

56:10-4  
**LEGISLATIVE HISTORY CHECKLIST**  
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(Motor vehicle franchise act---  
amendments)

**SA:** 56:10-4

**LAWS OF:** 1993 **CHAPTER:** 189

**BILL NO:** A2550

**SPONSOR(S)** Moran and others

**DATE INTRODUCED:** May 10, 1993

**COMMITTEE:** **ASSEMBLY:** Commerce  
**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
Second reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** June 21, 1993  
**SENATE:** June 28, 1993

**DATE OF APPROVAL:** July 19, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

<b>SPONSOR STATEMENT:</b>	Yes	<i>Also attached: Assembly floor amendments, with statement</i>
<b>COMMITTEE STATEMENT:</b> <b>ASSEMBLY:</b>	Yes	
<b>SENATE:</b>	No	
<b>FISCAL NOTE:</b>	No	
<b>VETO MESSAGE:</b>	No	
<b>MESSAGE ON SIGNING:</b>	No	
<b>FOLLOWING WERE PRINTED:</b>		
<b>REPORTS:</b>	No	
<b>HEARINGS:</b>	No	

KBG:pp

**Legislative History Checklist**

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**Synopsis:** Revises laws regarding the rights and responsibilities of motor vehicle franchisors and their franchisees.

**Bill No.:** A2550

**P.L.** 1993, c. 189

*Identical to:* S1811 (1R)  
*Substituted for:* S1811 (1R)  
*Combined with:*  
*Last Session Bill No.:*

*See Above Bill(s) for Additional History*

**NJSA:** 56:10-13.6 et seq.

**Sponsor(s):** Moran/Impreveduto+2

**Date Introduced:** 05/10/93

**Committee Reference:**

**Statement:**

**Public Hearing:**

*Assembly:*

Commerce and Regulated Professions

Yes

No

*Senate:*

(Without reference)

**Sponsor Statement:** Yes

**Fiscal Note:** No

**Dates of Passage:**

*Assembly:*

06/21/93 (75-1)

*Senate:*

06/28/93 (38-0)

**Amended During Passage:** Yes

**Governor's Action:**

**Veto:** No

**Date of Veto:**

**Date of Approval:** 07/19/93

**Message on Signing:** No

**Additional Information:**

P.L.1993, CHAPTER 189, *approved July 19, 1993*  
1993 Assembly No. 2550 (*Second Reprint*)

1 **AN ACT** concerning motor vehicle franchises, amending  
2 P.L.1971, c.356 <sup>2</sup>[and] <sup>1</sup><sup>2</sup> P.L.1982, c.156 <sup>2</sup>and P.L.1985,  
3 c.361<sup>2</sup>, and supplementing P.L.1977, c.84 (C.56:10-13 et seq.).  
4

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

7 1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read  
8 as follows:

9 4. This act applies only:

10 a. to a franchise (1) the performance of which contemplates or  
11 requires the franchisee to establish or maintain a place of  
12 business within the State of New Jersey, (2) where gross sales of  
13 products or services between the franchisor and franchisee  
14 covered by such franchise shall have exceeded \$35,000.00 for the  
15 12 months next preceding the institution of suit pursuant to this  
16 act, and (3) where more than 20% of the franchisee's gross sales  
17 are intended to be or are derived from such franchise; or

18 b. to a franchise for the sale of new motor vehicles as defined  
19 in R.S.39:10-2, the performance of which contemplates or  
20 requires the franchisee to establish or maintain a place of  
21 business within the State of New Jersey.

22 (cf: P.L.1971, c.356, s.4)

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

25 8. a. In determining whether the grant, relocation, reopening  
26 or reactivation of a franchise or establishment, relocation,  
27 reopening or reactivation of a business will be injurious to  
28 existing franchisees [and] or to the public interest, the committee  
29 may consider, but shall not be limited to considering the  
30 following:

31 [a.] (1) The effect that the proposed franchise or business would  
32 have on the provision of stable, adequate and reliable sales and  
33 service to purchasers of vehicles in the same line make in the  
34 relevant market area;

35 [b.] (2) The effect that the proposed franchise or business would  
36 have on the stability of existing franchisees in the same line  
37 make in the relevant market area;

38 [c.] (3) Whether the existing franchisees in the same line make  
39 in the relevant market area are providing adequate and  
40 convenient consumer service for motor vehicles of the line make  
41 in the relevant market area, which shall include the adequacy of

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> Assembly ACP committee amendments adopted May 17, 1993.

<sup>2</sup> Assembly floor amendments adopted June 17, 1993.

1 motor vehicle sales and service facilities, equipment, supply of  
2 motor vehicle parts and qualified service personnel;

3 [d.] (4) The effect on a relocating dealer of a denial of its  
4 relocation into the relevant market area.

