

CHAPTER 66

AN ACT concerning motor vehicle franchises and amending various parts of the statutory law and supplementing P.L.1971, c.356 (C.56:10-1 et seq.).

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

1. Section 2 of P.L.1989, c.24 (C.56:10-7.3) is amended to read as follows:

C.56:10-7.3 Prohibited conditions, terms of franchise.

2. a. It shall be a violation of the "Franchise Practices Act," P.L. 1971, c.356 (C.56:10-1 et seq.) for a motor vehicle franchisor to require a motor vehicle franchisee to agree to a term or condition in a franchise, or in any lease or agreement ancillary or collateral to a franchise, which:

(1) Requires the motor vehicle franchisee to waive trial by jury in actions involving the motor vehicle franchisor; or

(2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under the law of this State; or

(3) Requires that disputes between the motor vehicle franchisor and motor vehicle franchisee be submitted to arbitration or to any other binding alternate dispute resolution procedure; provided, however, that any franchise, lease or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the motor vehicle franchisor and motor vehicle franchisee voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises.

b. For the purposes of this section, it shall be presumed that a motor vehicle franchisee has been required to agree to a term or condition in violation of this section as a condition of the offer, grant or renewal of a franchise or of any lease or agreement ancillary or collateral to a franchise, if the motor vehicle franchisee, at the time of the offer, grant or renewal of the franchise, lease or agreement is not offered the option of an identical franchise, lease or agreement without the term or condition proscribed by this section.

c. In addition to any remedy provided in the "Franchise Practices Act," any term or condition included in a franchise, or in any lease or agreement ancillary or collateral to a franchise, in violation of this section may be revoked by the motor vehicle franchisee by written notice to the motor vehicle franchisor within 60 days of the motor vehicle franchisee's receipt of the fully executed franchise, lease or agreement. This revocation shall not otherwise affect the validity, effectiveness or enforceability of the franchise, lease or agreement.

2. Section 5 of P.L.1999, c.45 (C.56:10-7.4) is amended to read as follows:

C.56:10-7.4 Additional practice prohibited.

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

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

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

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

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

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

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

g. (1) To require or attempt to require a motor vehicle franchisee to order or purchase a new or used motor vehicle, or any accessory or equipment thereof not required by law; or (2) to require or attempt to require a motor vehicle franchisee to accept delivery of any motor vehicle, or any accessory or equipment thereof not required by law, which is not as ordered by the motor vehicle franchisee; or (3) to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the motor vehicle franchisee's failure or refusal to purchase, order or accept delivery of any such motor vehicle, accessory or equipment. This subsection shall not prevent a motor vehicle franchisor from requiring that a motor vehicle franchisee carry a representative inventory of models offered for sale by the motor vehicle franchisor.

h. To fail or refuse 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, or to fail or refuse to sell or offer to sell such motor vehicles to all motor vehicle franchisees at the same price for a comparably equipped motor vehicle, on the same terms, with no differential in discount, allowance, credit or bonus, and on reasonable, good faith and non-discriminatory allocation and availability terms. However, the failure to deliver any such motor vehicle shall not be considered a violation of this section if the failure is not arbitrary and is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo or other cause over which the franchisor has no control. A motor vehicle franchisor shall not require a motor vehicle franchisee to purchase unreasonable quantities of advertising materials, purchase special tools not required to properly service a motor vehicle or undertake sales person or service person training unrelated to the motor vehicle or meet unreasonable display requirements as a condition of receiving a motor vehicle.

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

j. To impose or attempt to impose any requirement, limitation or regulation on, or interfere or attempt to interfere with, the manner in which a motor vehicle franchisee utilizes the facilities at which a motor vehicle franchise is operated, including, but not limited to, requirements, limitations or regulations as to the line makes of motor vehicles that may be sold or offered for sale at the facility, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the manner in which the motor vehicle franchisee utilizes his facilities, except that the motor vehicle franchisor may require that the portion of the facilities allocated to or used for the motor vehicle franchise meets the motor vehicle franchisor's reasonable, written space and volume requirements as uniformly applied by the motor vehicle franchisor. The provisions of this subsection shall not apply if the motor vehicle franchisor and the motor vehicle franchisee voluntarily agree to the requirement and separate and valuable consideration therefor is paid.

