interest in a  
3 single premises that a franchisee has occupied under a lease,  
4 sublease or other grant of authority, unless the successor owner: (1)  
5 makes a bona fide offer to transfer, assign or sell the interest to the  
6 franchisee; and (2) if applicable, offers the franchisee a right of first  
7 refusal on any offer presented by another person acceptable to  
8 succeed the successor owner to the interest. In both cases, the  
9 franchisee shall have 60 days in which to accept or reject the offer.

10 A violation of these limitations is declared under the bill to be a  
11 violation of the "Franchise Practices Act," P.L.1971, c.356  
12 (C.56:10-1), thus permitting a franchisee to bring an action in  
13 Superior Court to recover damages sustained, injunctive relief  
14 where appropriate, and entitlement to costs of suit and reasonable  
15 attorney's fees.

16 The bill is intended to take effect on the first day of the first  
17 month next following enactment and apply to franchise agreements  
18 entered into on or after the effective date, and shall additionally  
19 apply retroactively to any franchise agreement entered into prior to  
20 the bill taking effect.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2553**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 18, 2009

The Assembly Appropriations Committee reports favorably Senate Bill No. 2553 (1R), with committee amendments.

The bill, as amended, establishes certain limitations on a franchisor's sale or assignment of an interest in one or more franchise premises where a franchisee buys motor fuels and sells them at retail.

The bill prohibits a franchisor from transferring, assigning, or selling an interest in one or more franchise premises that a franchisee has occupied under a lease agreement or agreements for a period of at least three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the franchisor: (1) makes a bona fide offer to transfer, assign, or sell the interest in the franchise premises to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the franchisor to the interest. In either case, the franchisee shall have 60 days in which to accept or reject the offer. If the franchisee accepts a franchisor's offer under the right of first refusal, the franchisor, as a condition for entering into the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract. This deposit shall be non-refundable if the franchisee willfully defaults on the contract.

The bill also imposes limitations on successor owners. Any successor owner, following a transfer, assignment, or sale: (1) shall maintain the requirements of the franchise arrangement in effect at the time of the transfer, assignment, or sale, unless that arrangement is changed by mutual agreement of the franchisee and successor owner; (2) shall renew the franchise arrangement at its expiration for the same term of years as the previously effective arrangement, not exceeding five years; and (3) may not require the franchisee to adhere to certain business practices, such as sales quotas, selling products at the successor owner's suggested prices, and keeping the premises open and operating during hours documented to be unprofitable.

Finally, the bill prohibits the successor owner from transferring, assigning, or selling an interest in a single premises that a franchisee has occupied under a lease agreement or agreements for a period of three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the successor owner: (1) makes a bona fide offer to transfer, assign, or sell the interest to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the successor owner to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

A violation of these limitations is declared under the bill to be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), thus permitting a franchisee to bring an action in Superior Court to recover damages sustained, injunctive relief where appropriate, and entitlement to costs of suit and reasonable attorney's fees.

The bill's restrictions on franchisors would not apply to any distributor owning or controlling fewer than 40 premises. Its provisions would also be inapplicable to the sale, transfer, or assignment of retail motor fuel franchise premises to a "family member" as defined under the legislation. The bill includes a "severability clause" limiting the effect of a court decision invalidating any of its provisions to the specific provision invalidated, and the scope of such invalidation to the persons and circumstances with respect to whom or which the holding was issued.

The bill is to take effect upon enactment and apply to any franchise arrangements in effect on February 2, 2009, or becoming effective thereafter.

This bill, as amended and reported, is identical to Assembly Bill No. 3726 (1R), as amended and reported by the committee.

#### FISCAL IMPACT:

The bill was not certified as requiring a fiscal note; and the amendments would have no immediate fiscal implications.

#### COMMITTEE AMENDMENTS

Committee amendments to the bill: (1) require a franchisee to be a buyer, as well as a retail seller, of motor fuels at the franchise premises in order to qualify for the bill's protections; (2) specify that the provisions for the initial bona fide offer, and for the "first refusal" right of preemption, for the sale of franchise premises should not be construed to require the franchisor to make a new offer upon the occurrence of a legitimate subsequent change at closing; (3) add the exemptions for distributors and intra-family sales from coverage under the legislation and insert the "severability clause"; (4) provide for the bill to take effect immediately, rather than on the first day of the month following enactment, and to apply retroactively to franchise

arrangements in effect on February 2, 2009; and (5) make various clarifications and editorial changes.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### **SENATE, No. 2553**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 26, 2009

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2553

This bill, as amended, establishes certain limitations on a franchisor's assignment of interest in one or more franchise premises where a franchisee engages in the retail sale of motor fuel.

