

56:10-13

LEGISLATIVE HISTORY CHECKLIST
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(Motor vehicle franchises--
clarify rights & responsibilities)

NJSA: 56:10-13

LAWS OF: 1991

CHAPTER: 459

BILL NO: S3486

SPONSOR(S): O'Connor

DATE INTRODUCED: May 20, 1991

COMMITTEE: ASSEMBLY: _____

SENATE: Labor

AMENDED DURING PASSAGE: Yes

Amendments during passage denoted
by asterisks

DATE OF PASSAGE: ASSEMBLY:

January 6, 1992

SENATE:

December 16, 1991

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT:

Yes

*SPONSOR'S STMT. TO A4862 IS
IDENTICAL -- NOT ENCLOSED*

COMMITTEE STATEMENT:

ASSEMBLY:

[Yes]

*A. COMM. STMT. TO A4862 --
ENCLOSED*

SENATE:

Yes

FISCAL NOTE:

No

VETO MESSAGE:

No

MESSAGE ON SIGNING:

No

FOLLOWING WERE PRINTED:

REPORTS:

No

HEARINGS:

No

KBG/pp

P.L.1991, CHAPTER 459, approved January 18, 1992
1991 Senate No. 3486 (First Reprint)

1 ~~AN ACT concerning certain motor vehicle franchises and~~
2 ~~amending and supplementing P.L.1977, c.84.~~

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

6 1. Section 1 of P.L.1977, c.84 (C.56:10-13) is amended to read
7 as follows:

8 1. For the purposes of this act:

9 "[motor] Motor vehicle franchisor" means a franchisor engaged
10 in the business of manufacturing or assembling new motor
11 vehicles, who will, under normal business conditions during the
12 year, manufacture or assemble at least 10 new motor vehicles,
13 and his motor vehicle distributors;

14 "[motor] Motor vehicle franchisee" means every franchisee
15 actively engaged in the business of buying, selling or exchanging
16 new motor vehicles [or motorcycles] and who has an established
17 place of business;

18 "Motor vehicle franchise" means a franchise for the marketing
19 of new motor vehicles;

20 "New motor vehicle" means only a newly manufactured motor
21 vehicle, and includes all vehicles propelled otherwise than by
22 muscular power, and motorcycles, trailers and tractors,
23 excepting: (1) those vehicles as run only upon rails or tracks and
24 motorized bicycles, and buses, including school buses; and (2)
25 those motor vehicles not designed or used primarily for the
26 transportation of persons or property and only incidentally
27 operated or moved over a highway.

28 (cf: P.L.1977, c.84, s.1)

29 2. (New section) It shall be a violation of the "Franchise
30 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.) for any motor
31 vehicle franchisor, directly or indirectly, through any officer,
32 agent or employee, to prohibit or restrict the relocation of a
33 motor vehicle franchise unless:

34 a. the relocation will leave that franchisor without
35 representation in the primary market area of the relocating
36 motor vehicle franchisee;

37 b. the relocation will have a material adverse effect on an
38 existing motor vehicle franchisee;

39 c. the place of business to which the motor vehicle franchisee
40 proposes to relocate does not substantially satisfy the reasonable

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 Senate SLI committee amendments adopted December 5, 1991.

1 standards for franchise facilities established by the motor vehicle
2 franchisor in writing and made available to its franchisees; or
3 d. the relocation is determined to be injurious pursuant to
4 P.L.1982, c.156 (C.56:10-16 et seq.).

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

13 a. any unused, undamaged, and unsold inventory, parts,
14 supplies, and accessories acquired from the franchisor or a source
15 approved or recommended by the franchisor at the franchisee's
16 net acquisition cost therefor, plus the franchisee's cost of
17 handling, packing, loading and transporting the inventory, parts,
18 supplies and accessories for return to the franchisor. For the
19 purposes of this subsection, inventory, parts, supplies and
20 accessories used by the franchisee or its employees for display,
21 demonstration or other marketing purposes shall be deemed to be
22 unused or unsold.

23 b. any special tools, equipment, furnishings, and signs which
24 were recommended or required by the franchisor, at:

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

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

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

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

40 (5) the fair market value if the item was acquired more than 60
41 months immediately preceding the effective date of the
42 termination, cancellation or nonrenewal;

43 plus the franchisee's cost of handling, packing, loading and
44 transporting the item for return to the franchisor.