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

13 (1) <sup>2</sup>for the 24 month period prior to notice pursuant to section  
14 4 of P.L.1982, c.156 (C.56:10-19),<sup>2</sup> the average sales  
15 <sup>2</sup>[registration] penetration<sup>2</sup> of the franchisees given notice  
16 pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at least  
17 equal to the average sales <sup>2</sup>[registration] penetration<sup>2</sup> of all  
18 franchisees in the same line make in the zone, district <sup>2</sup>, region<sup>2</sup>  
19 or <sup>2</sup>[territory to] other geographic designation used by the motor  
20 vehicle franchisor into<sup>2</sup> which the proposed franchise or business  
21 will be assigned;

22 (2) the proposed franchise or business is likely to cause not less  
23 than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in new vehicle <sup>2</sup>[, parts or service]<sup>2</sup>  
24 sales or not less than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in gross income for  
25 the protesting franchisee;

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

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

31 <sup>2</sup>c. The presumption in subsection b. of this section shall not  
32 apply to the grant, reopening or reactivation of a franchise or to  
33 the establishment, reopening or reactivation of a business if the  
34 proposed franchisee is a minority or a woman. For the purposes  
35 of this subsection, "minority" means a person who is:

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

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

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

44 (4) American Indian or Alaskan native, which is a person  
45 having origins in any of the original peoples of North America.<sup>2</sup>

46 (cf: P.L.1982, c.156, s.8)

47 <sup>2</sup>3. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to  
48 read as follows:

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

52 a. Permit an existing franchisee to relocate his franchise  
53 within 2 miles of the franchisee's existing franchise location,  
54 except that a franchise may not be relocated pursuant to this

1 subsection unless at least five years have elapsed since any  
2 previous relocation pursuant to this subsection:

3 b. Reopen or reactivate a franchise or business which has not  
4 been in operation for a period of [1 year] 2 years or less at a site  
5 within 2 miles of the prior site; or

6 c. Permit the purchaser of a controlling interest in the shares  
7 or substantially all of the operating assets of an existing  
8 franchise to relocate the place of business of the franchise within  
9 2 miles of the previously approved franchise location within 180  
10 days of the date of purchase.<sup>2</sup>

11 (cf: P.L.1991, c.460, s.1)

12 <sup>2</sup>4. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to  
13 read as follows:

14 3. It shall be a violation of this act for a motor vehicle  
15 franchisor, directly or indirectly, through any officer, agent,  
16 employee, broker or any shareholder of the franchisor, except a  
17 shareholder of 1% or less of the outstanding shares of any class of  
18 securities of a franchisor which is a publicly traded corporation,  
19 or other person, to own or operate a place of business as a motor  
20 vehicle franchisee, except that this section shall not prohibit the  
21 ownership or operation of a place of business by a motor vehicle  
22 franchisor for a period, not to exceed [12] 24 consecutive months,  
23 during the transition from one motor vehicle franchisee to  
24 another; or the investment in a motor vehicle franchisee by a  
25 motor vehicle franchisor if the investment is for the sole purpose  
26 of [supplementing the private capital investment funds of] enabling  
27 enabling a partner or shareholder in that motor vehicle franchisee  
28 to acquire an interest in that motor vehicle franchisee and that  
29 partner or shareholder is not otherwise employed by or associated  
30 with the motor vehicle franchisor and would not otherwise have  
31 the requisite capital investment funds to invest in the motor  
32 vehicle franchisee, and has the right to purchase the entire equity  
33 interest of the motor vehicle franchisor in the motor vehicle  
34 franchisee within a reasonable period of time not to exceed 10  
35 years.<sup>2</sup>

36 (cf: P.L.1985, c.361, s.3)

37 <sup>2</sup>[3.] 5.<sup>2</sup> (New section) It shall be a violation of the "Franchise  
38 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
39 vehicle franchisor to exercise a right of first refusal or other  
40 right to acquire a motor vehicle franchise from a motor vehicle  
41 franchisee as a means to influence the consideration or other  
42 terms offered by a person in connection with the acquisition of  
43 the motor vehicle franchise or to influence a person to refrain  
44 from entering into, or to withdraw from, negotiations for the  
45 acquisition of the motor vehicle franchise.

46 <sup>2</sup>[4.] 6.<sup>2</sup> (New section) It shall be a violation of the "Franchise  
47 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
48 vehicle franchisor to exercise a right of first refusal or other  
49 right to acquire a motor vehicle franchise from a motor vehicle  
50 franchisee unless the motor vehicle franchisor:

51 a. at the election of the motor vehicle franchisee, assumes the  
52 lease for or acquires the real property on which the motor vehicle  
53 franchise is conducted on the same terms as those on which the  
54 real property or lease was to be sold or transferred to the

1 acquiring transferee in connection with the sale of the motor  
2 vehicle franchise, unless otherwise agreed to by the motor  
3 vehicle franchisee and motor vehicle franchisor; and

4 b. reimburses the acquiring transferee of the motor vehicle  
5 franchise for the reasonable expenses paid or incurred by him in  
6 evaluating and investigating the motor vehicle franchise and  
7 negotiating and pursuing the acquisition of the motor vehicle  
8 franchise prior to the motor vehicle franchisor's exercise of the  
9 right of first refusal or other right to acquire the motor vehicle  
10 franchise. For purposes of this subsection, expenses to evaluate  
11 and investigate the motor vehicle franchise means, in addition to  
12 any other expenses associated with the evaluation and  
13 investigation of the motor vehicle franchise, <sup>1</sup>legal and  
14 accounting expenses, and<sup>1</sup> expenses associated with the  
15 evaluation and investigation of any real property on which the  
16 motor vehicle franchise is conducted, including, but not limited  
17 to, expenses associated with title examinations, environmental  
18 assessments and other expenses directly related to the acquisition  
19 or lease of such real property by the acquiring transferee. Upon  
20 reimbursement, any title reports, or other reports or studies  
21 received by the acquiring transferee as a result of the evaluation  
22 or investigation of the motor vehicle franchise or the real  
23 property on which the motor vehicle franchise is conducted shall  
24 be provided to the motor vehicle franchisor. The acquiring  
25 transferee shall submit an itemized list of the expenses to be  
26 reimbursed along with supporting documents, if any, to the motor  
27 vehicle franchisor no later than 30 days after receipt of a written  
28 request for same from the motor vehicle franchisor. The motor  
29 vehicle franchisor shall make payment within 30 days of receipt  
30 of the itemized list.

