

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 45

NJSA: 56:10-7

(Franchise Practice Act -- amendments -- MV Franchises)

BILL NO: S1093(Substituted forA2449 ACS)

SPONSOR(S): Cardinale And Lesniak

DATE INTRODUCED:May 21 1998

COMMITTEE:

*ASSEMBLY:*Judiciary

*SENATE:*Commerce

AMENDED DURING PASSAGE:Yes

DATES OF PASSAGE:

*ASSEMBLY:*January 29, 1999

*SENATE:*December 17, 1998

DATE OF APPROVAL:March 12, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *YES*Senate Committee Substitute (1R)
(Amendments during passage denoted by superscript numbers)

SCS for S1093

SPONSORS STATEMENT:*No*

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS:*Yes*

LEGISLATIVE FISCAL ESTIMATE: *No*

S1093

SPONSORS STATEMENT: *Yes (Begins on page 8 of original bill)*

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS:*No*

LEGISLATIVE FISCAL ESTIMATE: *No*

ACS for A2449

SPONSORS STATEMENT: *No*

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

Identical to Assembly Statement for S1093 SCS

SENATE: *No*

FLOOR AMENDMENT STATEMENTS:*No*

LEGISLATIVE FISCAL ESTIMATE: *No*

Last Version (ACS for A2449)*Yes*

A2449

SPONSORS STATEMENT: *Yes (Begins on page 8 of original bill)*

Bill and Sponsors Statement Identical to S1093

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *No*

FLOOR AMENDMENT STATEMENTS:*No*

LEGISLATIVE FISCAL ESTIMATE: *No*

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

P.L. 1999, CHAPTER 45, *approved March 12, 1999*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 1093

1 AN ACT concerning motor vehicle franchises and revising various
2 parts of the statutory law.

3

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

6

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

9 7. It shall be a violation of this act for any franchisor, directly or
10 indirectly, through any officer, agent or employee, to engage in any of
11 the following practices:

12 a. To require a franchisee at time of entering into a franchise
13 arrangement to assent to a release, assignment, novation, waiver or
14 estoppel which would relieve any person from liability imposed by this
15 act.

16 b. To prohibit directly or indirectly the right of free association
17 among franchisees for any lawful purpose.

18 c. To require or prohibit any change in management of any
19 franchisee unless such requirement or prohibition of change shall be
20 for good cause, which cause shall be stated in writing by the
21 franchisor.

22 d. To restrict the sale of any equity or debenture issue or the
23 transfer of any securities of a franchise or in any way prevent or
24 attempt to prevent the transfer, sale or issuance of ¹**[shares of stock]**
25 equity securities¹ or debentures to employees, personnel of the
26 franchisee, or spouse, child or heir of **[the principal]** an owner, as
27 long as basic financial requirements of the franchisor are complied
28 with, and provided any such sale, transfer or issuance does not have
29 the effect of accomplishing a sale ¹or transfer of control, including, but
30 not limited to, change in the persons holding the majority voting
31 power¹ of the franchise. Nothing contained in this subsection shall
32 excuse a franchisee's obligation to provide prior written notice of any
33 change of ownership to the franchisor if that notice is required by the
34 franchise.

35 e. To impose unreasonable standards of performance upon a
36 franchisee.

37 f. To provide any term or condition in any lease or other
38 agreement ancillary or collateral to a franchise, which term or

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 floor amendments adopted December 10, 1998.**

1 condition directly or indirectly violates this act.
2 (cf: P.L.1971, c.356, s.7)

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

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

17 a. any unused, undamaged[,] and unsold inventory, and any
18 unused, undamaged and unsold parts, supplies[,] and accessories ,
19 listed in the franchisor's current price catalog and acquired from the
20 franchisor or a source approved or recommended by the franchisor at
21 the franchisee's net acquisition cost therefor, plus the franchisee's cost
22 of handling, packing, loading and transporting the inventory, parts,
23 supplies and accessories for return to the franchisor. For the purposes
24 of this subsection, inventory, parts, supplies and accessories used by
25 the franchisee or its employees for display, demonstration or other
26 marketing purposes shall be deemed to be unused or unsold.

27 b. any special tools [, equipment, furnishings,] and signs which
28 were [recommended or] required by the franchisor, at:

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

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

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

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

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

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

2 Payment shall be made by the motor vehicle franchisor within 30
3 days after the tender of the property by the motor vehicle franchisee
4 free and clear of liens and encumbrances.

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

8 (cf: P.L.1991, c.459, s.3)

9

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

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

15 a. The motor vehicle franchisor shall reimburse each motor vehicle
16 franchisee for such services as are rendered and for such parts as are
17 supplied, in an amount equal to the prevailing retail price charged by
18 such motor vehicle franchisee for such services and parts in
19 circumstances where such services are rendered or such parts supplied
20 other than pursuant to warranty; provided that such motor vehicle
21 franchisee's prevailing retail price is not unreasonable when compared
22 with that of the holders of motor vehicle franchises from the same
23 motor vehicle franchisor for identical merchandise or services in the
24 geographic area in which the motor vehicle franchisee is engaged in
25 business.

26 b. The motor vehicle franchisor shall not by agreement, by
27 restrictions upon reimbursement, or otherwise, restrict the nature and
28 extent of services to be rendered or parts to be provided so that such
29 restriction prevents the motor vehicle franchisee from satisfying the
30 warranty by rendering services in a good and workmanlike manner and
31 providing parts which are required in accordance with generally
32 accepted standards. Any such restriction shall constitute a prohibited
33 practice hereunder.

34 c. The motor vehicle franchisor shall reimburse the motor vehicle
35 franchisee pursuant to subsection a. of this section, without deduction,
36 for services performed on, and parts supplied for, a motor vehicle by
37 the motor vehicle franchisee in good faith and in accordance with
38 generally accepted standards, notwithstanding any requirement that the
39 motor vehicle franchisor accept the return of the motor vehicle or
40 make payment to a consumer with respect to the motor vehicle
41 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).

42 d. For the purposes of this section, the "prevailing retail price"
43 charged by a motor vehicle franchisee for parts means the price paid
44 by the motor vehicle franchisee for those parts, including all shipping
45 and other charges, multiplied by the sum of 1.0 and the franchisee's
46 average percentage markup over the price paid by the motor vehicle

1 franchisee for parts purchased by the motor vehicle franchisee from the
2 motor vehicle franchisor and sold at retail. The motor vehicle
3 franchisee may establish average percentage markup under this section
4 by submitting to the motor vehicle franchisor 100 sequential customer
5 paid service repair orders or 90 days of customer paid service repair
6 orders, whichever is less, covering repairs made no more than 180
7 days before the submission, and declaring what the average percentage
8 markup is. The average percentage markup so declared shall go into
9 effect 30 days following the declaration subject to audit of the
10 submitted repair orders by the motor vehicle franchisor and adjustment
11 of the average percentage markup based on that audit. Only retail
12 sales not involving warranty repairs, parts covered by subsection e. of
13 this section, or parts supplied for routine vehicle maintenance, shall be
14 considered in calculating average percentage markup. No motor
15 vehicle franchisor shall require a motor vehicle franchisee to establish
16 average percentage markup by a methodology, or by requiring
17 information, that is unduly burdensome or time consuming to provide,
18 including, but not limited to, part by part or transaction by transaction
19 calculations. A motor vehicle franchisee shall not request a change in
20 the average percentage markup more than twice in one calendar year.

21 e. If a motor vehicle franchisor supplies a part or parts for use in
22 a repair rendered under a warranty other than by sale of that part or
23 parts to the motor vehicle franchisee, the motor vehicle franchisee
24 shall be entitled to compensation equivalent to the motor vehicle
25 franchisee's average percentage markup on the part or parts, as if the
26 part or parts had been sold to the motor vehicle franchisee by the
27 motor vehicle franchisor. The requirements of this section shall not
28 apply to entire engine assemblies and entire transmission assemblies.
29 In the case of those assemblies, the motor vehicle franchisor shall
30 reimburse the motor vehicle franchisee in the amount of 30% of what
31 the motor vehicle franchisee would have paid the motor vehicle
32 franchisor for the assembly if the assembly had not been supplied by
33 the franchisor other than by the sale of that assembly to the motor
34 vehicle franchisee.

35 f. The motor vehicle franchisor shall reimburse the motor vehicle
36 franchisee for parts supplied and services rendered under a warranty
37 within 30 days after approval of a claim for reimbursement. All claims
38 for reimbursement shall be approved or disapproved within 30 days
39 after receipt of the claim by the motor vehicle franchisor. When a
40 claim is disapproved, the motor vehicle franchisee shall be notified in
41 writing of the grounds for the disapproval. No claim that has been
42 approved and paid shall be charged back to the motor vehicle
43 franchisee unless it can be shown that the claim was false or
44 fraudulent, that the services were not properly performed, that the
45 parts or services were unnecessary to correct the defective condition,
46 or that the motor vehicle franchisee failed to reasonably substantiate

1 the claim in accordance with reasonable written requirements of the
2 motor vehicle franchisor, provided that the motor vehicle franchisee
3 had been notified of the requirements prior to the time the claim arose
4 and the requirements were in effect at the time the claim arose. A
5 motor vehicle franchisor shall not audit a claim after the expiration of
6 two years following the payment of the claim unless the motor vehicle
7 franchisor has reasonable grounds to believe that the claim was
8 fraudulent.