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

1 (1) any change in the ownership, operation or control of all or
2 any part of the franchisor's business, whether by sale or transfer
3 of the assets, corporate stock or other equity interest;
4 ~~assignment; merger; consolidation; combination; reorganization;~~
5 ~~restructuring; redemption; operation of law or otherwise; or~~

6 (2) the termination, suspension or cessation of all or any part of
7 the franchisor's business operations, other than a termination or
8 cessation of a part of the franchisor's business operations
9 throughout the United States which is not part of any change in
10 the ownership, operation or control of all or any part of the
11 franchisor's business;

12 unless the franchisor complies with the provisions of ¹subsections
13 b., c., d. and e. of¹ this section ¹or unless the franchisor, or
14 another motor vehicle franchisor, pursuant to an agreement with
15 the franchisor, offers the franchisee a replacement motor vehicle
16 franchise which takes effect no later than the date of the
17 termination, cancellation or nonrenewal of the franchisee's
18 existing motor vehicle franchise¹.

19 b. Within 90 days of the effective date of the termination,
20 cancellation or nonrenewal, the motor vehicle franchisor shall
21 compensate the motor vehicle franchisee in an amount at least
22 equivalent to the fair market value of the motor vehicle
23 franchise on

24 (1) the date the franchisor announces the action which results
25 in the termination, cancellation or nonrenewal; or

26 (2) the date on which the notice of termination, cancellation or
27 nonrenewal is issued.

28 whichever amount is higher.

29 c. The franchisor shall authorize the franchisee to continue
30 servicing and supplying parts, including service and parts pursuant
31 to a warranty issued by the franchisor, for any goods or services
32 marketed by the franchisee pursuant to the motor vehicle
33 franchise for a period of not less than five years from the
34 effective date of the termination, cancellation or nonrenewal and
35 shall continue to reimburse the franchisee for warranty parts and
36 service in an amount and on terms no less favorable than those in
37 effect prior to the termination, cancellation or nonrenewal and in
38 accordance with section 3 of P.L.1977, c.84 (C.56:10-15).

39 d. The franchisor shall continue to supply the franchisee with
40 replacement parts for any goods or services marketed by the
41 franchisee pursuant to the motor vehicle franchise for a period of
42 not less than five years from the effective date of the
43 termination, cancellation or nonrenewal, ¹at the same price and
44 terms as the franchisor supplies them to the remaining
45 franchisees of the franchisor, or, if there are no such remaining
46 franchisees,¹ at a price and on terms no less favorable than those
47 in effect prior to the termination, cancellation or nonrenewal.

48 ¹e. If the franchisee continues to service motor vehicles and
49 sell parts after the termination, cancellation or nonrenewal, as

1 provided for in subsections c. and d. of this section, the
2 compensation paid to the franchisee pursuant to subsection b. of
3 this section shall be reduced to the extent, if any, of the fair
4 market value of such rights as of the effective date of the
5 termination, cancellation or nonrenewal.¹

6 5. (New section) For the purposes of sections 3 and 4 of this
7 1991 amendatory and supplementary act, and section 5 of the
8 "Franchise Practices Act," P.L.1971, c.356 (C.56:10-5), the
9 termination, cancellation or discontinuation of a series, line,
10 brand or ¹[category] class¹ of new motor vehicle marketed by a
11 motor vehicle franchisor as a distinct series, line, brand or
12 ¹[category] class¹ shall be deemed to be the termination,
13 cancellation or nonrenewal of the motor vehicle franchise of a
14 motor vehicle franchisee holding a franchise which includes that
15 series, line, brand or ¹[category] class¹, even if that series, line,
16 brand or ¹[category] class¹ of new motor vehicle is part of a
17 motor vehicle franchise which includes other series, lines, brands
18 or ¹[categories] classes¹ of new motor vehicles. Notwithstanding
19 the provisions of this section, a franchisor may change, add or
20 delete models, specifications, model names, numbers or
21 identifying marks or similar characteristics of the new motor
22 vehicles it markets, if those changes, additions or deletions do
23 not result, directly or indirectly, in the termination, cancellation
24 or discontinuation of a distinct series, line, brand or ¹[category]
25 class¹ of new motor vehicle.

26 6. (New section) If a motor vehicle franchisor fails to make
27 any payment required by this 1991 amendatory and supplementary
28 act within the time specified for payment, interest shall be added
29 to that payment at the rate of 12% per annum from the date
30 payment was due.