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

36 <sup>2</sup>[5.] <sup>2</sup> This act shall take effect immediately.

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41 Revises laws regarding the rights and responsibilities of motor  
42 vehicle franchisors and their franchisees.

ASSEMBLY, No. 2550  
STATE OF NEW JERSEY

INTRODUCED MAY 10, 1993

By Assemblymen MORAN, IMPREVEDUTO and Connors

1 AN ACT concerning motor vehicle franchises, amending  
2 P.L.1971, c.356 and P.L.1982, c.156, and supplementing  
3 P.L.1977, c.84 (C.56:10-13 et seq.).  
4

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

7 1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read  
8 as follows:

9 4. This act applies only:

10 a. to a franchise (1) the performance of which contemplates or  
11 requires the franchisee to establish or maintain a place of  
12 business within the State of New Jersey, (2) where gross sales of  
13 products or services between the franchisor and franchisee  
14 covered by such franchise shall have exceeded \$35,000.00 for the  
15 12 months next preceding the institution of suit pursuant to this  
16 act, and (3) where more than 20% of the franchisee's gross sales  
17 are intended to be or are derived from such franchise; or

18 b. to a franchise for the sale of new motor vehicles as defined  
19 in R.S.39:10-2, the performance of which contemplates or  
20 requires the franchisee to establish or maintain a place of  
21 business within the State of New Jersey.

22 (cf: P.L.1971, c.356, s.4)

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

25 8. a. In determining whether the grant, relocation, reopening  
26 or reactivation of a franchise or establishment, relocation,  
27 reopening or reactivation of a business will be injurious to  
28 existing franchisees [and] or to the public interest, the committee  
29 may consider, but shall not be limited to considering the  
30 following:

31 [a.] (1) The effect that the proposed franchise or business would  
32 have on the provision of stable, adequate and reliable sales and  
33 service to purchasers of vehicles in the same line make in the  
34 relevant market area;

35 [b.] (2) The effect that the proposed franchise or business would  
36 have on the stability of existing franchisees in the same line  
37 make in the relevant market area;

38 [c.] (3) Whether the existing franchisees in the same line make  
39 in the relevant market area are providing adequate and  
40 convenient consumer service for motor vehicles of the line make  
41 in the relevant market area, which shall include the adequacy of  
42 motor vehicle sales and service facilities, equipment, supply of  
43 motor vehicle parts and qualified service personnel;

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 [d.] (4) The effect on a relocating dealer of a denial of its  
2 relocation into the relevant market area.

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

11 (1) the average sales registration of the franchisees given  
12 notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at  
13 least equal to the average sales registration of all franchisees in  
14 the same line make in the zone, district or territory to which the  
15 proposed franchise or business will be assigned;

16 (2) the proposed franchise or business is likely to cause not less  
17 than a 20% reduction in new vehicle, parts or service sales or not  
18 less than a 20% reduction in gross income for the protesting  
19 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 material unfair or deceptive business practices  
24 with respect to a motor vehicle franchise or business.

25 (cf: P.L.1982, c.156, s.8)

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

35 4. (New section) It shall be a violation of the "Franchise  
36 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
37 vehicle franchisor to exercise a right of first refusal or other  
38 right to acquire a motor vehicle franchise from a motor vehicle  
39 franchisee unless the motor vehicle franchisor:

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

47 b. reimburses the acquiring transferee of the motor vehicle  
48 franchise for the reasonable expenses paid or incurred by him in  
49 evaluating and investigating the motor vehicle franchise and  
50 negotiating and pursuing the acquisition of the motor vehicle  
51 franchise prior to the motor vehicle franchisor's exercise of the  
52 right of first refusal or other right to acquire the motor vehicle  
53 franchise. For purposes of this subsection, expenses to evaluate  
54 and investigate the motor vehicle franchise means, in addition to



1 any other expenses associated with the evaluation and  
2 investigation of the motor vehicle franchise, expenses associated  
3 with the evaluation and investigation of any real property on  
4 which the motor vehicle franchise is conducted, including, but not  
5 limited to, expenses associated with title examinations,  
6 environmental assessments and other expenses directly related to  
7 the acquisition or lease of such real property by the acquiring  
8 transferee. Upon reimbursement, any title reports, or other  
9 reports or studies received by the acquiring transferee as a result  
10 of the evaluation or investigation of the motor vehicle franchise  
11 or the real property on which the motor vehicle franchise is  
12 conducted shall be provided to the motor vehicle franchisor. The  
13 acquiring transferee shall submit an itemized list of the expenses  
14 to be reimbursed along with supporting documents, if any, to the  
15 motor vehicle franchisor no later than 30 days after receipt of a  
16 written request for same from the motor vehicle franchisor. The  
17 motor vehicle franchisor shall make payment within 30 days of  
18 receipt of the itemized list.

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

24 5. This act shall take effect immediately.

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#### STATEMENT

29 For over twenty years, New Jersey has been in the forefront of  
30 the enactment of franchise legislation protecting franchisees and  
31 the public from arbitrary conduct by franchisors. New Jersey's  
32 franchise laws have created a more equitable environment in  
33 which franchisors and franchisees can do business. During this  
34 twenty-year period, however, changes have occurred in the ways  
35 in which motor vehicle franchisors do business with their dealers,  
36 requiring changes to the existing body of franchise legislation.