9 g. The obligations imposed on motor vehicle franchisors by this
10 section shall apply to any parent, subsidiary, affiliate or agent of the
11 motor vehicle franchisor, any person under common ownership or
12 control, any employee of the motor vehicle franchisor and any person
13 holding 1% or more of the shares of any class of securities or other
14 ownership interest in the motor vehicle franchisor, if a warranty or
15 service or repair plan is issued by that person instead of or in addition
16 to one issued by the motor vehicle franchisor.

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

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

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

24 (3) for the first 36,000 miles of coverage under the franchisor
25 administered service or repair plan, if the warranty offered by the
26 motor vehicle franchisor on the motor vehicle provides coverage for
27 less than 36,000 miles; or

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

31 With respect to franchisor administered service or repair plans
32 covering only routine maintenance service, this section applies only to
33 those plans sold to customers on or after the effective date of P.L. .
34 c. (now before the Legislature as this bill).

35 (cf: P.L.1991, c.459, s.7)

36

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

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

44 (1) The effect that the proposed franchise or business would have
45 on the provision of stable, adequate and reliable sales and service to
46 purchasers of vehicles in the same line make in the relevant market

1 area;

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

5 (3) Whether the existing franchisees in the same line make in the
6 relevant market area are providing adequate and convenient consumer
7 service for motor vehicles of the line make in the relevant market area,
8 which shall include the adequacy of motor vehicle sales and service
9 facilities, equipment, supply of motor vehicle parts and qualified
10 service personnel;

11 (4) The effect on a relocating dealer of a denial of its relocation
12 into the relevant market area.

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

20 (1) for the 24 month period prior to notice pursuant to section 4
21 of P.L.1982, c.156 (C.56:10-19), the average **[sales]** market
22 penetration of the franchisees given notice pursuant to section 4 of
23 P.L.1982, c.156 (C.56:10-19) is at least equal to the average **[sales]**
24 market penetration of all franchisees in the same line make in the zone,
25 district , region or other similar geographic designation, other than a
26 national geographic designation, used by the motor vehicle franchisor
27 into which the proposed franchise or business will be assigned, it being
28 the intent of this paragraph (1) of this subsection b. not to compare the
29 franchisees given notice to the national market penetration of the
30 motor vehicle franchisor;

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

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

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

39 c. The presumption in subsection b. of this section shall not apply
40 to the grant, reopening or reactivation of a franchise or to the
41 establishment, reopening or reactivation of a business if the proposed
42 franchisee is a minority or a woman. For the purposes of this
43 subsection, "minority" means a person who is:

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

46 (2) Hispanic, which is a person of Spanish or Portuguese culture

1 with origins in Mexico, South or Central America, or the Caribbean
2 Islands, regardless of race; or

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

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

8 (cf: P.L.1993, c.189, s.2)

9

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

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

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

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

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

28 e. To own or operate or enter into an agreement with a person,
29 other than an existing motor vehicle franchisee, to operate a retail
30 facility for the servicing of motor vehicles, which is authorized to
31 perform warranty service on motor vehicles manufactured or
32 distributed by the motor vehicle franchisor. The establishment,
33 relocation, reopening or reactivation of such a facility pursuant to an
34 agreement with a motor vehicle franchisee shall be subject to the
35 provisions of P.L.1982, c.156 (C.56:10-16 et seq.), except that
36 paragraph (3) of subsection b. of section 8 of that act (C.56:10-23)
37 shall not be applicable. Notice shall be given to motor vehicle
38 franchisees in the same line make or makes within 6 miles of the
39 proposed retail facility for the servicing of motor vehicles which is
40 authorized to perform warranty service on motor vehicles
41 manufactured or distributed by the motor vehicle franchisor.

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

1 g. To require or attempt to require a motor vehicle franchisee to
2 accept delivery of any motor vehicle, or accessory or equipment
3 thereof not required by law, which is not as ordered by the motor
4 vehicle franchisee.

5 h. To fail or refuse to sell or offer to sell to all motor vehicle
6 franchisees in a line make every motor vehicle sold or offered for sale
7 to any motor vehicle franchisee of the same line make. However, the
8 failure to deliver any such motor vehicle shall not be considered a
9 violation of this section if the failure is not arbitrary and is due to a
10 lack of manufacturing capacity or to a strike or labor difficulty, a
11 shortage of materials, a freight embargo or other cause over which the
12 franchisor has no control. A motor vehicle franchisor shall not require
13 a motor vehicle franchisee to purchase unreasonable quantities of
14 advertising materials, purchase special tools not required to properly
15 service a motor vehicle or undertake sales person or service person
16 training unrelated to the motor vehicle or meet unreasonable display
17 requirements as a condition of receiving a motor vehicle.

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

29

30 6. This act shall take effect immediately.

31

32

33

34

35 _____
36 Makes various changes to the "Franchise Practices Act" in regard to
motor vehicle franchisees.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1093**

STATE OF NEW JERSEY

DATED: JANUARY 7, 1999

The Assembly Judiciary Committee reports favorably Senate Bill No. 1093 (SCS) (1R).

This bill amends the "Franchise Practices Act" in regard to all franchises, including motor vehicle franchises, in section 1 of the bill, and motor vehicle franchises (dealerships) in particular in the other sections of the bill.

In regard to all franchises, including motor vehicle franchises, the bill provides that a franchisor cannot prevent the transfer, sale or issuance of equity securities in a franchise to a spouse, child or heir of any owner of the franchise, as long as basic financial requirements of the franchisor are complied with and the sale, transfer or issuance does not have the effect of accomplishing a sale or transfer of control and prior written notice of the sale is given, if required by the franchise.

In regard to motor vehicle franchises, a motor vehicle franchisor (manufacturer):

(1) is prohibited from imposing unreasonable standards of performance or unreasonable facilities, financial, operating or other requirements upon a motor vehicle franchisee (dealer). Currently a franchisor is prohibited from imposing unreasonable standards of performance on a franchisee and it is unclear whether that standard includes facilities, financial or operating requirements;

(2) is prohibited from basing its disapproval of the transfer, sale or assignment of a motor vehicle franchise to a corporation or other business organization because it is not a natural person;

(3) is required to compensate franchisees for all reasonable costs incurred by the franchisee as a result of a product recall;

(4) is prohibited from terminating or sanctioning a franchise using an arbitrary or unreasonable formula or process to gauge performance;

(5) is prohibited from opening separate warranty service centers except in cooperation with an existing motor vehicle franchisee under certain circumstances;

(6) is prohibited from requiring franchisees to give unconditional

releases in regard to any claims that the franchisee may have against the franchisor under the "Franchise Practices Act" in order to receive monies due them;

(7) is prohibited from requiring a motor vehicle franchisee to accept delivery of any vehicle, or accessory or equipment not required by law, which is not as ordered by the motor vehicle franchisee;

(8) is prohibited from requiring a motor vehicle franchisee to release confidential consumer and certain other information not necessary for the franchisor to meet its obligations to consumers or the franchisee if the customer has objected thereto in writing and a franchisor is prohibited from releasing information which has been provided to it by the franchisee to any third party; and

(9) is required to sell or offer to sell to all motor vehicle franchisees in a line make every motor vehicle sold or offered for sale to any motor vehicle franchisee of the same line make if delivery of such vehicle is possible.

The bill requires franchisors to repurchase vehicles and certain parts from franchisees who voluntarily relinquish their franchises. Under current law, a franchisee who is terminated for cause by a franchisor has this right, but no such right exists for franchisees who voluntarily give up their franchises.

In regard to warranty service, the bill provides that reimbursement will be based on the franchisee's average percentage markup for parts sold at retail, determined by other actual repairs done by the franchisee; requires a franchisor to pay a franchisee the franchisee's average percentage markup if a part is supplied by the franchisor without requiring the franchisee to purchase it for warranty plans, except that entire engine assemblies and entire transmission assemblies shall have a 30% markup; and limits the time within which franchisors must pay franchisees for (30 days), or may audit (two years), warranty plan reimbursement claims. The provisions concerning warranty plans apply to franchisor administered service and repair plans under certain circumstances.

Lastly, the bill provides that the average market penetration of the franchisees protesting the opening or relocation of a franchise must be compared to the market penetration of all franchisees in the same line make in the zone or region and not to the franchisor's national market penetration.

This bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2449.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1093**

STATE OF NEW JERSEY

DATED: NOVEMBER 30, 1998

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1093.

This bill, a Senate Committee Substitute for Senate, No. 1093, amends the "Franchise Practices Act" in regard to all franchises, including motor vehicle franchises, in section 1 of the bill, and motor vehicle franchises (dealerships) in particular in the other sections of the bill.

In regard to all franchises, including motor vehicle franchises, the bill provides that a franchisor cannot prevent the sale of stock in a franchise to a spouse, child or heir of any owner of the franchise, as long as basic financial requirements of the franchisor are complied with and prior written notice of the sale is given, if required by the franchise.