k. To require or attempt to require a motor vehicle franchisee, or the owner or landlord of property on which a motor vehicle franchise is operated, to give a motor vehicle franchisor or any person under the control of the motor vehicle franchisor an interest in or option with respect to the real property on which the motor vehicle franchise is operated, to restrict the uses to which the facility at which the motor vehicle franchise is operated may be put during or after the term of the franchise, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the failure or refusal of a motor vehicle franchisee, property owner, or landlord to agree to or comply with any such demand or restriction. Nothing in this subsection shall be deemed to bar a voluntary agreement between a motor vehicle franchisor and a motor vehicle franchisee, or the owner or landlord of property on which a motor vehicle franchise is operated, to give the motor vehicle franchisor or the person under the control of the motor vehicle franchisor an interest in or option with respect to the real property on which a motor vehicle franchise is operated, or to restrict the uses to which the facility at which the motor vehicle franchise is operated is put, provided that separate and valuable consideration is paid for such interest, option or restriction.

l. To require or attempt to require a motor vehicle franchisee to relocate his franchise or to implement any facility or operational modification or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit as a result of the failure or refusal of such motor vehicle franchisee to agree to any such relocation or modification, unless the motor vehicle franchisor can demonstrate that: (1) funds are generally available to the franchisee for the relocation or modification on reasonable terms; and (2) the motor vehicle franchisee will be able, in the ordinary course of business as conducted by such motor vehicle franchisee, to earn a reasonable return on his total investment in such facility or from such operational modification, and the full return of his total investment in such facility or from such operational modifications within 10 years;

or (3) the modification is required so that the motor vehicle franchisee can effectively sell and service a motor vehicle offered by the motor vehicle franchisor based on the specific technology of the motor vehicle. This subsection shall not be construed as requiring a motor vehicle franchisor to guarantee that the return as provided in paragraph (2) of this subsection will be realized.

m. Directly, or through any financial institution having any commonality of ownership with the motor vehicle franchisor, to require or attempt to require, or to take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, as a result of the failure or refusal of a motor vehicle franchisee to maintain working capital, equity, floor plan financing or other indications of financial condition, greater than the lesser of (1) the minimum required to operate the motor vehicle franchise based on the operations of the franchise over the prior 12-month period; or (2) an increase of no more than 5% over the prior calendar year, unless the motor vehicle franchisor, or the financial institution having any commonality of ownership with a motor vehicle franchisor, can establish that such failure or refusal prevents the franchisee from operating the franchise in the ordinary course of business. This subsection shall not apply if the working capital, equity, floor plan financing or other indication of financial condition is the result of an accommodation by the motor vehicle franchisor, or financial institution with a commonality of ownership with the motor vehicle franchisor, to the motor vehicle franchisee, containing specific terms and deadlines for the restoration of the motor vehicle franchisee's working capital, inventory, floor plan financing or other indication of financial condition, which accommodation is agreed to in writing by the motor vehicle franchisee.

n. To impose or attempt to impose any conditions on the approval of the transfer of a motor vehicle franchise, except as provided in section 6 of P.L. 1971, c.356 (C.56:10-6).

o. To amend or modify the franchise of a motor vehicle franchisee, or any lease or agreement ancillary or collateral to such franchise, including in connection with the renewal of a franchise, if such amendment or modification is not in good faith, is not for good cause, or would adversely and substantially alter the rights, obligations, investment or return on investment of the motor vehicle franchisee.

p. To take or withhold or threaten to take or withhold any action, impose or threaten to impose any penalty, or deny or threaten to deny any benefit, because the motor vehicle franchisee sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country or who resold the vehicle, unless the motor vehicle franchisor can establish that the motor vehicle franchisee knew or reasonably should have known, prior to the sale or lease, that the customer intended to export or resell the motor vehicle; provided, however, that it shall be presumed that the motor vehicle franchisee did not know or should not have reasonably known that the vehicle would be exported if the vehicle is titled or registered in any state or the District of Columbia.

q. To require a motor vehicle franchisee, at the time of entering into a franchise arrangement, any lease or agreement ancillary or collateral to a motor vehicle franchise, or any amendment, modification, renewal or termination thereof, to assent to a release, assignment, novation, waiver or estoppel, which would relieve any person from liability imposed by P.L.1971, c.356 (C.56:10-1 et seq.); provided that nothing in this subsection shall be deemed to prohibit a voluntary agreement between the motor vehicle franchisor and the motor vehicle franchisee which contains a release, assignment, novation, waiver or estoppel for which separate and valuable consideration is paid by the motor vehicle franchisor to the motor vehicle franchisee.

r. To provide any term or condition in any motor vehicle franchise, in any lease or other agreement ancillary or collateral to a motor vehicle franchise or in any renewal, amendment or modification thereof, which term or condition directly or indirectly violates P.L.1971, c.356 (C.56:10-1 et seq.).

s. To allocate vehicles to or evaluate the performance of a motor vehicle franchise based on, or offer any discount, incentive, bonus, program, allowance or credit that differentiates between vehicle sales by a motor vehicle franchisee within a territory or geographic area assigned to the motor vehicle franchisee and vehicle sales outside of such territory or geographic area.