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

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

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

47 b. The motor vehicle franchisor shall not by agreement, by
48 restrictions upon reimbursement, or otherwise, restrict the
49 nature and extent of services to be rendered or parts to be

1 provided so that such restriction prevents the motor vehicle
2 franchisee from satisfying the warranty by rendering services in a
3 good and workmanlike manner and providing parts which are
4 required in accordance with generally accepted standards. Any
5 such restriction shall constitute a prohibited practice hereunder.

6 c. The motor vehicle franchisor shall reimburse the motor
7 vehicle franchisee pursuant to subsection a. of this section,
8 without deduction, for services performed on, and parts supplied
9 for, a motor vehicle by the motor vehicle franchisee in good faith
10 and in accordance with generally accepted standards,
11 notwithstanding any requirement that the motor vehicle
12 franchisor accept the return of the motor vehicle or make
13 payment to a consumer with respect to the motor vehicle
14 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).
15 (cf: P.L.1977, c.84, s.3)

16 8. This act shall take effect immediately and sections 2
17 through 6 shall apply only to motor vehicle franchises granted on
18 or after the effective date and, to motor vehicle franchises
19 granted prior to that date, upon the amendment or renewal of
20 that existing franchise on or after the effective date.

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COMMERCE AND INDUSTRY

24

25 Clarifies rights and responsibilities of motor vehicle franchisors
26 and their franchisees.

1 through 6 shall apply only to motor vehicle franchises granted on
2 or after the effective date and, to motor vehicle franchises
3 granted prior to that date, upon the amendment or renewal of
4 that existing franchise on or after the effective date.

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SPONSORS' STATEMENT

8

9 Over the last 20 years, New Jersey has enacted a body of
10 motor vehicle franchise law that has been emulated throughout
11 the nation. The "Franchise Practices Act," P.L.1971, c.356
12 (C.56:10-1 et seq.), has been bolstered by four subsequent laws
13 designed to permit auto retailers to render the highest quality of
14 sales and service to the consuming public. The years have seen
15 vast changes in automotive retailing and, as a result, a number of
16 problems have arisen that were not contemplated by the earlier
17 laws.

18 This bill is part of a three bill package that seeks to update
19 New Jersey's motor vehicle franchise laws in response to current
20 conditions in the marketplace. It addresses some of the larger
21 issues currently confronting franchisors and their franchisees and
22 the two companion bills amend related statutes to address certain
23 specific concerns which have arisen since their enactment.

24 The bill protects a motor vehicle franchisee wishing to relocate
25 the franchise from arbitrary action by the franchisor which would
26 prohibit that relocation. So long as the relocation does not
27 jeopardize the franchisor's representation in the market area,
28 does not adversely affect another franchisee, meets the
29 franchisor's reasonable standards as to franchise facilities and
30 does not violate existing law giving other franchisees the right to
31 challenge the relocation, it cannot be prohibited by the franchisor.

32 The bill also deals with the unique problems faced by motor
33 vehicle franchisees who lose their franchises. Without the
34 protections provided under the bill, they often must absorb the
35 considerable costs of unsold vehicles, parts, tools, signs and
36 equipment they were required to purchase as a condition of the
37 franchise. In this regard, the bill requires that the franchisor
38 repurchase such tangible property and establishes a fair value for
39 those transactions. The bill does not, however, affect the
40 existing rights of franchisees when the termination is not in
41 compliance with section 5 of the "Franchise Practices Act,"
42 (C.56:10-5).

43 The termination of franchises as the result of mergers or other
44 changes in the corporate structure of the franchisor are also
45 contemplated by the bill. In those cases, a franchisor must
46 compensate the franchisee for the fair market value of the
47 franchise. The public's interest is also protected by the bill in
48 this regard by assuring that parts and related services for the
49 franchisor's vehicles will remain available for five years after

1 the termination.

2 The bill makes it clear that the removal or elimination of one
3 or more lines or makes of vehicles under a single franchise
4 agreement is nevertheless a termination of the franchise. Some
5 franchisors evade the present requirements of the "Franchise
6 Practices Act" by cancelling only a part of the agreement. For
7 example, some franchisors grant the right to sell two or more
8 makes or lines of vehicles (light and heavy trucks) under a single
9 agreement and then subsequently remove one or more lines while
10 leaving others in place. Under the bill, such action would be
11 treated as a termination of the franchise.