In regard to motor vehicle franchises, a motor vehicle franchisor (manufacturer):

(1) is prohibited from imposing unreasonable standards of performance or unreasonable facilities, financial, operating or other requirements upon a motor vehicle franchisee (dealer). Currently a franchisor is prohibited from imposing unreasonable standards of performance on a franchisee and it is unclear whether that standard includes facilities, financial or operating requirements;

(2) is prohibited from basing its disapproval of the transfer, sale or assignment of a motor vehicle franchise to a corporation or other business organization because it is not a natural person;

(3) is required to compensate franchisees for all reasonable costs incurred by the franchisee as a result of a product recall;

(4) is prohibited from terminating or sanctioning a franchise using an arbitrary or unreasonable formula or process to gauge performance;

(5) is prohibited from opening separate warranty service centers except in cooperation with an existing motor vehicle franchisee under certain circumstances;

(6) is prohibited from requiring franchisees to give unconditional releases in regard to any claims that the franchisee may have against the franchisor under the "Franchise Practices Act" in order to receive monies due them;

(7) is prohibited from requiring a motor vehicle franchisee to accept delivery of any vehicle, or accessory or equipment not required by law, which is not as ordered by the motor vehicle franchisee;

(8) is prohibited from requiring a motor vehicle franchisee to release confidential consumer and certain other information not necessary for the franchisor to meet its obligations to consumers or the franchisee if the customer has objected thereto in writing and a franchisor is prohibited from releasing information which has been provided to it by the franchisee to any third party; and

(9) is required to sell or offer to sell to all motor vehicle franchisees in a line make every motor vehicle sold or offered for sale to any motor vehicle franchisee of the same line make if delivery of such vehicle is possible.

The bill requires franchisors to repurchase vehicles and certain parts from franchisees who voluntarily relinquish their franchises. Under current law, a franchisee who is terminated for cause by a franchisor has this right, but no such right exists for franchisees who voluntarily give up their franchises.

In regard to warranty service, the bill provides that reimbursement will be based on the franchisee's average percentage markup for parts sold at retail, determined by other actual repairs done by the franchisee; requires a franchisor to pay a franchisee the franchisee's average percentage markup if a part is supplied by the franchisor without requiring the franchisee to purchase it for warranty plans, except that entire engine assemblies and entire transmission assemblies shall have a 30% markup; and limits the time within which franchisors must pay franchisees for (30 days), or may audit (two years), warranty plan reimbursement claims. The provisions concerning warranty plans apply to franchisor administered service and repair plans under certain circumstances.

Lastly, the bill provides that the average market penetration of the franchisees protesting the opening or relocation of a franchise must be compared to the market penetration of all franchisees in the same line make in the zone or region and not to the franchisor's national market penetration.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1093

with Senate Floor Amendments
(Proposed By Senator CARDINALE)

ADOPTED: DECEMBER 10, 1998

Some franchisees have several owners and a shift in very small percentage of ownership interest between multiple owners amounts to a shift in the majority voting power. This amendment clarifies and protects the franchisor's right to notice in such circumstances.

SENATE, No. 1093

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 21, 1998

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senators Furnari, Singer, O'Connor and Ciesla

SYNOPSIS

Makes various changes to the "Franchise Practices Act" in regard to motor vehicle franchises.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/18/1998)

S1093 CARDINALE, LESNIAK

2

1 AN ACT concerning motor vehicle franchises and revising various
2 parts of the statutory law.

3

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

6

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

9 7. It shall be a violation of this act for any franchisor, directly or
10 indirectly, through any officer, agent or employee, to engage in any of
11 the following practices:

12 a. To require a franchisee at time of entering into a franchise
13 arrangement to assent to a release, assignment, novation, waiver or
14 estoppel which would relieve any person from liability imposed by this
15 act.

16 b. To prohibit directly or indirectly the right of free association
17 among franchisees for any lawful purpose.

18 c. To require or prohibit any change in management of any
19 franchisee unless such requirement or prohibition of change shall be
20 for good cause, which cause shall be stated in writing by the
21 franchisor.

22 d. To restrict the sale of any equity or debenture issue or the
23 transfer of any securities of a franchise or in any way prevent or
24 attempt to prevent the transfer, sale or issuance of shares of stock or
25 debentures to employees, personnel of the franchisee, or spouse,
26 children or heir of **the principal** an owner, as long as basic financial
27 requirements of the franchisor are complied with, and provided any
28 such sale, transfer or issuance does not have the effect of
29 accomplishing a sale of the franchise.

30 e. To impose unreasonable standards of performance upon a
31 franchisee.

32 f. To provide any term or condition in any lease or other agreement
33 ancillary or collateral to a franchise, which term or condition directly
34 or indirectly violates this act.

35 (cf: P.L.1971, c.356, s.7)

36

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

39 10. a. Any franchisee may bring an action against its franchisor for
40 violation of this act in the Superior Court of the State of New Jersey
41 to recover damages sustained by reason of any violation of this act
42 and, where appropriate, shall be entitled to injunctive relief. Such

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 franchisee, if successful, shall also be entitled to the costs of the action
2 including, but not limited to, reasonable attorney's fees.

3 b. A proposed transferee of a franchise may bring an action against
4 a franchisor for violation of section 6 of P.L. 1971, c.356 (C.56:10-6)
5 in the Superior Court of the State of New Jersey to recover damages
6 sustained by reason of the violation. The proposed transferee, if
7 successful, shall also be entitled to the costs of the action including,
8 but not limited to, reasonable attorney's fees.

9 (cf: P.L.1971, c.356, s.10)

10

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

13 3. Within 90 days of the termination, cancellation or nonrenewal
14 of a motor vehicle franchise as provided for in section 5 of P.L.1971,
15 c.356 (C.56:10-5), the termination, cancellation or nonrenewal of a
16 motor vehicle franchise by the motor vehicle franchisee or by mutual
17 agreement of the motor vehicle franchisee and motor vehicle
18 franchisor, or the termination, cancellation or nonrenewal of a motor
19 vehicle franchise as a result of a termination or cessation of a part of
20 the franchisor's business operations throughout the United States,
21 which is not a part of any change in the ownership, operation or
22 control of all or any part of the franchisor's business, the motor vehicle
23 franchisor shall repurchase from the motor vehicle franchisee:

24 a. any unused, undamaged, and unsold inventory, parts, supplies,
25 and accessories acquired from the franchisor or a source approved or
26 recommended by the franchisor at the franchisee's net acquisition cost
27 therefor, plus the franchisee's cost of handling, packing, loading and
28 transporting the inventory, parts, supplies and accessories for return
29 to the franchisor. For the purposes of this subsection, inventory,
30 parts, supplies and accessories used by the franchisee or its employees
31 for display, demonstration or other marketing purposes shall be
32 deemed to be unused or unsold.

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

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

38 (2) the greater of the fair market value or 75% of the franchisee's
39 net acquisition cost if the item was acquired more than 12 but less than
40 24 months immediately preceding the effective date of the termination,
41 cancellation or nonrenewal;

42 (3) the greater of the fair market value or 50% of the franchisee's
43 net acquisition cost if the item was acquired more than 24 but less than
44 36 months immediately preceding the effective date of the termination,
45 cancellation or nonrenewal;

1 (4) the greater of the fair market value or 25% of the franchisee's
2 net acquisition cost if the item was acquired more than 36 but less than
3 60 months immediately preceding the effective date of the termination,
4 cancellation or nonrenewal; or

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

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

12 (cf: P.L.1991, c.459, s.3)

13
14 4. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read as
15 follows:

16 3. If any motor vehicle franchise shall require or permit motor
17 vehicle franchisees to perform services or provide parts in satisfaction
18 of a warranty or franchisor-administered service or repair plan issued
19 by the motor vehicle franchisor:

20 a. The motor vehicle franchisor shall reimburse each motor vehicle
21 franchisee for such services as are rendered and for such parts as are
22 supplied, in an amount equal to the prevailing retail price charged by
23 such motor vehicle franchisee for such services and parts in
24 circumstances where such services are rendered or such parts supplied
25 other than pursuant to warranty or under the franchisor-administered
26 service or repair plan; provided that such motor vehicle franchisee's
27 prevailing retail price is not unreasonable when compared with that of
28 the holders of motor vehicle franchises from the same motor vehicle
29 franchisor for identical merchandise or services in the geographic area
30 in which the motor vehicle franchisee is engaged in business.

31 b. The motor vehicle franchisor shall not by agreement, by
32 restrictions upon reimbursement, or otherwise, restrict the nature and
33 extent of services to be rendered or parts to be provided so that such
34 restriction prevents the motor vehicle franchisee from satisfying the
35 warranty or franchisor-administered service or repair plan by rendering
36 services in a good and workmanlike manner and providing parts which
37 are required in accordance with generally accepted standards. Any
38 such restriction shall constitute a prohibited practice hereunder.

39 c. The motor vehicle franchisor shall reimburse the motor vehicle
40 franchisee pursuant to subsection a. of this section, without deduction,
41 for services performed on, and parts supplied for, a motor vehicle by
42 the motor vehicle franchisee in good faith and in accordance with
43 generally accepted standards, notwithstanding any requirement that the
44 motor vehicle franchisor accept the return of the motor vehicle or
45 make payment to a consumer with respect to the motor vehicle
46 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).

1 d. For purposes of this section, the "prevailing retail price" charged
2 by a motor vehicle franchisee for parts means the price paid by the
3 motor vehicle franchisee for those parts, including all shipping and
4 other charges, multiplied by the sum of 1.0 and the average percentage
5 markup over the price paid by the motor vehicle franchisee for parts
6 purchased by the motor vehicle franchisee from the motor vehicle
7 franchisor and sold at retail. Average percentage markup may be
8 determined by any reasonably reliable methodology or from any
9 reasonably reliable information. No motor vehicle franchisor may
10 require a motor vehicle franchisee to establish average percentage
11 markup by a methodology, or by requiring information, that is unduly
12 burdensome or time consuming to provide, including, but not limited
13 to, part by part or transaction by transaction calculations. Retail sales
14 involving rebates, discounts, special prices or promotions need not be
15 used by a franchisee to determine average percentage markup.