37 To keep up with changing market conditions, over the past  
38 twenty years, an increasing number of motor vehicle dealers have  
39 come to hold more than a single franchise. While no business  
40 more classically represents a franchise than a motor vehicle  
41 dealership, because the current "Franchise Practices Act"  
42 protects only those franchises representing twenty percent or  
43 more of a dealer's gross sales, those "dualed" dealerships with  
44 multiple franchises may not be covered under this act. The bill,  
45 therefore, establishes that the provisions of the "Franchise  
46 Practices Act" shall apply for all franchises engaged in the sale  
47 of new motor vehicles.

48 In recent years, some motor vehicle franchisors have used  
49 "rights of first refusal" contained in their franchise agreements  
50 to circumvent the requirement in the "Franchise Practices Act"  
51 that they approve the sale of franchises to qualified purchasers.  
52 "Rights of first refusal" can discourage potential purchasers from  
53 negotiating to buy dealerships and, thus, devalue franchises.  
54 While the bill would not prohibit manufacturers from exercising

1 "rights of first refusal," it includes provisions that serve to  
2 prevent their use as a means to discourage an individual from  
3 pursuing the purchase of a dealership or as a means of influencing  
4 the price to be paid for the dealership. The bill contains  
5 provisions requiring the motor vehicle franchisor to acquire any  
6 real estate involved in the sale it preempts by the exercise of its  
7 "rights of first refusal" and to reimburse the intended purchaser  
8 for his expenses in pursuing the purchase.

9 Furthermore, the bill amends P.L.1982, c.156 (C.56:10-16 et  
10 seq.), the law which prohibits the establishing, granting,  
11 relocating, reopening or reactivating of a motor vehicle franchise  
12 that would be injurious to existing franchisees and to the public  
13 interest. Inasmuch as the problems this law is designed to  
14 remedy can occur either as a result of injury to existing motor  
15 vehicle dealers or injury to the consuming public, the bill removes  
16 the requirement that injury to both the dealers and the public be  
17 shown before the proposed establishment, grant, relocation,  
18 reopening or reactivation of a franchise will be prohibited by the  
19 Motor Vehicle Franchise Committee. In addition, the bill  
20 specifies a particular set of conditions that are to be deemed by  
21 the Motor Vehicle Franchise Committee as being injurious to  
22 existing dealers or to the public. This pertains to a situation  
23 whereby (1) the average sales penetration of the franchisees  
24 given notice is at least equal to the average sales penetration of  
25 all franchisees in the same line make in the zone, district or  
26 territory to which the proposed franchise or business will be  
27 assigned; (2) the proposed franchise or business is likely to cause  
28 not less than a 20 percent reduction in new vehicle, parts or  
29 service sales or not less than a 20 percent reduction in gross  
30 income for the protesting franchisee; (3) the proposed franchise  
31 or business will not operate a full service franchise or business at  
32 the proposed location; or (4) an owner or operator of the proposed  
33 franchise or business has engaged in material unfair or deceptive  
34 business practices with respect to a motor vehicle franchise or  
35 business.

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40 Revises laws regarding the rights and responsibilities of motor  
41 vehicle franchisors and their franchisees.

ASSEMBLY COMMERCE AND REGULATED  
PROFESSIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2550**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 17, 1993

The Assembly Commerce and Regulated Professions Committee reports favorably Assembly Bill No. 2550 with amendments.

As amended, this bill revises the laws regarding the rights and responsibilities of motor vehicle franchisors and their franchisees.

For over twenty years, New Jersey has been in the forefront of the enactment of franchise legislation protecting franchisees and the public from arbitrary conduct by franchisors. New Jersey's franchise laws have created a more equitable environment in which franchisors and franchisees can do business. During this twenty-year period, however, changes have occurred in the ways in which motor vehicles franchisors do business with their dealers, requiring changes to the existing body of franchise legislation.

To keep up with changing market conditions, over the past twenty years, an increasing number of motor vehicle dealers have come to hold more than a single franchise. While no business more classically represents a franchise than a motor vehicle dealership, because the current "Franchise Practices Act" protects only those franchises representing twenty percent or more of a dealer's gross sales, those "dual" dealerships with multiple franchises may not be covered under this act. The bill, therefore, establishes that the provisions of the "Franchise Practices Act" shall apply for all franchises engaged in the sale of new motor vehicles.

In recent years, some motor vehicle franchisors have used "rights of first refusal" contained in their franchise agreements that they approve the sale of franchises to qualified purchasers. "Rights of first refusal" can discourage potential purchasers from negotiating to buy dealerships and, thus, devalue franchises. While the bill would not prohibit manufacturers from exercising "rights of first refusal," it includes provisions that serve to prevent their use as a means to discourage an individual from pursuing the purchase of a dealership or as a means of influencing the price to be paid for the dealership. The bill contains provisions requiring the motor vehicle franchisor to acquire any real estate involved in the sale it preempts by the exercise of its "rights of first refusal." It also provides for reimbursement of the intended purchaser for his expenses in pursuing the purchase. The committee amended the bill to specify that legal and accounting expenses are to be included for such reimbursement.