12 Finally, the bill clarifies the franchisor's obligation to
13 reimburse franchisees for repairs performed on the franchisor's
14 vehicles as the result of the operation of New Jersey's highly
15 regarded "lemon law." That law puts the franchisee in the
16 position of performing extensive and often costly repairs before
17 the manufacturer or franchisor must replace the "lemon," and
18 some franchisors have refused to reimburse franchisees for their
19 repair efforts. The bill makes it clear that such expenses must be
20 reimbursed under the legally established standards for warranty
21 service.

22

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24

COMMERCE AND INDUSTRY

25

26 Clarifies rights and responsibilities of motor vehicle franchisors
27 and their franchisees.

ASSEMBLY COMMERCE AND REGULATED PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4862

STATE OF NEW JERSEY

DATED: AUGUST 22, 1991

The Assembly Commerce and Regulated Professions Committee reports favorably Assembly Bill No. 4862.

This bill provides that it shall be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for any motor vehicle franchisor to prohibit or restrict the relocation of a motor vehicle franchise except if the relocation would: leave the franchisor without representation in the market area; adversely affect another franchisee; fail to meet the franchisor's reasonable standards for franchise facilities; or violate existing law giving other franchisees the right to challenge the relocation.

The bill also requires a franchisor to repurchase from the motor vehicle franchisee any unused, undamaged, and unsold inventory, parts, supplies, and accessories acquired from the franchisor or a source approved by the franchisor when a motor vehicle franchisor terminates, cancels or fails to renew a motor vehicle franchise. This repurchase includes any special tools, equipment, furnishings, and signs which were recommended or required by the franchisor.

Another issue addressed in the legislation concerns the termination, cancellation, or nonrenewal of franchises as the result of mergers or other changes in the corporate structure of the franchisor. In those cases, a franchisor is required to: compensate the franchisee a fair market value for the franchise; and, for a period of not less than five years, authorize the franchisee to continue to service vehicles sold under the franchise, including warranty service and parts; and supply the franchisee with replacement parts necessary to service such vehicles.

The bill prohibits the termination, cancellation or discontinuation of a series, line, brand or category of new motor vehicle without good cause by treating such an action as a termination of a franchise held by a motor vehicle franchisee which includes more than one series, line, brand or category of new motor vehicle.

Furthermore, the bill clarifies the franchisor's obligation to reimburse franchisees for warranty repairs performed on a new motor vehicle when, as the result of the operation of New Jersey's "lemon law," the franchisor is required to replace the new motor vehicle. That law may place the franchisee in the position of performing extensive and often costly repairs before the manufacturer or franchisor must replace the vehicle designated as a "lemon."

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3486

with Senate committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 1991

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate, No. 3486.

This bill prohibits a motor vehicle franchisor from prohibiting or restricting the relocation of a motor vehicle franchise except if the relocation would: leave the franchisor without representation in the market area; adversely affect another franchisee; fail to meet the franchisor's reasonable standards for franchise facilities; or violate existing law giving other franchisees the right to challenge the relocation.

The bill also requires a motor vehicle franchisor to repurchase from the motor vehicle franchisee any unused, undamaged and unsold inventory, parts, supplies and accessories acquired from the franchisor or a source approved by the franchisor when a motor vehicle franchisor terminates, cancels or fails to renew a motor vehicle franchise for good cause under the "Franchise Practices Act" or when a motor vehicle franchisor terminates or ceases a part of its business operations throughout the United States. This repurchase includes any special tools, equipment, furnishings and signs which were recommended or required by the franchisor.

The bill prohibits a motor vehicle franchisor from terminating, cancelling or failing to renew a motor vehicle franchise because of any change in the ownership, operation or control of all or part of the franchisor's business or because of the termination or ceasing of all or part of its business operations in part of the United States, other than the termination or cessation of a part of its business operations throughout the United States which is not the result of any change in the ownership or control of the franchisor, unless it: (1) compensates the franchisee at least the fair market value for the franchise; for a period of not less than five years, authorizes the franchisee to continue to service and supply parts to vehicles sold under the franchise, including warranty service and parts; and supplies the franchise with replacement parts necessary to service such vehicles; or (2) offers the franchisee a replacement motor vehicle franchise, whether one of its own or one secured in agreement with another motor vehicle franchisor (provision (2) was added by amendment).

The bill clarifies that the termination or discontinuance of one or more lines or makes of a franchise by a motor vehicle franchisor would be treated as a termination of the franchise.

Finally, the bill clarifies that a franchisor has an obligation to reimburse franchisees for warranty repairs performed on a new motor vehicle when, as the result of the operation of New Jersey's "lemon law," the franchisor is required to replace or make payment to the consumer for a new motor vehicle.