16 e. If a motor vehicle franchisor supplies a part or parts for use in
17 a repair rendered under a warranty or franchisor-administered service
18 or repair plan other than by sale of such part or parts to the motor
19 vehicle franchisee, the motor vehicle franchisee shall be entitled to
20 compensation equivalent to the motor vehicle franchisee's average
21 percentage markup on the part or parts, as if the part or parts had been
22 sold to the motor vehicle franchisee by the motor vehicle franchisor.

23 f. The motor vehicle franchisor shall reimburse the motor vehicle
24 franchisee for parts supplied and services rendered under a warranty
25 or franchisor-administered service or repair plan within 30 days after
26 approval of a claim for reimbursement. All claims for reimbursement
27 shall be approved or disapproved within 30 days after receipt of the
28 claim by the motor vehicle franchisor. When a claim is disapproved,
29 the motor vehicle franchisee shall be notified in writing of the grounds
30 for the disapproval. No claim that has been approved and paid shall
31 be charged back to the motor vehicle franchisee unless it can be shown
32 that the claim was false or fraudulent, that the services were not
33 properly performed, that the parts or services were unnecessary to
34 correct the defective condition, or that the motor vehicle franchisee
35 failed to reasonably substantiate the claim in accordance with
36 reasonable written requirements of the motor vehicle franchisor,
37 provided that the motor vehicle franchisee had been notified of the
38 requirements prior to the time the claim arose and the requirements
39 were in effect at the time the claim arose. A motor vehicle franchisor
40 shall not audit a claim after the expiration of two years following the
41 submission of the claim unless the motor vehicle franchisor has
42 reasonable grounds to believe that the claim was fraudulent.

43 (cf: P.L.1991, c.459, s.7)

44

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

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

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

10 (2) The effect that the proposed franchise or business would have
11 on the stability of existing franchisees in the same line make in the
12 relevant market area;

13 (3) Whether the existing franchisees in the same line make in the
14 relevant market area are providing adequate and convenient consumer
15 service for motor vehicles of the line make in the relevant market area,
16 which shall include the adequacy of motor vehicle sales and service
17 facilities, equipment, supply of motor vehicle parts and qualified
18 service personnel;

19 (4) The effect on a relocating dealer of a denial of its relocation
20 into the relevant market area.

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

28 (1) for the 24 month period prior to notice pursuant to section 4
29 of P.L.1982, c.156 (C.56:10-19), the average sales penetration of the
30 franchisees given notice pursuant to section 4 of P.L.1982, c.156
31 (C.56:10-19) is at least equal to the average sales penetration of all
32 franchisees in the same line make in the most local zone, district,
33 region or other geographic designation used by the motor vehicle
34 franchisor into which the proposed franchise or business will be
35 assigned, it being the intent of this paragraph (1) of this subsection b.
36 to compare the franchisees given notice to other franchisees in the
37 immediately surrounding area;

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

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

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

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

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

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

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

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

16 (cf: P.L.1993, c.189, s.2)

17

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

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

25 b. To disapprove the transfer, sale or assignment of a motor vehicle
26 franchise, or any interest therein, on the ground that the proposed
27 transferee is not a natural person.

28 c. To fail to compensate a motor vehicle franchisee for all costs
29 incurred by the franchisee in complying with the terms of a product
30 recall by the franchisor, including the costs, if any, incurred by the
31 motor vehicle franchisee in notifying vehicle owners of the existence
32 of the recall.

33 d. To utilize an arbitrary or unreasonable formula or other
34 calculation or process intended to gauge the performance of a motor
35 vehicle franchisee or proposed transferee as a basis for making any
36 decision or taking any action with respect to that franchisee or
37 proposed transferee.

38 e. To operate or enter into an agreement with a person, other than
39 an existing motor vehicle franchisee, to operate a facility for the
40 servicing of motor vehicles manufactured or distributed by the motor
41 vehicle franchisor. The establishment, relocation, reopening or
42 reactivation of such a facility pursuant to an agreement with a motor
43 vehicle franchisee shall be subject to the provisions of P.L. 1982, c.
44 156 (C. 56:10-16 et seq.), except that paragraph (3) of subsection b.
45 of section 8 of that act (C. 56:10-23) shall not be applicable. Notice

1 shall be given to motor vehicle franchisees in the same line make or
2 makes in the relevant market area.

3 f. To require an unconditional release in advance of payment due
4 the motor vehicle franchisee from the motor vehicle franchisor without
5 permitting the franchisee to except from the release any claims that the
6 franchisee may have against the franchisor under P.L. 1971, c. 356 (C.
7 56:10-1 et seq.), the franchise or otherwise.

8 g. To require or attempt to require a motor vehicle franchisee to
9 accept delivery of any motor vehicle, part or accessory, or any other
10 commodity connected therewith, which is not as ordered by the motor
11 vehicle franchisee.

12 h. To fail or refuse to sell or offer to sell to all motor vehicle
13 franchisees in a line-make every motor vehicle sold or offered for sale
14 to any motor vehicle franchisee of the same line-make.

15 i. To require a motor vehicle franchisee to publish, release, convey
16 or otherwise provide information obtained with respect to any
17 customers, contracts, products, services or other transactions of the
18 motor vehicle franchisee which is not necessary for the motor vehicle
19 franchisor to meet its obligations to consumers or the motor vehicle
20 franchisee, or for complying with the duties or obligations of the
21 respective parties under the franchise.

22

23 7. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 New Jersey's "Franchise Practices Act" serves to protect
29 consumers, motor vehicle franchisees (dealers) and the public from
30 arbitrary conduct by motor vehicle franchisors (manufacturers). The
31 law is designed to provide a "level playing field" on which franchisees
32 and franchisors can do business, and on which consumers and the
33 public interest in a strong and secure franchise system of responsible
34 local businesses can be safeguarded.

35 Over the years, this statute has been amended to keep pace with
36 changing market conditions and to address new threats to the
37 consumer and public interest in the franchise system. However,
38 because of the unequal bargaining provisions of existing law, this bill
39 clarifies and reinforces these key provisions of existing law so that
40 franchisees will not be drawn into costly and wasteful litigation in
41 order to protect their rights and the public and consumer interest in the
42 franchise system.

43 Specifically, this bill clarifies and reinforces provisions of the
44 existing "Franchise Practices Act" as it relates to the following:

45 (1) Clarifies provisions of existing law providing that
46 reimbursement for warranty service work will be based on the

1 franchisee's average percentage markup for parts sold at retail,
2 determined by any reasonably reliable methodology, and limits the time
3 within which franchisors must pay franchisees for (30 days), or may
4 audit (two years), warranty reimbursement claims;

5 (2) Clarifies provisions in the existing law stating that the
6 manufacturer is prohibited from imposing unreasonable standards of
7 performance or unreasonable facilities, financial, operating or other
8 requirements upon a motor vehicle franchisee. Currently, a franchisor
9 is prohibited from imposing unreasonable standards of performance on
10 a franchisee and franchisors have argued the prohibition does not
11 extend to facilities, financial or operating requirements;

12 (3) Clarifies the provisions of existing law stating that the
13 manufacturer is prohibited from disapproving the sale of a motor
14 vehicle franchise to a corporation or other business organization
15 because it is not a natural person;

16 (4) Clarifies the provisions of the existing law stating that the
17 manufacturer is prohibited from terminating a franchise using
18 unreasonable consumer satisfaction indexes;

19 (5) Clarifies the provisions of existing law stating that the average
20 sales penetration of the franchisees protesting the opening or
21 relocation of a franchise must be compared to the local sales
22 penetration of the franchisor and not to the franchisor's national sales
23 penetration;

24 (6) Clarifies the provisions of existing law stating that a franchisor
25 cannot restrict the sale of stock in a franchise to a spouse, children or
26 heir of any owner of the franchise, as long as basic financial
27 requirements of the franchisor are complied with; and

28 (7) Clarifies the provisions of existing law prohibiting
29 manufacturers from refusing a franchisee the opportunity to sell all
30 models manufactured for that line-make.

31 The bill also expands the level of protection available to franchisees,
32 consumers and the public as follows:

33 (1) Allows a transferee to bring an action against a franchisor for
34 damages when the franchisor improperly refuses to allow a transfer of
35 the franchise to take place;

36 (2) Prohibits a franchisor from opening separate service centers
37 except in cooperation with an existing motor vehicle franchisee;

38 (3) Prohibits a franchisor from requiring franchisees to give
39 unconditional releases in regard to any claims that the franchisee may
40 have against the franchisor under the "Franchise Practices Act" in
41 order to receive monies due them;

42 (4) Prohibits a franchisor from requiring a motor vehicle franchisee
43 to accept delivery of any vehicle or part which is not as ordered by the
44 motor vehicle franchisee;

45 (5) Requires franchisors to repurchase vehicles and parts from
46 franchisees who voluntarily relinquish their franchises. Under current

1 law, a franchisee who is terminated for cause by a franchisor has this
2 right, but no such right exists for franchisees who voluntarily give up
3 their franchises;

4 (6) Provides that the franchisor is required to reimburse motor
5 vehicle franchisees for all expenses incurred as a result of a recall;

6 (7) Extends provisions of warranty reimbursement requirements
7 under existing law to include franchisor administered service or repair
8 plans. The bill provides that the current retail reimbursement
9 requirement for warranty work applies to franchisor administered
10 service or repair plans, and requires a franchisor to pay a franchisee
11 the franchisee's average percentage markup if a part is supplied by the
12 franchisor without requiring the franchisee to purchase it for warranty
13 or franchisor administered service or repair plans; and

14 (8) Prohibits franchisors from requiring a motor vehicle franchisee
15 to release confidential consumer information not needed for the
16 business relationship between franchisee and franchisor.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2449**

STATE OF NEW JERSEY

DATED: JANUARY 7, 1999

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2449.