Furthermore, the bill amends P.L.1982, c.156 (C.56:10-16 et seq.), the law which prohibits the establishing, granting, relocating, reopening or reactivating of a motor vehicle franchise that would be injurious to existing franchises and to the public interest. Inasmuch as the problems this law is designed to remedy can occur either as a result of injury to existing motor vehicle dealers or

injury to the consuming public, the bill removes the requirement that injury to both the dealers and the public be shown before the proposed establishment, grant, relocation, reopening or reactivation of a franchise will be prohibited by the Motor Vehicle Franchise Committee. In addition, the bill specifies a particular set of conditions that are to be deemed by the Motor Vehicle Franchise Committee as being injurious to existing dealers or to the public. This pertains to a situation whereby:

1) the average sales registration of the franchisees given notice is at least equal to the average sales registration of all franchisees in the same line make in the zone, district or territory to which the proposed franchise or business will be assigned;

2) the proposed franchise or business is likely to cause not less than a 20 percent reduction in new vehicle, parts or service sales or not less than a 20 percent reduction in gross income for the protesting franchisee;

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

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

ASSEMBLY ACP COMMITTEE

AMENDMENTS

to

ASSEMBLY, No. 2550

(Sponsored by Assemblymen Moran and Impeveduto)



REPLACE SECTION 4 TO READ:

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

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

b. reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by him in evaluating and investigating the motor vehicle franchise and negotiating and pursuing the acquisition of the motor vehicle franchise prior to the motor vehicle franchisor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. For purposes of this subsection, expenses to evaluate and investigate the motor vehicle franchise means, in addition to any other expenses associated with the evaluation and investigation of the motor vehicle franchise, 1legal and accounting expenses, and<sup>1</sup> expenses associated with the evaluation and investigation of any real property on which the motor vehicle franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of such real property by the acquiring transferee. Upon reimbursement, any title reports, or other reports or studies received by the acquiring transferee as a result of the evaluation or investigation of the motor vehicle franchise or the real property on which the motor vehicle franchise is conducted shall be provided to the motor vehicle franchisor. The acquiring transferee shall submit an itemized list of the expenses to be reimbursed along with supporting documents, if any, to the motor vehicle franchisor no later than 30 days after receipt of a written request for same from the motor vehicle franchisor. The motor vehicle franchisor shall make payment within 30 days of receipt of the itemized list.

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

[FIRST REPRINT]  
ASSEMBLY, No. 2550  
STATE OF NEW JERSEY

INTRODUCED MAY 10, 1993

By Assemblymen MORAN, IMPREVEDUTO and Connors

1 AN ACT concerning motor vehicle franchises, amending  
2 P.L.1971, c.356 and P.L.1982, c.156, and supplementing  
3 P.L.1977, c.84 (C.56:10-13 et seq.).  
4

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

7 1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read  
8 as follows:

9 4. This act applies only:

10 a. to a franchise (1) the performance of which contemplates or  
11 requires the franchisee to establish or maintain a place of  
12 business within the State of New Jersey, (2) where gross sales of  
13 products or services between the franchisor and franchisee  
14 covered by such franchise shall have exceeded \$35,000.00 for the  
15 12 months next preceding the institution of suit pursuant to this  
16 act, and (3) where more than 20% of the franchisee's gross sales  
17 are intended to be or are derived from such franchise; or

18 b. to a franchise for the sale of new motor vehicles as defined  
19 in R.S.39:10-2, the performance of which contemplates or  
20 requires the franchisee to establish or maintain a place of  
21 business within the State of New Jersey.

22 (cf: P.L.1971, c.356, s.4)

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

25 8. a. In determining whether the grant, relocation, reopening  
26 or reactivation of a franchise or establishment, relocation,  
27 reopening or reactivation of a business will be injurious to  
28 existing franchisees [and] or to the public interest, the committee  
29 may consider, but shall not be limited to considering the  
30 following:

31 [a.] (1) The effect that the proposed franchise or business would  
32 have on the provision of stable, adequate and reliable sales and  
33 service to purchasers of vehicles in the same line make in the  
34 relevant market area;

35 [b.] (2) The effect that the proposed franchise or business would  
36 have on the stability of existing franchisees in the same line  
37 make in the relevant market area;

38 [c.] (3) Whether the existing franchisees in the same line make  
39 in the relevant market area are providing adequate and  
40 convenient consumer service for motor vehicles of the line make  
41 in the relevant market area, which shall include the adequacy of  
42 motor vehicle sales and service facilities, equipment, supply of  
43 motor vehicle parts and qualified service personnel;

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:  
1 Assembly ACP committee amendments adopted May 17, 1993.

1 [d.] (4) The effect on a relocating dealer of a denial of its  
2 relocation into the relevant market area.

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

11 (1) the average sales registration of the franchisees given  
12 notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at  
13 least equal to the average sales registration of all franchisees in  
14 the same line make in the zone, district or territory to which the  
15 proposed franchise or business will be assigned;

16 (2) the proposed franchise or business is likely to cause not less  
17 than a 20% reduction in new vehicle, parts or service sales or not  
18 less than a 20% reduction in gross income for the protesting  
19 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 material unfair or deceptive business practices  
24 with respect to a motor vehicle franchise or business.

25 (cf: P.L.1982, c.156, s.8)

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

35 4. (New section) It shall be a violation of the "Franchise  
36 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
37 vehicle franchisor to exercise a right of first refusal or other  
38 right to acquire a motor vehicle franchise from a motor vehicle  
39 franchisee unless the motor vehicle franchisor:

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

47 b. reimburses the acquiring transferee of the motor vehicle  
48 franchise for the reasonable expenses paid or incurred by him in  
49 evaluating and investigating the motor vehicle franchise and  
50 negotiating and pursuing the acquisition of the motor vehicle  
51 franchise prior to the motor vehicle franchisor's exercise of the  
52 right of first refusal or other right to acquire the motor vehicle  
53 franchise. For purposes of this subsection, expenses to evaluate  
54 and investigate the motor vehicle franchise means, in addition to