The provisions of the bill would apply to all motor vehicle franchises granted after the effective date of the bill and to all motor vehicle franchises amended or renewed after that date.

[FIRST REPRINT]
SENATE, No. 3486

STATE OF NEW JERSEY

INTRODUCED MAY 13, 1991

By Senators O'CONNOR and DiFRANCESCO

1 AN ACT concerning certain motor vehicle franchises and
2 amending and supplementing P.L.1977, c.84.

3

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

6 1. Section 1 of P.L.1977, c.84 (C.56:10-13) is amended to read
7 as follows:

8 1. For the purposes of this act:

9 "[motor] Motor vehicle franchisor" means a franchisor engaged
10 in the business of manufacturing or assembling new motor
11 vehicles, who will, under normal business conditions during the
12 year, manufacture or assemble at least 10 new motor vehicles,
13 and his motor vehicle distributors;

14 "[motor] Motor vehicle franchisee" means every franchisee
15 actively engaged in the business of buying, selling or exchanging
16 new motor vehicles [or motorcycles] and who has an established
17 place of business;

18 "Motor vehicle franchise" means a franchise for the marketing
19 of new motor vehicles;

20 "New motor vehicle" means only a newly manufactured motor
21 vehicle, and includes all vehicles propelled otherwise than by
22 muscular power, and motorcycles, trailers and tractors,
23 excepting: (1) those vehicles as run only upon rails or tracks and
24 motorized bicycles, and buses, including school buses; and (2)
25 those motor vehicles not designed or used primarily for the
26 transportation of persons or property and only incidentally
27 operated or moved over a highway.

28 (cf: P.L.1977, c.84, s.1)

29 2. (New section) It shall be a violation of the "Franchise
30 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.) for any motor
31 vehicle franchisor, directly or indirectly, through any officer,
32 agent or employee, to prohibit or restrict the relocation of a
33 motor vehicle franchise unless:

34 a. the relocation will leave that franchisor without
35 representation in the primary market area of the relocating
36 motor vehicle franchisee;

37 b. the relocation will have a material adverse effect on an
38 existing motor vehicle franchisee;

39 c. the place of business to which the motor vehicle franchisee
40 proposes to relocate does not substantially satisfy the reasonable

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 Senate SLI committee amendments adopted December 5, 1991.

1 standards for franchise facilities established by the motor vehicle
2 franchisor in writing and made available to its franchisees; or

3 d. the relocation is determined to be injurious pursuant to
4 P.L.1982, c.156 (C.56:10-16 et seq.).

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

13 a. any unused, undamaged, and unsold inventory, parts,
14 supplies, and accessories acquired from the franchisor or a source
15 approved or recommended by the franchisor at the franchisee's
16 net acquisition cost therefor, plus the franchisee's cost of
17 handling, packing, loading and transporting the inventory, parts,
18 supplies and accessories for return to the franchisor. For the
19 purposes of this subsection, inventory, parts, supplies and
20 accessories used by the franchisee or its employees for display,
21 demonstration or other marketing purposes shall be deemed to be
22 unused or unsold.

23 b. any special tools, equipment, furnishings, and signs which
24 were recommended or required by the franchisor, at:

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

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

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

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

40 (5) the fair market value if the item was acquired more than 60
41 months immediately preceding the effective date of the
42 termination, cancellation or nonrenewal;

43 plus the franchisee's cost of handling, packing, loading and
44 transporting the item for return to the franchisor.

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

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

6 (2) the termination, suspension or cessation of all or any part of
7 the franchisor's business operations, other than a termination or
8 cessation of a part of the franchisor's business operations
9 throughout the United States which is not part of any change in
10 the ownership, operation or control of all or any part of the
11 franchisor's business;

12 unless the franchisor complies with the provisions of ¹subsections
13 b., c., d. and e. of¹ this section ¹or unless the franchisor, or
14 another motor vehicle franchisor, pursuant to an agreement with
15 the franchisor, offers the franchisee a replacement motor vehicle
16 franchise which takes effect no later than the date of the
17 termination, cancellation or nonrenewal of the franchisee's
18 existing motor vehicle franchise¹.