This bill amends the "Franchise Practices Act" in regard to all franchises, including motor vehicle franchises, in section 1 of the bill, and motor vehicle franchises (dealerships) in particular in the other sections of the bill.

In regard to all franchises, including motor vehicle franchises, the bill provides that a franchisor cannot prevent the transfer, sale or issuance of equity securities in a franchise to a spouse, child or heir of any owner of the franchise, as long as basic financial requirements of the franchisor are complied with and the sale, transfer or issuance does not have the effect of accomplishing a sale or transfer of control and prior written notice of the sale is given, if required by the franchise.

In regard to motor vehicle franchises, a motor vehicle franchisor (manufacturer):

(1) is prohibited from imposing unreasonable standards of performance or unreasonable facilities, financial, operating or other requirements upon a motor vehicle franchisee (dealer). Currently a franchisor is prohibited from imposing unreasonable standards of performance on a franchisee and it is unclear whether that standard includes facilities, financial or operating requirements;

(2) is prohibited from basing its disapproval of the transfer, sale or assignment of a motor vehicle franchise to a corporation or other business organization because it is not a natural person;

(3) is required to compensate franchisees for all reasonable costs incurred by the franchisee as a result of a product recall;

(4) is prohibited from terminating or sanctioning a franchise using an arbitrary or unreasonable formula or process to gauge performance;

(5) is prohibited from opening separate warranty service centers except in cooperation with an existing motor vehicle franchisee under certain circumstances;

(6) is prohibited from requiring franchisees to give unconditional releases in regard to any claims that the franchisee may have against the franchisor under the "Franchise Practices Act" in order to receive monies due them;

(7) is prohibited from requiring a motor vehicle franchisee to accept delivery of any vehicle, or accessory or equipment not required by law, which is not as ordered by the motor vehicle franchisee;

(8) is prohibited from requiring a motor vehicle franchisee to release confidential consumer and certain other information not necessary for the franchisor to meet its obligations to consumers or the franchisee if the customer has objected thereto in writing and a franchisor is prohibited from releasing information which has been provided to it by the franchisee to any third party; and

(9) is required to sell or offer to sell to all motor vehicle franchisees in a line make every motor vehicle sold or offered for sale to any motor vehicle franchisee of the same line make if delivery of such vehicle is possible.

The bill requires franchisors to repurchase vehicles and certain parts from franchisees who voluntarily relinquish their franchises. Under current law, a franchisee who is terminated for cause by a franchisor has this right, but no such right exists for franchisees who voluntarily give up their franchises.

In regard to warranty service, the bill provides that reimbursement will be based on the franchisee's average percentage markup for parts sold at retail, determined by other actual repairs done by the franchisee; requires a franchisor to pay a franchisee the franchisee's average percentage markup if a part is supplied by the franchisor without requiring the franchisee to purchase it for warranty plans, except that entire engine assemblies and entire transmission assemblies shall have a 30% markup; and limits the time within which franchisors must pay franchisees for (30 days), or may audit (two years), warranty plan reimbursement claims. The provisions concerning warranty plans apply to franchisor administered service and repair plans under certain circumstances.

Lastly, the bill provides that the average market penetration of the franchisees protesting the opening or relocation of a franchise must be compared to the market penetration of all franchisees in the same line make in the zone or region and not to the franchisor's national market penetration.

This committee substitute is identical to Senate, No. 1093 (SCS/1R).

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2449

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED JANUARY 7, 1999

Sponsored by:

Assemblyman GERALD J. LUONGO

District 4 (Camden and Gloucester)

Assemblyman JEFFREY W. MORAN

District 9 (Atlantic, Burlington and Ocean)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

Assemblymen Holzapfel and Wolfe

SYNOPSIS

Makes various changes to the "Franchise Practices Act" in regard to motor vehicle franchisees.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Judiciary Committee.



1 AN ACT concerning motor vehicle franchises and revising various
2 parts of the statutory law.

3

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

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

9 7. It shall be a violation of this act for any franchisor, directly or
10 indirectly, through any officer, agent or employee, to engage in any of
11 the following practices:

12 a. To require a franchisee at time of entering into a franchise
13 arrangement to assent to a release, assignment, novation, waiver or
14 estoppel which would relieve any person from liability imposed by this
15 act.

16 b. To prohibit directly or indirectly the right of free association
17 among franchisees for any lawful purpose.

18 c. To require or prohibit any change in management of any
19 franchisee unless such requirement or prohibition of change shall be
20 for good cause, which cause shall be stated in writing by the
21 franchisor.

22 d. To restrict the sale of any equity or debenture issue or the
23 transfer of any securities of a franchise or in any way prevent or
24 attempt to prevent the transfer, sale or issuance of **[shares of stock]**
25 equity securities or debentures to employees, personnel of the
26 franchisee, or spouse, child or heir of **[the principal]** an owner, as
27 long as basic financial requirements of the franchisor are complied
28 with, and provided any such sale, transfer or issuance does not have
29 the effect of accomplishing a sale or transfer of control, including, but
30 not limited to, change in the person holding the majority voting power
31 of the franchise. Nothing contained in this subsection shall excuse a
32 franchisee's obligation to provide prior written notice of any change of
33 ownership to the franchisor if that notice is required by the franchise.

34 e. To impose unreasonable standards of performance upon a
35 franchisee.

36 f. To provide any term or condition in any lease or other
37 agreement ancillary or collateral to a franchise, which term or
38 condition directly or indirectly violates this act.

39 (cf: P.L.1971, c.356, s.7)

40

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

43 3. Within 90 days of the termination, cancellation or nonrenewal

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

Matter underlined thus is new matter.

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

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

21 b. any special tools ~~[,]~~, equipment, furnishings,~~]~~ and signs which
22 were ~~]~~recommended or~~]~~ required by the franchisor, at:

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

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

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

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

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

42 Payment shall be made by the motor vehicle franchisor within 30
43 days after the tender of the property by the motor vehicle franchisee
44 free and clear of liens and encumbrances.

45 Nothing in this section shall prohibit the franchise from containing

1 provisions in addition to, but not inconsistent with, those required by
2 this section.

3 (cf: P.L.1991, c.459, s.3)

4

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

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

10 a. The motor vehicle franchisor shall reimburse each motor vehicle
11 franchisee for such services as are rendered and for such parts as are
12 supplied, in an amount equal to the prevailing retail price charged by
13 such motor vehicle franchisee for such services and parts in
14 circumstances where such services are rendered or such parts supplied
15 other than pursuant to warranty; provided that such motor vehicle
16 franchisee's prevailing retail price is not unreasonable when compared
17 with that of the holders of motor vehicle franchises from the same
18 motor vehicle franchisor for identical merchandise or services in the
19 geographic area in which the motor vehicle franchisee is engaged in
20 business.

21 b. The motor vehicle franchisor shall not by agreement, by
22 restrictions upon reimbursement, or otherwise, restrict the nature and
23 extent of services to be rendered or parts to be provided so that such
24 restriction prevents the motor vehicle franchisee from satisfying the
25 warranty by rendering services in a good and workmanlike manner and
26 providing parts which are required in accordance with generally
27 accepted standards. Any such restriction shall constitute a prohibited
28 practice hereunder.

29 c. The motor vehicle franchisor shall reimburse the motor vehicle
30 franchisee pursuant to subsection a. of this section, without deduction,
31 for services performed on, and parts supplied for, a motor vehicle by
32 the motor vehicle franchisee in good faith and in accordance with
33 generally accepted standards, notwithstanding any requirement that the
34 motor vehicle franchisor accept the return of the motor vehicle or
35 make payment to a consumer with respect to the motor vehicle
36 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).

37 d. For the purposes of this section, the "prevailing retail price"
38 charged by a motor vehicle franchisee for parts means the price paid
39 by the motor vehicle franchisee for those parts, including all shipping
40 and other charges, multiplied by the sum of 1.0 and the franchisee's
41 average percentage markup over the price paid by the motor vehicle
42 franchisee for parts purchased by the motor vehicle franchisee from the
43 motor vehicle franchisor and sold at retail. The motor vehicle
44 franchisee may establish average percentage markup under this section
45 by submitting to the motor vehicle franchisor 100 sequential customer
46 paid service repair orders or 90 days of customer paid service repair

1 orders, whichever is less, covering repairs made no more than 180
2 days before the submission, and declaring what the average percentage
3 markup is. The average percentage markup so declared shall go into
4 effect 30 days following the declaration subject to audit of the
5 submitted repair orders by the motor vehicle franchisor and adjustment
6 of the average percentage markup based on that audit. Only retail
7 sales not involving warranty repairs, parts covered by subsection e. of
8 this section, or parts supplied for routine vehicle maintenance, shall be
9 considered in calculating average percentage markup. No motor
10 vehicle franchisor shall require a motor vehicle franchisee to establish
11 average percentage markup by a methodology, or by requiring
12 information, that is unduly burdensome or time consuming to provide,
13 including, but not limited to, part by part or transaction by transaction
14 calculations. A motor vehicle franchisee shall not request a change in
15 the average percentage markup more than twice in one calendar year.