1 any other expenses associated with the evaluation and  
2 investigation of the motor vehicle franchise, <sup>1</sup>legal and  
3 accounting expenses, and<sup>1</sup> expenses associated with the  
4 evaluation and investigation of any real property on which the  
5 motor vehicle franchise is conducted, including, but not limited  
6 to, expenses associated with title examinations, environmental  
7 assessments and other expenses directly related to the acquisition  
8 or lease of such real property by the acquiring transferee. Upon  
9 reimbursement, any title reports, or other reports or studies  
10 received by the acquiring transferee as a result of the evaluation  
11 or investigation of the motor vehicle franchise or the real  
12 property on which the motor vehicle franchise is conducted shall  
13 be provided to the motor vehicle franchisor. The acquiring  
14 transferee shall submit an itemized list of the expenses to be  
15 reimbursed along with supporting documents, if any, to the motor  
16 vehicle franchisor no later than 30 days after receipt of a written  
17 request for same from the motor vehicle franchisor. The motor  
18 vehicle franchisor shall make payment within 30 days of receipt  
19 of the itemized list.

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

25 5. This act shall take effect immediately.

26  
27  
28  
29  
30 Revises laws regarding the rights and responsibilities of motor  
31 vehicle franchisors and their franchisees.





ASSEMBLY Amendments  
(Proposed by Assemblymen Moran and Impeveduto)

to

ASSEMBLY, No. 2550 (1R)

(Sponsored by Assemblymen Moran and Impeveduto)

- \_\_\_\_\_ Speaker
- \_\_\_\_\_ Clerk (3)
- \_\_\_\_\_ Majority Leader
- \_\_\_\_\_ Minority Leader
- \_\_\_\_\_ Sponsor of Aa
- \_\_\_\_\_ Sponsor of Bill

REPLACE THE TITLE TO READ:

AN ACT concerning motor vehicle franchises, amending P.L.1971, c.356 <sup>2</sup>[and] <sup>2</sup> P.L.1982, c.156 <sup>2</sup>and P.L.1985, c.361<sup>2</sup>, and supplementing P.L.1977, c.84 (C.56:10-13 et seq.).

REPLACE SECTION 2 TO READ:

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

8. a. In determining whether the grant, relocation, reopening or reactivation of a franchise or establishment, relocation, reopening or reactivation of a business will be injurious to existing franchisees [and] or to the public interest, the committee may consider, but shall not be limited to considering the following:

[a.] (1) The effect that the proposed franchise or business would have on the provision of stable, adequate and reliable sales and service to purchasers of vehicles in the same line make in the relevant market area;

[b.] (2) The effect that the proposed franchise or business would have on the stability of existing franchisees in the same line make in the relevant market area;

[c.] (3) Whether the existing franchisees in the same line make in the relevant market area are providing adequate and convenient consumer service for motor vehicles of the line make in the relevant market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

[d.] (4) The effect on a relocating dealer of a denial of its relocation into the relevant market area.

b. In determining whether the grant, relocation, reopening or reactivation of a franchise or establishment, relocation, reopening or reactivation of a business will be injurious to existing franchisees or to the public interest, it shall be presumed that the proposed grant, relocation, reopening or reactivation of the franchise or establishment, relocation, reopening or reactivation of the business will be injurious to existing franchisees or to the public interest if:

(1) <sup>2</sup>for the 24 month period prior to notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19),<sup>2</sup> the average sales <sup>2</sup>[registration] penetration<sup>2</sup> of the franchisees given notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at least equal to the average sales <sup>2</sup>[registration] penetration<sup>2</sup> of all franchisees in the same line make in the zone, district <sup>2</sup>, region<sup>2</sup> or <sup>2</sup>[territory to] other geographic designation used by the motor vehicle franchisor into<sup>2</sup> which the proposed franchise or business will be assigned;

(2) the proposed franchise or business is likely to cause not less than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in new vehicle <sup>2</sup>[, parts or service]<sup>2</sup> sales or not less than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in gross income for the protesting franchisee;

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

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

<sup>2</sup>c. The presumption in subsection b. of this section shall not apply to the grant, reopening or reactivation of a franchise or to the establishment, reopening or reactivation of a business if the proposed franchisee is a minority or a woman. For the purposes of this subsection, "minority" means a person who is:

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

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

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

(4) American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.<sup>2</sup>

(cf: P.L.1982, c.156, s.8)

INSERT NEW SECTIONS 3 AND 4 TO READ:

<sup>2</sup>3. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to read as follows:

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

a. Permit an existing franchisee to relocate his franchise within 2 miles of the franchisee's existing franchise location, except that a franchise may not be relocated pursuant to this subsection unless at least five years have elapsed since any previous relocation pursuant to this subsection;

b. Reopen or reactivate a franchise or business which has not been in operation for a period of [1 year] 2 years or less at a site within 2 miles of the prior site; or

c. Permit the purchaser of a controlling interest in the shares or substantially all of the operating assets of an existing franchise to relocate the place of business of the franchise within 2 miles of the previously approved franchise location within 180 days of the date of purchase.<sup>2</sup>

(cf: P.L.1991, c.460, s.1)

<sup>2</sup>4. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to read as follows:

3. It shall be a violation of this act for a motor vehicle franchisor, directly or indirectly, through any officer, agent, employee, broker or any shareholder of the franchisor, except a shareholder of 1% or less of the outstanding shares of any

class of securities of a franchisor which is a publicly traded corporation, or other person, to own or operate a place of business as a motor vehicle franchisee, except that this section shall not prohibit the ownership or operation of a place of business by a motor vehicle franchisor for a period, not to exceed [12] 24 consecutive months, during the transition from one motor vehicle franchisee to another; or the investment in a motor vehicle franchisee by a motor vehicle franchisor if the investment is for the sole purpose of [supplementing the private capital investment funds of] enabling a partner or shareholder in that motor vehicle franchisee to acquire an interest in that motor vehicle franchisee and that partner or shareholder is not otherwise employed by or associated with the motor vehicle franchisor and would not otherwise have the requisite capital investment funds to invest in the motor vehicle franchisee, and has the right to purchase the entire equity interest of the motor vehicle franchisor in the motor vehicle franchisee within a reasonable period of time not to exceed 10 years.<sup>2</sup>  
(cf: P.L.1985, c.361, s.3)

RENUMBER SECTIONS 3 THROUGH 5 AS SECTIONS 5  
THROUGH 7

STATEMENT

These amendments permit a motor vehicle franchisor: to reopen or reactivate a franchise which has not been in operation for a period of two years or less at a site within two miles of the prior site, instead of the current one year or less; to own or operate a franchise for 24 consecutive months, instead of the current 12 consecutive months, during a transition from one franchisee to another; and to invest in a franchisee if the investment is for the sole purpose of enabling a partner or shareholder in that franchisee to acquire an interest in that franchisee.

The bill establishes a number of conditions that are to be deemed by the Motor Vehicle Franchise Committee as being injurious to existing dealers or to the public interest. The amendments provide that these foregoing presumptions would not apply to the grant, reopening or reactivation of a franchise if the proposed franchisee is a minority or woman. Further, the amendments provide that a proposed establishment, grant, relocation, reopening or reactivation of a franchise will be injurious to existing franchisees or to the public interest if the proposed franchise is likely to cause not less than a 25% reduction in new vehicle sales or not less than a 25% reduction in gross income for the protesting franchisee. The bill originally specified, instead, not less than a 20% reduction in new vehicle, parts, or service sales, or not less than a 20% reduction in gross income for the protesting franchisee.

[SECOND REPRINT]  
ASSEMBLY, No. 2550

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1993

By Assemblymen MORAN, IMPREVEDUTO and Connors

1 AN ACT concerning motor vehicle franchises, amending  
2 P.L.1971, c.356 <sup>2</sup>[and] <sup>2</sup> P.L.1982, c.156 <sup>2</sup>and P.L.1985,  
3 c.361<sup>2</sup>, and supplementing P.L.1977, c.84 (C.56:10-13 et seq.).  
4

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

7 1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read  
8 as follows:

9 4. This act applies only:

10 a. to a franchise (1) the performance of which contemplates or  
11 requires the franchisee to establish or maintain a place of  
12 business within the State of New Jersey, (2) where gross sales of  
13 products or services between the franchisor and franchisee  
14 covered by such franchise shall have exceeded \$35,000.00 for the  
15 12 months next preceding the institution of suit pursuant to this  
16 act, and (3) where more than 20% of the franchisee's gross sales  
17 are intended to be or are derived from such franchise; or

18 b. to a franchise for the sale of new motor vehicles as defined  
19 in R.S.39:10-2, the performance of which contemplates or  
20 requires the franchisee to establish or maintain a place of  
21 business within the State of New Jersey.

22 (cf: P.L.1971, c.356, s.4)

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

25 8. a. In determining whether the grant, relocation, reopening  
26 or reactivation of a franchise or establishment, relocation,  
27 reopening or reactivation of a business will be injurious to  
28 existing franchisees [and] or to the public interest, the committee  
29 may consider, but shall not be limited to considering the  
30 following:

31 [a.] (1) The effect that the proposed franchise or business would  
32 have on the provision of stable, adequate and reliable sales and  
33 service to purchasers of vehicles in the same line make in the  
34 relevant market area;

35 [b.] (2) The effect that the proposed franchise or business would  
36 have on the stability of existing franchisees in the same line  
37 make in the relevant market area;

38 [c.] (3) Whether the existing franchisees in the same line make  
39 in the relevant market area are providing adequate and  
40 convenient consumer service for motor vehicles of the line make  
41 in the relevant market area, which shall include the adequacy of

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> Assembly ACP committee amendments adopted May 17, 1993.

<sup>2</sup> Assembly floor amendments adopted June 17, 1993.

1 motor vehicle sales and service facilities, equipment, supply of  
2 motor vehicle parts and qualified service personnel;

3 [d.] (4) The effect on a relocating dealer of a denial of its  
4 relocation into the relevant market area.

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

13 (1) <sup>2</sup>for the 24 month period prior to notice pursuant to section  
14 4 of P.L.1982, c.156 (C.56:10-19),<sup>2</sup> the average sales  
15 <sup>2</sup>[registration] penetration<sup>2</sup> of the franchisees given notice  
16 pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at least  
17 equal to the average sales <sup>2</sup>[registration] penetration<sup>2</sup> of all  
18 franchisees in the same line make in the zone, district <sup>2</sup>, region<sup>2</sup>  
19 or <sup>2</sup>[territory to] other geographic designation used by the motor  
20 vehicle franchisor into<sup>2</sup> which the proposed franchise or business  
21 will be assigned;

22 (2) the proposed franchise or business is likely to cause not less  
23 than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in new vehicle <sup>2</sup>[, parts or service]<sup>2</sup>  
24 sales or not less than a <sup>2</sup>[20%] 25%<sup>2</sup> reduction in gross income for  
25 the protesting franchisee;

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

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

31 <sup>2</sup>c. The presumption in subsection b. of this section shall not  
32 apply to the grant, reopening or reactivation of a franchise or to  
33 the establishment, reopening or reactivation of a business if the  
34 proposed franchisee is a minority or a woman. For the purposes  
35 of this subsection, "minority" means a person who is:

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

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

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

44 (4) American Indian or Alaskan native, which is a person  
45 having origins in any of the original peoples of North America.<sup>2</sup>

46 (cf: P.L.1982, c.156, s.8)

47 <sup>2</sup>3. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to  
48 read as follows:

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

52 a. Permit an existing franchisee to relocate his franchise  
53 within 2 miles of the franchisee's existing franchise location,  
54 except that a franchise may not be relocated pursuant to this

1 subsection unless at least five years have elapsed since any  
2 previous relocation pursuant to this subsection;

3 b. Reopen or reactivate a franchise or business which has not  
4 been in operation for a period of [1 year] 2 years or less at a site  
5 within 2 miles of the prior site; or

6 c. Permit the purchaser of a controlling interest in the shares  
7 or substantially all of the operating assets of an existing  
8 franchise to relocate the place of business of the franchise within  
9 2 miles of the previously approved franchise location within 180  
10 days of the date of purchase.<sup>2</sup>

11 (cf: P.L.1991, c.460, s.1)

12 <sup>2</sup>4. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to  
13 read as follows:

14 3. It shall be a violation of this act for a motor vehicle  
15 franchisor, directly or indirectly, through any officer, agent,  
16 employee, broker or any shareholder of the franchisor, except a  
17 shareholder of 1% or less of the outstanding shares of any class of  
18 securities of a franchisor which is a publicly traded corporation,  
19 or other person, to own or operate a place of business as a motor  
20 vehicle franchisee, except that this section shall not prohibit the  
21 ownership or operation of a place of business by a motor vehicle  
22 franchisor for a period, not to exceed [12] 24 consecutive months,  
23 during the transition from one motor vehicle franchisee to  
24 another; or the investment in a motor vehicle franchisee by a  
25 motor vehicle franchisor if the investment is for the sole purpose  
26 of [supplementing the private capital investment funds of]  
27 enabling a partner or shareholder in that motor vehicle franchisee  
28 to acquire an interest in that motor vehicle franchisee and that  
29 partner or shareholder is not otherwise employed by or associated  
30 with the motor vehicle franchisor and would not otherwise have  
31 the requisite capital investment funds to invest in the motor  
32 vehicle franchisee, and has the right to purchase the entire equity  
33 interest of the motor vehicle franchisor in the motor vehicle  
34 franchisee within a reasonable period of time not to exceed 10  
35 years.<sup>2</sup>

36 (cf: P.L.1985, c.361, s.3)

37 <sup>2</sup>[3.] 5.<sup>2</sup> (New section) It shall be a violation of the "Franchise  
38 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
39 vehicle franchisor to exercise a right of first refusal or other  
40 right to acquire a motor vehicle franchise from a motor vehicle  
41 franchisee as a means to influence the consideration or other  
42 terms offered by a person in connection with the acquisition of  
43 the motor vehicle franchise or to influence a person to refrain  
44 from entering into, or to withdraw from, negotiations for the  
45 acquisition of the motor vehicle franchise.

46 <sup>2</sup>[4.] 6.<sup>2</sup> (New section) It shall be a violation of the "Franchise  
47 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor  
48 vehicle franchisor to exercise a right of first refusal or other  
49 right to acquire a motor vehicle franchise from a motor vehicle  
50 franchisee unless the motor vehicle franchisor:

51 a. at the election of the motor vehicle franchisee, assumes the  
52 lease for or acquires the real property on which the motor vehicle  
53 franchise is conducted on the same terms as those on which the  
54 real property or lease was to be sold or transferred to the

1 acquiring transferee in connection with the sale of the motor  
2 vehicle franchise, unless otherwise agreed to by the motor  
3 vehicle franchisee and motor vehicle franchisor; and

4 b. reimburses the acquiring transferee of the motor vehicle  
5 franchise for the reasonable expenses paid or incurred by him in  
6 evaluating and investigating the motor vehicle franchise and  
7 negotiating and pursuing the acquisition of the motor vehicle  
8 franchise prior to the motor vehicle franchisor's exercise of the  
9 right of first refusal or other right to acquire the motor vehicle  
10 franchise. For purposes of this subsection, expenses to evaluate  
11 and investigate the motor vehicle franchise means, in addition to  
12 any other expenses associated with the evaluation and  
13 investigation of the motor vehicle franchise, <sup>1</sup>legal and  
14 accounting expenses, and<sup>1</sup> expenses associated with the  
15 evaluation and investigation of any real property on which the  
16 motor vehicle franchise is conducted, including, but not limited  
17 to, expenses associated with title examinations, environmental  
18 assessments and other expenses directly related to the acquisition  
19 or lease of such real property by the acquiring transferee. Upon  
20 reimbursement, any title reports, or other reports or studies  
21 received by the acquiring transferee as a result of the evaluation  
22 or investigation of the motor vehicle franchise or the real  
23 property on which the motor vehicle franchise is conducted shall  
24 be provided to the motor vehicle franchisor. The acquiring  
25 transferee shall submit an itemized list of the expenses to be  
26 reimbursed along with supporting documents, if any, to the motor  
27 vehicle franchisor no later than 30 days after receipt of a written  
28 request for same from the motor vehicle franchisor. The motor  
29 vehicle franchisor shall make payment within 30 days of receipt  
30 of the itemized list.

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

36 <sup>2</sup>[5.] 7.<sup>2</sup> This act shall take effect immediately.

37

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39

40

41 Revises laws regarding the rights and responsibilities of motor  
42 vehicle franchisors and their franchisees.