The first limitation set forth under the bill prevents a franchisor from transferring, assigning or selling an interest in one or more franchise premises that a franchisee has occupied under a lease agreement or agreements for a period of at least three years, or has a lease agreement for a term of at least three years, unless the franchisor: (1) makes a bona fide offer to transfer, assign or sell the interest in the franchise premises to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the franchisor to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

If the franchisee accepts a franchisor's offer by exercising a right of first refusal, the franchisor, as a condition for entering into the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract. This deposit shall be non-refundable if the franchisee willfully defaults on the contract.

The next limitation concerns successor owners. Any successor owner, following a transfer, assignment or sale: shall maintain the requirements of the franchise arrangement in effect at the time of the transfer, assignment or sale, unless changed by mutual agreement of the franchisee and successor owner; shall renew the franchise arrangement at its expiration for the same number of years as the previously effective arrangement, provided the renewal shall not exceed five years; and shall not require the franchisee to adhere to certain business practices, such as sales quotas, selling products at the successor owner's suggested prices, and keeping the premises open and operating during hours documented to be unprofitable.

The final limitation prevents the above described successor owner from then transferring, assigning or selling an interest in a single premises that a franchisee has occupied under a lease agreement or agreements for a period of three consecutive years, or has a lease agreement for a term of at least three years, unless the successor owner: (1) makes a bona fide offer to transfer, assign or sell the interest to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the successor owner to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

A violation of these limitations is declared under the bill to be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1), thus permitting a franchisee to bring an action in Superior Court to recover damages sustained, injunctive relief where appropriate, and entitlement to costs of suit and reasonable attorney's fees.

The bill is intended to take effect on the first day of the first month next following enactment and apply to all current franchise agreements in existence on the effective date, and any new franchise agreements entered into on or after the effective date.

The committee amendments to the bill:

- clarify that the general intent of the bill is to address the transfer, assignment, or sale of an interest in franchise premises where a franchisee has engaged in the retail sale of motor fuel, and has occupied the premises under a lease agreement or agreements for a period of at least three years, or has a lease agreement for a term of at least three years;

- eliminate the term "retail dealer" throughout the bill, and the cross-reference to its definition in section 101 of P.L.1938, c.163 (C.56:6-1);

- require, regarding a franchisee's right of first refusal, that any offer presented by a third party to a franchisor that is subsequently modified be resubmitted to the franchisee for consideration as a new offer;

- provide, if the franchisee accepts an offer by exercising a right of first refusal, the franchisor, as a condition for entering the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract, which shall be non-refundable if the franchisee willfully defaults on the contract; and

- clarify the application of the bill to any franchise arrangement in effect on the bill's effective date, and to any franchise arrangement entered into on or after that date.

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

5 c. For any successor owner, as set forth in subsection b. of this  
6 section, to transfer, assign or sell an interest in a single franchise  
7 premises that is a retail dealer engaged in the sale of motor fuel that  
8 is not part of two or more franchise premises retail dealers,  
9 presented by the successor owner as a package to transfer, assign or  
10 sell, and that a franchisee has occupied under a lease, sublease or  
11 other grant of authority, unless the successor owner makes an offer  
12 to transfer, assign or sell to the franchisee the successor owner's  
13 interest, or offers the franchisee a right of first refusal on an offer  
14 presented by another person acceptable to the successor owner as a  
15 new successor to the interest, in accordance with the provisions of  
16 subsection a. of this section.

17  
18 2. This act shall take effect on the first day of the first month  
19 next following enactment, and shall apply to franchise agreements  
20 entered into on or after that effective date and shall also apply to  
21 any franchise agreement entered into prior to the effective date.

22

23

24 SPONSORS STATEMENT

25

26 This bill establishes certain limitations on a franchisor's  
27 assignment of interest relating to franchisees engaged in the retail  
28 sale of motor fuel.

29 The first limitation set forth under the bill prevents a franchisor  
30 from transferring, assigning or selling an interest in one or more  
31 franchise premises that a franchisee has occupied under a lease,  
32 sublease or other grant of authority, unless the franchisor: (1) makes  
33 a bona fide offer to transfer, assign or sell the interest to the  
34 franchisee; and (2) if applicable, offers the franchisee a right of first  
35 refusal on any offer presented by another person acceptable to  
36 succeed the franchisor to the interest. In both cases, the franchisee  
37 shall have 60 days in which to accept or reject the offer.