16 e. If a motor vehicle franchisor supplies a part or parts for use in
17 a repair rendered under a warranty other than by sale of that part or
18 parts to the motor vehicle franchisee, the motor vehicle franchisee
19 shall be entitled to compensation equivalent to the motor vehicle
20 franchisee's average percentage markup on the part or parts, as if the
21 part or parts had been sold to the motor vehicle franchisee by the
22 motor vehicle franchisor. The requirements of this section shall not
23 apply to entire engine assemblies and entire transmission assemblies.
24 In the case of those assemblies, the motor vehicle franchisor shall
25 reimburse the motor vehicle franchisee in the amount of 30% of what
26 the motor vehicle franchisee would have paid the motor vehicle
27 franchisor for the assembly if the assembly had not been supplied by
28 the franchisor other than by the sale of that assembly to the motor
29 vehicle franchisee.

30 f. The motor vehicle franchisor shall reimburse the motor vehicle
31 franchisee for parts supplied and services rendered under a warranty
32 within 30 days after approval of a claim for reimbursement. All claims
33 for reimbursement shall be approved or disapproved within 30 days
34 after receipt of the claim by the motor vehicle franchisor. When a
35 claim is disapproved, the motor vehicle franchisee shall be notified in
36 writing of the grounds for the disapproval. No claim that has been
37 approved and paid shall be charged back to the motor vehicle
38 franchisee unless it can be shown that the claim was false or
39 fraudulent, that the services were not properly performed, that the
40 parts or services were unnecessary to correct the defective condition,
41 or that the motor vehicle franchisee failed to reasonably substantiate
42 the claim in accordance with reasonable written requirements of the
43 motor vehicle franchisor, provided that the motor vehicle franchisee
44 had been notified of the requirements prior to the time the claim arose
45 and the requirements were in effect at the time the claim arose. A
46 motor vehicle franchisor shall not audit a claim after the expiration of

1 two years following the payment of the claim unless the motor vehicle
2 franchisor has reasonable grounds to believe that the claim was
3 fraudulent.

4 g. The obligations imposed on motor vehicle franchisors by this
5 section shall apply to any parent, subsidiary, affiliate or agent of the
6 motor vehicle franchisor, any person under common ownership or
7 control, any employee of the motor vehicle franchisor and any person
8 holding 1% or more of the shares of any class of securities or other
9 ownership interest in the motor vehicle franchisor, if a warranty or
10 service or repair plan is issued by that person instead of or in addition
11 to one issued by the motor vehicle franchisor.

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

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

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

19 (3) for the first 36,000 miles of coverage under the franchisor
20 administered service or repair plan, if the warranty offered by the
21 motor vehicle franchisor on the motor vehicle provides coverage for
22 less than 36,000 miles; or

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

26 With respect to franchisor administered service or repair plans
27 covering only routine maintenance service, this section applies only to
28 those plans sold to customers on or after the effective date of P.L. .

29 c. (now before the Legislature as this bill).

30 (cf: P.L.1991, c.459, s.7)

31
32 4. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to read
33 as follows:

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

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

43 (2) The effect that the proposed franchise or business would have
44 on the stability of existing franchisees in the same line make in the
45 relevant market area;

46 (3) Whether the existing franchisees in the same line make in the

1 relevant market area are providing adequate and convenient consumer
2 service for motor vehicles of the line make in the relevant market area,
3 which shall include the adequacy of motor vehicle sales and service
4 facilities, equipment, supply of motor vehicle parts and qualified
5 service personnel;

6 (4) The effect on a relocating dealer of a denial of its relocation
7 into the relevant market area.

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

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

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

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

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

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

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

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

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

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

3 (cf: P.L.1993, c.189, s.2)

4

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

9 a. To impose unreasonable standards of performance or
10 unreasonable facilities, financial, operating or other requirements upon
11 a motor vehicle franchisee.

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

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

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

23 e. To own or operate or enter into an agreement with a person,
24 other than an existing motor vehicle franchisee, to operate a retail
25 facility for the servicing of motor vehicles, which is authorized to
26 perform warranty service on motor vehicles manufactured or
27 distributed by the motor vehicle franchisor. The establishment,
28 relocation, reopening or reactivation of such a facility pursuant to an
29 agreement with a motor vehicle franchisee shall be subject to the
30 provisions of P.L.1982, c.156 (C.56:10-16 et seq.), except that
31 paragraph (3) of subsection b. of section 8 of that act (C.56:10-23)
32 shall not be applicable. Notice shall be given to motor vehicle
33 franchisees in the same line make or makes within 6 miles of the
34 proposed retail facility for the servicing of motor vehicles which is
35 authorized to perform warranty service on motor vehicles
36 manufactured or distributed by the motor vehicle franchisor.

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

42 g. To require or attempt to require a motor vehicle franchisee to
43 accept delivery of any motor vehicle, or accessory or equipment
44 thereof not required by law, which is not as ordered by the motor
45 vehicle franchisee.

46 h. To fail or refuse to sell or offer to sell to all motor vehicle

1 franchisees in a line make every motor vehicle sold or offered for sale
2 to any motor vehicle franchisee of the same line make. However, the
3 failure to deliver any such motor vehicle shall not be considered a
4 violation of this section if the failure is not arbitrary and is due to a
5 lack of manufacturing capacity or to a strike or labor difficulty, a
6 shortage of materials, a freight embargo or other cause over which the
7 franchisor has no control. A motor vehicle franchisor shall not require
8 a motor vehicle franchisee to purchase unreasonable quantities of
9 advertising materials, purchase special tools not required to properly
10 service a motor vehicle or undertake sales person or service person
11 training unrelated to the motor vehicle or meet unreasonable display
12 requirements as a condition of receiving a motor vehicle.

13 i. Unless compelled by law or legal process, (1) if the customer
14 has objected thereto in writing, to require a motor vehicle franchisee
15 to publish, release, convey or otherwise provide information obtained
16 with respect to any customers, contracts, products, services or other
17 transactions of the motor vehicle franchisee which is not necessary for
18 the motor vehicle franchisor to meet its obligations to consumers or
19 the motor vehicle franchisee, including vehicle recalls or other
20 requirements imposed by State or federal law, or for complying with
21 the duties or obligations of the respective parties under the franchise;
22 or (2) to release such information which has been provided to it by the
23 motor vehicle franchisees to any third party.

24

25 6. This act shall take effect immediately.

ASSEMBLY, No. 2449

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED SEPTEMBER 28, 1998

Sponsored by:

Assemblyman GERALD J. LUONGO
District 4 (Camden and Gloucester)

Co-Sponsored by:

Assemblymen Holzapfel and Wolfe

SYNOPSIS

Makes various changes to the "Franchise Practices Act" in regard to motor vehicle franchises.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/29/1998)

1 AN ACT concerning motor vehicle franchises and revising various
2 parts of the statutory law.

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

6
7 1. Section 7 of P.L.1971, c.356 (C. 56:10-7) is amended to read as
8 follows:

9 7. It shall be a violation of this act for any franchisor, directly or
10 indirectly, through any officer, agent or employee, to engage in any of
11 the following practices:

12 a. To require a franchisee at time of entering into a franchise
13 arrangement to assent to a release, assignment, novation, waiver or
14 estoppel which would relieve any person from liability imposed by this
15 act.

16 b. To prohibit directly or indirectly the right of free association
17 among franchisees for any lawful purpose.

18 c. To require or prohibit any change in management of any
19 franchisee unless such requirement or prohibition of change shall be
20 for good cause, which cause shall be stated in writing by the
21 franchisor.

22 d. To restrict the sale of any equity or debenture issue or the
23 transfer of any securities of a franchise or in any way prevent or
24 attempt to prevent the transfer, sale or issuance of shares of stock or
25 debentures to employees, personnel of the franchisee, or spouse,
26 children or heir of **the principal** an owner, as long as basic financial
27 requirements of the franchisor are complied with, and provided any
28 such sale, transfer or issuance does not have the effect of
29 accomplishing a sale of the franchise.

30 e. To impose unreasonable standards of performance upon a
31 franchisee.

32 f. To provide any term or condition in any lease or other agreement
33 ancillary or collateral to a franchise, which term or condition directly
34 or indirectly violates this act.

35 (cf: P.L.1971, c.356, s.7)

36
37 2. Section 10 of P.L. 1971, c. 356 (C. 56:10-10) is amended to
38 read as follows:

39 10. a. Any franchisee may bring an action against its franchisor for
40 violation of this act in the Superior Court of the State of New Jersey
41 to recover damages sustained by reason of any violation of this act
42 and, where appropriate, shall be entitled to injunctive relief. Such

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

Matter underlined thus is new matter.

1 franchisee, if successful, shall also be entitled to the costs of the action
2 including, but not limited to, reasonable attorney's fees.

3 b. A proposed transferee of a franchise may bring an action against
4 a franchisor for violation of section 6 of P.L.1971, c.356 (C.56:10-6)
5 in the Superior Court of the State of New Jersey to recover damages
6 sustained by reason of the violation. The proposed transferee, if
7 successful, shall also be entitled to the costs of the action including,
8 but not limited to, reasonable attorney's fees.