19 b. Within 90 days of the effective date of the termination,
20 cancellation or nonrenewal, the motor vehicle franchisor shall
21 compensate the motor vehicle franchisee in an amount at least
22 equivalent to the fair market value of the motor vehicle
23 franchise on

24 (1) the date the franchisor announces the action which results
25 in the termination, cancellation or nonrenewal; or

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

29 c. The franchisor shall authorize the franchisee to continue
30 servicing and supplying parts, including service and parts pursuant
31 to a warranty issued by the franchisor, for any goods or services
32 marketed by the franchisee pursuant to the motor vehicle
33 franchise for a period of not less than five years from the
34 effective date of the termination, cancellation or nonrenewal and
35 shall continue to reimburse the franchisee for warranty parts and
36 service in an amount and on terms no less favorable than those in
37 effect prior to the termination, cancellation or nonrenewal and in
38 accordance with section 3 of P.L.1977, c.84 (C.56:10-15).

39 d. The franchisor shall continue to supply the franchisee with
40 replacement parts for any goods or services marketed by the
41 franchisee pursuant to the motor vehicle franchise for a period of
42 not less than five years from the effective date of the
43 termination, cancellation or nonrenewal, ¹at the same price and
44 terms as the franchisor supplies them to the remaining
45 franchisees of the franchisor, or, if there are no such remaining
46 franchisees,¹ at a price and on terms no less favorable than those
47 in effect prior to the termination, cancellation or nonrenewal.

48 ¹e. If the franchisee continues to service motor vehicles and
49 sell parts after the termination, cancellation or nonrenewal, as

1 provided for in subsections c. and d. of this section, the
2 compensation paid to the franchisee pursuant to subsection b. of
3 this section shall be reduced to the extent, if any, of the fair
4 market value of such rights as of the effective date of the
5 termination, cancellation or nonrenewal.¹

6 5. (New section) For the purposes of sections 3 and 4 of this
7 1991 amendatory and supplementary act, and section 5 of the
8 "Franchise Practices Act," P.L.1971, c.356 (C.56:10-5), the
9 termination, cancellation or discontinuation of a series, line,
10 brand or ¹[category] class¹ of new motor vehicle marketed by a
11 motor vehicle franchisor as a distinct series, line, brand or
12 ¹[category] class¹ shall be deemed to be the termination,
13 cancellation or nonrenewal of the motor vehicle franchise of a
14 motor vehicle franchisee holding a franchise which includes that
15 series, line, brand or ¹[category] class¹, even if that series, line,
16 brand or ¹[category] class¹ of new motor vehicle is part of a
17 motor vehicle franchise which includes other series, lines, brands
18 or ¹[categories] classes¹ of new motor vehicles. Notwithstanding
19 the provisions of this section, a franchisor may change, add or
20 delete models, specifications, model names, numbers or
21 identifying marks or similar characteristics of the new motor
22 vehicles it markets, if those changes, additions or deletions do
23 not result, directly or indirectly, in the termination, cancellation
24 or discontinuation of a distinct series, line, brand or ¹[category]
25 class¹ of new motor vehicle.

26 6. (New section) If a motor vehicle franchisor fails to make
27 any payment required by this 1991 amendatory and supplementary
28 act within the time specified for payment, interest shall be added
29 to that payment at the rate of 12% per annum from the date
30 payment was due.

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

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

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

47 b. The motor vehicle franchisor shall not by agreement, by
48 restrictions upon reimbursement, or otherwise, restrict the
49 nature and extent of services to be rendered or parts to be

1 provided so that such restriction prevents the motor vehicle
2 franchisee from satisfying the warranty by rendering services in a
3 good and workmanlike manner and providing parts which are
4 required in accordance with generally accepted standards. Any
5 such restriction shall constitute a prohibited practice hereunder.

6 c. The motor vehicle franchisor shall reimburse the motor
7 vehicle franchisee pursuant to subsection a. of this section,
8 without deduction, for services performed on, and parts supplied
9 for, a motor vehicle by the motor vehicle franchisee in good faith
10 and in accordance with generally accepted standards,
11 notwithstanding any requirement that the motor vehicle
12 franchisor accept the return of the motor vehicle or make
13 payment to a consumer with respect to the motor vehicle
14 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).
15 (cf: P.L.1977, c.84, s.3)

16 8. This act shall take effect immediately and sections 2
17 through 6 shall apply only to motor vehicle franchises granted on
18 or after the effective date and, to motor vehicle franchises
19 granted prior to that date, upon the amendment or renewal of
20 that existing franchise on or after the effective date.

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23 COMMERCE AND INDUSTRY

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Clarifies rights and responsibilities of motor vehicle franchisors
and their franchisees.