38 The next limitation concerns successor owners. Any successor  
39 owner, following a transfer, assignment or sale: shall maintain the  
40 requirements of the franchise in effect at the time of the transfer,  
41 assignment or sale, unless changed by mutual agreement of the  
42 franchisee and successor owner; shall renew the franchise  
43 agreement at its expiration for the same number of years as the  
44 previously effective agreement, provided the renewal shall not  
45 exceed five years; and shall not require the franchisee to adhere to  
46 certain business practices, such as sales quotas, selling products at  
47 the successor owner's suggested prices, and keeping the premises  
48 open and operating during hours documented to be unprofitable.

1       The final limitation prevents the above described successor  
2 owner from then transferring, assigning or selling an interest in a  
3 single premises that a franchisee has occupied under a lease,  
4 sublease or other grant of authority, unless the successor owner: (1)  
5 makes a bona fide offer to transfer, assign or sell the interest to the  
6 franchisee; and (2) if applicable, offers the franchisee a right of first  
7 refusal on any offer presented by another person acceptable to  
8 succeed the successor owner to the interest. In both cases, the  
9 franchisee shall have 60 days in which to accept or reject the offer.

10       A violation of these limitations is declared under the bill to be a  
11 violation of the "Franchise Practices Act," P.L.1971, c.356  
12 (C.56:10-1), thus permitting a franchisee to bring an action in  
13 Superior Court to recover damages sustained, injunctive relief  
14 where appropriate, and entitlement to costs of suit and reasonable  
15 attorney's fees.

16       The bill is intended to take effect on the first day of the first  
17 month next following enactment and apply to franchise agreements  
18 entered into on or after the effective date, and shall additionally  
19 apply retroactively to any franchise agreement entered into prior to  
20 the bill taking effect.

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ASSEMBLY TRANSPORTATION, PUBLIC WORKS AND  
INDEPENDENT AUTHORITIES COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3726**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 12, 2009

The Assembly Transportation, Public Works and Independent Authorities Committee reports favorably and with amendments Assembly Bill No. 3726.

As reported, this amended bill establishes certain limitations on a franchisor's assignment of interest in one or more franchise premises where a franchisee engages in the retail sale of motor fuel.

The first limitation set forth under the amended bill prevents a franchisor from transferring, assigning, or selling an interest in one or more franchise premises that a franchisee has occupied under a lease agreement or agreements for a period of at least three years, or has a lease agreement for a term of at least three years, unless the franchisor: (1) makes a bona fide offer to transfer, assign, or sell the interest in the franchise premises to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the franchisor to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

If the franchisee accepts a franchisor's offer by exercising the right of first refusal, the franchisor, as a condition for entering into the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract. This deposit shall be non-refundable if the franchisee willfully defaults on the contract.

The next limitation concerns successor owners. Any successor owner, following a transfer, assignment, or sale: shall maintain the requirements of the franchise arrangement in effect at the time of the transfer, assignment, or sale, unless changed by mutual agreement of the franchisee and successor owner; shall renew the franchise arrangement at its expiration for the same number of years as the previously effective arrangement, provided the renewal shall not exceed five years; and shall not require the franchisee to adhere to certain business practices, such as sales quotas, selling products at the

successor owner's suggested prices, and keeping the premises open and operating during hours documented to be unprofitable.

The final limitation prevents the above described successor owner from then transferring, assigning, or selling an interest in a single premises that a franchisee has occupied under a lease agreement or agreements for a period of three consecutive years, or has a lease agreement for a term of at least three years, unless the successor owner: (1) makes a bona fide offer to transfer, assign, or sell the interest to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the successor owner to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

A violation of these limitations is declared under the bill to be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), thus permitting a franchisee to bring an action in Superior Court to recover damages sustained, injunctive relief where appropriate, and entitlement to costs of suit and reasonable attorney's fees.

The amended bill shall take effect on the first day of the first month next following enactment and apply to all current franchise agreements in existence on the effective date, and any new franchise agreements entered into on or after the effective date.

#### COMMITTEE AMENDMENTS

The committee amendments clarify that the general intent of the bill is to address the transfer, assignment, or sale of an interest in franchise premises where a franchisee has engaged in the retail sale of motor fuel, and has occupied the premises under a lease agreement or agreements for a period of at least three years, or has a lease agreement for a term of at least three years.