9 (cf: P.L.1971, c.356, s.10)

10

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

13 3. Within 90 days of the termination, cancellation or nonrenewal
14 of a motor vehicle franchise as provided for in section 5 of P.L.1971,
15 c.356 (C.56:10-5), the termination, cancellation or nonrenewal of a
16 motor vehicle franchise by the motor vehicle franchisee or by mutual
17 agreement of the motor vehicle franchisee and motor vehicle
18 franchisor, or the termination, cancellation or nonrenewal of a motor
19 vehicle franchise as a result of a termination or cessation of a part of
20 the franchisor's business operations throughout the United States,
21 which is not a part of any change in the ownership, operation or
22 control of all or any part of the franchisor's business, the motor vehicle
23 franchisor shall repurchase from the motor vehicle franchisee:

24 a. any unused, undamaged, and unsold inventory, parts, supplies,
25 and accessories acquired from the franchisor or a source approved or
26 recommended by the franchisor at the franchisee's net acquisition cost
27 therefor, plus the franchisee's cost of handling, packing, loading and
28 transporting the inventory, parts, supplies and accessories for return
29 to the franchisor. For the purposes of this subsection, inventory,
30 parts, supplies and accessories used by the franchisee or its employees
31 for display, demonstration or other marketing purposes shall be
32 deemed to be unused or unsold.

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

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

38 (2) the greater of the fair market value or 75% of the franchisee's
39 net acquisition cost if the item was acquired more than 12 but less than
40 24 months immediately preceding the effective date of the termination,
41 cancellation or nonrenewal;

42 (3) the greater of the fair market value or 50% of the franchisee's
43 net acquisition cost if the item was acquired more than 24 but less than
44 36 months immediately preceding the effective date of the termination,
45 cancellation or nonrenewal;

1 (4) the greater of the fair market value or 25% of the franchisee's
2 net acquisition cost if the item was acquired more than 36 but less than
3 60 months immediately preceding the effective date of the termination,
4 cancellation or nonrenewal; or

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

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

12 (cf: P.L.1991, c.459, s.3)

13
14 4. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read as
15 follows:

16 3. If any motor vehicle franchise shall require or permit motor
17 vehicle franchisees to perform services or provide parts in satisfaction
18 of a warranty or franchisor-administered service or repair plan issued
19 by the motor vehicle franchisor:

20 a. The motor vehicle franchisor shall reimburse each motor vehicle
21 franchisee for such services as are rendered and for such parts as are
22 supplied, in an amount equal to the prevailing retail price charged by
23 such motor vehicle franchisee for such services and parts in
24 circumstances where such services are rendered or such parts supplied
25 other than pursuant to warranty or under the franchisor-administered
26 service or repair plan; provided that such motor vehicle franchisee's
27 prevailing retail price is not unreasonable when compared with that of
28 the holders of motor vehicle franchises from the same motor vehicle
29 franchisor for identical merchandise or services in the geographic area
30 in which the motor vehicle franchisee is engaged in business.

31 b. The motor vehicle franchisor shall not by agreement, by
32 restrictions upon reimbursement, or otherwise, restrict the nature and
33 extent of services to be rendered or parts to be provided so that such
34 restriction prevents the motor vehicle franchisee from satisfying the
35 warranty or franchisor-administered service or repair plan by rendering
36 services in a good and workmanlike manner and providing parts which
37 are required in accordance with generally accepted standards. Any
38 such restriction shall constitute a prohibited practice hereunder.

39 c. The motor vehicle franchisor shall reimburse the motor vehicle
40 franchisee pursuant to subsection a. of this section, without deduction,
41 for services performed on, and parts supplied for, a motor vehicle by
42 the motor vehicle franchisee in good faith and in accordance with
43 generally accepted standards, notwithstanding any requirement that the
44 motor vehicle franchisor accept the return of the motor vehicle or
45 make payment to a consumer with respect to the motor vehicle
46 pursuant to the provisions of P.L.1988, c.123 (C.56:12-29 et seq.).

1 d. For purposes of this section, the "prevailing retail price" charged
2 by a motor vehicle franchisee for parts means the price paid by the
3 motor vehicle franchisee for those parts, including all shipping and
4 other charges, multiplied by the sum of 1.0 and the average percentage
5 markup over the price paid by the motor vehicle franchisee for parts
6 purchased by the motor vehicle franchisee from the motor vehicle
7 franchisor and sold at retail. Average percentage markup may be
8 determined by any reasonably reliable methodology or from any
9 reasonably reliable information. No motor vehicle franchisor may
10 require a motor vehicle franchisee to establish average percentage
11 markup by a methodology, or by requiring information, that is unduly
12 burdensome or time consuming to provide, including, but not limited
13 to, part by part or transaction by transaction calculations. Retail sales
14 involving rebates, discounts, special prices or promotions need not be
15 used by a franchisee to determine average percentage markup.

16 e. If a motor vehicle franchisor supplies a part or parts for use in
17 a repair rendered under a warranty or franchisor-administered service
18 or repair plan other than by sale of such part or parts to the motor
19 vehicle franchisee, the motor vehicle franchisee shall be entitled to
20 compensation equivalent to the motor vehicle franchisee's average
21 percentage markup on the part or parts, as if the part or parts had been
22 sold to the motor vehicle franchisee by the motor vehicle franchisor.

23 f. The motor vehicle franchisor shall reimburse the motor vehicle
24 franchisee for parts supplied and services rendered under a warranty
25 or franchisor-administered service or repair plan within 30 days after
26 approval of a claim for reimbursement. All claims for reimbursement
27 shall be approved or disapproved within 30 days after receipt of the
28 claim by the motor vehicle franchisor. When a claim is disapproved,
29 the motor vehicle franchisee shall be notified in writing of the grounds
30 for the disapproval. No claim that has been approved and paid shall
31 be charged back to the motor vehicle franchisee unless it can be shown
32 that the claim was false or fraudulent, that the services were not
33 properly performed, that the parts or services were unnecessary to
34 correct the defective condition, or that the motor vehicle franchisee
35 failed to reasonably substantiate the claim in accordance with
36 reasonable written requirements of the motor vehicle franchisor,
37 provided that the motor vehicle franchisee had been notified of the
38 requirements prior to the time the claim arose and the requirements
39 were in effect at the time the claim arose. A motor vehicle franchisor
40 shall not audit a claim after the expiration of two years following the
41 submission of the claim unless the motor vehicle franchisor has
42 reasonable grounds to believe that the claim was fraudulent.

43 (cf: P.L.1991, c.459, s.7)

44

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

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

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

10 (2) The effect that the proposed franchise or business would have
11 on the stability of existing franchisees in the same line make in the
12 relevant market area;

13 (3) Whether the existing franchisees in the same line make in the
14 relevant market area are providing adequate and convenient consumer
15 service for motor vehicles of the line make in the relevant market area,
16 which shall include the adequacy of motor vehicle sales and service
17 facilities, equipment, supply of motor vehicle parts and qualified
18 service personnel;

19 (4) The effect on a relocating dealer of a denial of its relocation
20 into the relevant market area.

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

28 (1) for the 24 month period prior to notice pursuant to section 4
29 of P.L.1982, c.156 (C.56:10-19), the average sales penetration of the
30 franchisees given notice pursuant to section 4 of P.L.1982, c.156
31 (C.56:10-19) is at least equal to the average sales penetration of all
32 franchisees in the same line make in the most local zone, district,
33 region or other geographic designation used by the motor vehicle
34 franchisor into which the proposed franchise or business will be
35 assigned, it being the intent of this paragraph (1) of this subsection b.
36 to compare the franchisees given notice to other franchisees in the
37 immediately surrounding area;

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

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

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

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

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

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

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

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

16 (cf: P.L.1993, c.189, s.2)

17

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

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

25 b. To disapprove the transfer, sale or assignment of a motor vehicle
26 franchise, or any interest therein, on the ground that the proposed
27 transferee is not a natural person.

28 c. To fail to compensate a motor vehicle franchisee for all costs
29 incurred by the franchisee in complying with the terms of a product
30 recall by the franchisor, including the costs, if any, incurred by the
31 motor vehicle franchisee in notifying vehicle owners of the existence
32 of the recall.

33 d. To utilize an arbitrary or unreasonable formula or other
34 calculation or process intended to gauge the performance of a motor
35 vehicle franchisee or proposed transferee as a basis for making any
36 decision or taking any action with respect to that franchisee or
37 proposed transferee.

38 e. To operate or enter into an agreement with a person, other than
39 an existing motor vehicle franchisee, to operate a facility for the
40 servicing of motor vehicles manufactured or distributed by the motor
41 vehicle franchisor. The establishment, relocation, reopening or
42 reactivation of such a facility pursuant to an agreement with a motor
43 vehicle franchisee shall be subject to the provisions of P.L. 1982, c.
44 156 (C. 56:10-16 et seq.), except that paragraph (3) of subsection b.
45 of section 8 of that act (C. 56:10-23) shall not be applicable. Notice

1 shall be given to motor vehicle franchisees in the same line make or
2 makes in the relevant market area.

3 f. To require an unconditional release in advance of payment due
4 the motor vehicle franchisee from the motor vehicle franchisor without
5 permitting the franchisee to except from the release any claims that the
6 franchisee may have against the franchisor under P.L.1971, c.356
7 (C.56:10-1 et seq.), the franchise or otherwise.

8 g. To require or attempt to require a motor vehicle franchisee to
9 accept delivery of any motor vehicle, part or accessory, or any other
10 commodity connected therewith, which is not as ordered by the motor
11 vehicle franchisee.