The amendments require, regarding a franchisee's right of first refusal, that any offer presented by a third party to a franchisor that is subsequently modified be resubmitted to the franchisee for consideration as a new offer. The amendments also provide that if the franchisee accepts an offer by exercising a right of first refusal, the franchisor, as a condition for entering the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract, which shall be non-refundable if the franchisee willfully defaults on the contract.

The amendments eliminate the term "retail dealer" throughout the bill, and the cross-reference to its definition in section 101 of P.L.1938, c.163 (C.56:6-1).

The amendments clarify the application of the bill to any franchise arrangement in effect on the bill's effective date, and to any franchise arrangement entered into on or after that date.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 3726

with committee amendments

# STATE OF NEW JERSEY

DATED: MAY 18, 2009

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3726 (1R), with committee amendments.

The bill, as amended, establishes certain limitations on a franchisor's sale or assignment of an interest in one or more franchise premises where a franchisee buys motor fuels and sells them at retail.

The bill prohibits a franchisor from transferring, assigning, or selling an interest in one or more franchise premises that a franchisee has occupied under a lease agreement or agreements for a period of at least three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the franchisor: (1) makes a bona fide offer to transfer, assign, or sell the interest in the franchise premises to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the franchisor to the interest. In either case, the franchisee shall have 60 days in which to accept or reject the offer. If the franchisee accepts a franchisor's offer under the right of first refusal, the franchisor, as a condition for entering into the contract for the accepted offer, may request as a good faith acknowledgement of the contract, a deposit by the franchisee of up to 10% on the total amount payable under the terms of the contract. This deposit shall be non-refundable if the franchisee willfully defaults on the contract.

The bill also imposes limitations on successor owners. Any successor owner, following a transfer, assignment, or sale: (1) shall maintain the requirements of the franchise arrangement in effect at the time of the transfer, assignment, or sale, unless that arrangement is changed by mutual agreement of the franchisee and successor owner; (2) shall renew the franchise arrangement at its expiration for the same term of years as the previously effective arrangement, not exceeding five years; and (3) may not require the franchisee to adhere to certain business practices, such as sales quotas, selling products at the successor owner's suggested prices, and keeping the premises open and operating during hours documented to be unprofitable.

Finally, the bill prohibits the successor owner from transferring, assigning, or selling an interest in a single premises that a franchisee

has occupied under a lease agreement or agreements for a period of three consecutive years, or occupies under a lease agreement for a term of at least three years, unless the successor owner: (1) makes a bona fide offer to transfer, assign, or sell the interest to the franchisee; and (2) if applicable, offers the franchisee a right of first refusal on any offer presented by another person acceptable to succeed the successor owner to the interest. In both cases, the franchisee shall have 60 days in which to accept or reject the offer.

A violation of these limitations is declared under the bill to be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), thus permitting a franchisee to bring an action in Superior Court to recover damages sustained, injunctive relief where appropriate, and entitlement to costs of suit and reasonable attorney's fees.

The bill's restrictions on franchisors would not apply to any distributor owning or controlling fewer than 40 premises. Its provisions would also be inapplicable to the sale, transfer, or assignment of retail motor fuel franchise premises to a "family member" as defined under the legislation. The bill includes a "severability clause" limiting the effect of a court decision invalidating any of its provisions to the specific provision invalidated, and the scope of such invalidation to the persons and circumstances with respect to whom or which the holding was issued.

The bill is to take effect upon enactment and apply to any franchise arrangements in effect on February 2, 2009, or becoming effective thereafter.

This bill, as amended and reported, is identical to Senate Bill No. 2553 (1R), as amended and also reported by the committee.

#### FISCAL IMPACT:

The bill was not certified as requiring a fiscal note; and the amendments would have no immediate fiscal implications.

#### COMMITTEE AMENDMENTS:

Committee amendments to the bill: (1) require a franchisee to be a buyer, as well as a retail seller, of motor fuels at the franchise premises in order to qualify for the bill's protections; (2) specify that the provisions for the initial bona fide offer, and for the "first refusal" right of preemption, for the sale of franchise premises should not be construed to require the franchisor to make a new offer upon the occurrence of a legitimate subsequent change at closing; (3) add the exemptions for distributors and intra-family sales from coverage under the legislation and insert the "severability clause"; (4) provide for the bill to take effect immediately, rather than on the first day of the month following enactment, and to apply retroactively to franchise arrangements in effect on February 2, 2009; and (5) make various clarifications and editorial changes.