12 h. To fail or refuse to sell or offer to sell to all motor vehicle
13 franchisees in a line-make every motor vehicle sold or offered for sale
14 to any motor vehicle franchisee of the same line-make.

15 i. To require a motor vehicle franchisee to publish, release, convey
16 or otherwise provide information obtained with respect to any
17 customers, contracts, products, services or other transactions of the
18 motor vehicle franchisee which is not necessary for the motor vehicle
19 franchisor to meet its obligations to consumers or the motor vehicle
20 franchisee, or for complying with the duties or obligations of the
21 respective parties under the franchise.

22

23 7. This act shall take effect immediately.

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STATEMENT

27

28 New Jersey's "Franchise Practices Act" serves to protect
29 consumers, motor vehicle franchisees (dealers) and the public from
30 arbitrary conduct by motor vehicle franchisors (manufacturers). The
31 law is designed to provide a "level playing field" on which franchisees
32 and franchisors can do business, and on which consumers and the
33 public interest in a strong and secure franchise system of responsible
34 local businesses can be safeguarded.

35 Over the years, this statute has been amended to keep pace with
36 changing market conditions and to address new threats to the
37 consumer and public interest in the franchise system. However,
38 because of the unequal bargaining provisions of existing law, this bill
39 clarifies and reinforces these key provisions of existing law so that
40 franchisees will not be drawn into costly and wasteful litigation in
41 order to protect their rights and the public and consumer interest in the
42 franchise system.

43 Specifically, this bill clarifies and reinforces provisions of the
44 existing "Franchise Practices Act" as it relates to the following:

45 (1) Clarifies provisions of existing law providing that
46 reimbursement for warranty service work will be based on the

1 franchisee's average percentage markup for parts sold at retail,
2 determined by any reasonably reliable methodology, and limits the time
3 within which franchisors must pay franchisees for (30 days), or may
4 audit (two years), warranty reimbursement claims;

5 (2) Clarifies provisions in the existing law stating that the
6 manufacturer is prohibited from imposing unreasonable standards of
7 performance or unreasonable facilities, financial, operating or other
8 requirements upon a motor vehicle franchisee. Currently, a franchisor
9 is prohibited from imposing unreasonable standards of performance on
10 a franchisee and franchisors have argued the prohibition does not
11 extend to facilities, financial or operating requirements;

12 (3) Clarifies the provisions of existing law stating that the
13 manufacturer is prohibited from disapproving the sale of a motor
14 vehicle franchise to a corporation or other business organization
15 because it is not a natural person;

16 (4) Clarifies the provisions of the existing law stating that the
17 manufacturer is prohibited from terminating a franchise using
18 unreasonable consumer satisfaction indexes;

19 (5) Clarifies the provisions of existing law stating that the average
20 sales penetration of the franchisees protesting the opening or
21 relocation of a franchise must be compared to the local sales
22 penetration of the franchisor and not to the franchisor's national sales
23 penetration;

24 (6) Clarifies the provisions of existing law stating that a franchisor
25 cannot restrict the sale of stock in a franchise to a spouse, children or
26 heir of any owner of the franchise, as long as basic financial
27 requirements of the franchisor are complied with; and

28 (7) Clarifies the provisions of existing law prohibiting
29 manufacturers from refusing a franchisee the opportunity to sell all
30 models manufactured for that line-make.

31 The bill also expands the level of protection available to franchisees,
32 consumers and the public as follows:

33 (1) Allows a transferee to bring an action against a franchisor for
34 damages when the franchisor improperly refuses to allow a transfer of
35 the franchise to take place;

36 (2) Prohibits a franchisor from opening separate service centers
37 except in cooperation with an existing motor vehicle franchisee;

38 (3) Prohibits a franchisor from requiring franchisees to give
39 unconditional releases in regard to any claims that the franchisee may
40 have against the franchisor under the "Franchise Practices Act" in
41 order to receive monies due them;

42 (4) Prohibits a franchisor from requiring a motor vehicle franchisee
43 to accept delivery of any vehicle or part which is not as ordered by the
44 motor vehicle franchisee;

45 (5) Requires franchisors to repurchase vehicles and parts from
46 franchisees who voluntarily relinquish their franchises. Under current

1 law, a franchisee who is terminated for cause by a franchisor has this
2 right, but no such right exists for franchisees who voluntarily give up
3 their franchises;

4 (6) Provides that the franchisor is required to reimburse motor
5 vehicle franchisees for all expenses incurred as a result of a recall;

6 (7) Extends provisions of warranty reimbursement requirements
7 under existing law to include franchisor administered service or repair
8 plans. The bill provides that the current retail reimbursement
9 requirement for warranty work applies to franchisor administered
10 service or repair plans, and requires a franchisor to pay a franchisee
11 the franchisee's average percentage markup if a part is supplied by the
12 franchisor without requiring the franchisee to purchase it for warranty
13 or franchisor administered service or repair plans; and

14 (8) Prohibits franchisors from requiring a motor vehicle franchisee
15 to release confidential consumer information not needed for the
16 business relationship between franchisee and franchisor.

Office of the Governor
NEWS RELEASE

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RELEASE: March 15, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

A-2246, sponsored by Assembly Members Joseph Azzolina (R-Middlesex/Monmouth) and Samuel D. Thompson (R-Middlesex/Monmouth) and Senators James S. Cafiero (R-Cape May/Atlantic/Cumberland) and Diane B. Allen (R-Burlington/Camden), amends the current stalking law and provides for temporary restraining orders to protect children and certain adults who are victims of stalking. The legislation amends the stalking statute to provide that a person is guilty of stalking when he or she purposely or knowingly engages in a course of conduct that would cause reasonable persons to fear bodily injury to themselves or family members. By removing the "subjective fear" requirement from the state statute, which required the victim to actually be put in fear, the statute now reaches circumstances where the victim, perhaps due to age or disability, is unable to perceive or understand the threat posed by the stalker. In addition, the bill expands the statute to reach circumstances where the stalker's intent may not have been to cause fear, but where the stalker knew that his or her conduct would cause a reasonable person to fear bodily injury or death. The bill also allows the parent or guardian of a minor or mentally-disabled stalking victim to apply for a temporary restraining order to prevent the stalker from having contact with the victim. The temporary restraining order may remain in place until a conviction is secured or the parent or guardian requests that it be lifted and the court finds just cause to do so.

S-1093, sponsored by Senators Gerald Cardinale (R-Bergen) and Raymond J. Lesniak (D-Union), amends the "Franchise Practices Act" in regard to motor vehicle franchises. The bill clarifies and reinforces existing law so that motor vehicle dealers will not be drawn into costly litigation in order to protect their rights and the consumer interest in the franchise system. The bill clarifies current aspects of the law that prohibit motor vehicle manufacturers from refusing a dealer the opportunity to sell all models manufactured for that line-make. In addition, the legislation prohibits a manufacturer from opening separate service centers, except in cooperation with an existing motor vehicle franchise. The legislation provides a number of protections for motor vehicle dealers, many involving warranty issues. Currently, the "Franchise Practices Act" requires motor vehicle manufacturers to reimburse their dealers for the warranty repairs made by the dealer. Dealers are reimbursed at the rate at which they charge their customers for similar work. However, dealers have been subjected to costly litigation when manufacturers challenged the method used to calculate the retail price. The bill clarifies this along with other warranty issues by (1) defining how a dealer's rate for parts reimbursement is to be calculated; (2) extending the retail reimbursement requirement to services and repair plans administered by manufacturers; (3) requiring the manufacturer to make payment equivalent to the dealer's average percentage markup when a warranty part is delivered in bulk (engine and transmission assemblies are the exception and the markup is specified at 30 % due to high cost); and (4) placing limits on the time within which the manufacturer must pay a dealer for an audit for warranty reimbursement claims.

A-2839, sponsored by Assembly Members Joseph V. Doria, Jr. (D- Hudson) and Paul DiGaetano (R-Bergen/Essex/Passaic) and Senator Edward T. O'Connor, Jr. (D-Hudson), allows local governments to participate in the State Health Benefits Program (SHBP) in a manner that is competitive with private insurers. Local governments will be allowed to participate in the SHBP in a competitive manner by negotiating health benefits for retirees. Currently, local governments are only allowed to negotiate health benefits for retirees with private insurers. Allowing the SHBP to be part of the competitive process will allow interested local governments to receive the benefits of the state's lower administrative costs.

A-1913, sponsored by Assembly Members John S. Wisniewski (D- Middlesex) and Christopher "Kip" Bateman (R-Morris/Somerset) and Senators Joseph F. Vitale (D-Middlesex) and Jack Sinagra (R-Middlesex), requires health insurers to cover anesthetic procedures associated with dental surgery and other procedures. The bill requires health insurers and health maintenance organizations to provide coverage for dental services provided to any covered person who is severely disabled or who is a child, age five or under, for (1) general anesthesia and hospital charges or (2) a medical condition requiring hospitalization or general anesthesia for dental services, regardless of where treatment is provided. The anesthetic procedures that would be covered by this bill are procedures that would not be required on a typical, healthy, adult, but, instead, would be necessary on a person with severe disabilities or on a young child that could not otherwise sit still for the dental procedure. The bill also provides that an insurer or health maintenance organization may require prior authorization of hospitalization for dental procedures in the same manner that prior authorization is required for other covered diseases or conditions.