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

C.56:10-13.2 Violations related to termination, cancellation or nonrenewal.

3. Within 90 days of the termination, cancellation or nonrenewal of a motor vehicle franchise as provided for in section 5 of P.L.1971, c.356 (C.56:10-5), or the termination, cancellation or nonrenewal of a motor vehicle franchise by the motor vehicle franchisee or by mutual agreement of the motor vehicle franchisee and motor vehicle franchisor, the motor vehicle franchisor shall repurchase from the motor vehicle franchisee:

a. any unused, undamaged and unsold vehicles from current and all prior year inventories with 500 miles or less registered on the odometer, or recreational vehicles that were acquired from the motor vehicle franchisor within 12 months before the effective date of the termination, and any unused, undamaged and unsold parts, supplies and accessories, listed in the franchisor's current price catalog and acquired from the franchisor or a source approved or recommended by the franchisor at the franchisee's net acquisition cost therefor, including transportation, delivery and similar charges paid by the franchisee, plus the franchisee's cost of handling, packing, loading and transporting the vehicle inventory, parts, supplies and accessories for return to the franchisor. For the purposes of this subsection, vehicle inventory, parts, supplies and accessories used by the franchisee or its employees for display, demonstration or other marketing purposes shall be deemed to be unused or unsold.

b. any special tools and signs which were required by the franchisor, at:

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

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

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

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

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

Payment shall be made by the motor vehicle franchisor within 30 days after the date on which the motor vehicle franchisee notifies the motor vehicle franchisor in writing that the property is available for repurchase.

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

4. Section 4 of P.L.1991, c.459 (C.56:10-13.3) is amended to read as follows:

C.56:10-13.3 Violations related to termination, cancellation or nonrenewal.

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

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

(2) the termination, suspension or cessation of all or any part of the franchisor's business operations due to the discontinuance of a line make or otherwise, unless the franchisor complies with the provisions of subsections b., c., d. and e. of this section or unless the franchisor, or another motor vehicle franchisor, pursuant to an agreement with the franchisor, offers the franchisee a replacement motor vehicle franchise which takes effect no later than the date of the termination, cancellation or nonrenewal of the franchisee's existing motor vehicle franchise.

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

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

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

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

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

e. If the franchisee continues to service motor vehicles and sell parts after the termination, cancellation or nonrenewal, as provided for in subsections c. and d. of this section, the compensation paid to the franchisee pursuant to subsection b. of this section shall be reduced to the extent, if any, of the fair market value of such rights as of the effective date of the termination, cancellation or nonrenewal.

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

C.56:10-15 Reimbursement for services or parts under warranty or law.

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

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

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

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

d. For the purposes of this section, the "prevailing retail price" charged by: (1) a motor vehicle franchisee for parts means the price paid by the motor vehicle franchisee for those parts, including all shipping and other charges, multiplied by the sum of 1.0 and the franchisee's average percentage markup over the price paid by the motor vehicle franchisee for parts purchased by the motor vehicle franchisee from the motor vehicle franchisor and sold at retail. The motor vehicle franchisee may establish average percentage markup under this section by submitting to the motor vehicle franchisor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and declaring what the average percentage markup is. The average percentage markup so declared shall go into effect 30 days following the declaration subject to audit of the submitted repair orders by the motor vehicle franchisor and adjustment of the average percentage markup based on that audit. Only retail sales not involving warranty repairs, parts covered by subsection e. of this section, or parts supplied for routine vehicle maintenance, shall be considered in calculating average percentage markup. No motor vehicle franchisor shall require a motor vehicle franchisee to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part by part or transaction by transaction calculations. A motor vehicle franchisee shall not request a change in the average percentage markup more than twice in one calendar year; and (2) a recreational motor vehicle franchisee for parts means actual wholesale cost, plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the motor vehicle franchisor.

e. If a motor vehicle franchisor supplies a part or parts for use in a repair rendered under a warranty other than by sale of that part or parts to the motor vehicle franchisee, the motor

vehicle franchisee shall be entitled to compensation equivalent to the motor vehicle franchisee's average percentage markup on the part or parts, as if the part or parts had been sold to the motor vehicle franchisee by the motor vehicle franchisor. The requirements of this section shall not apply to entire engine assemblies and entire transmission assemblies. In the case of those assemblies, the motor vehicle franchisor shall reimburse the motor vehicle franchisee in the amount of 30% of what the motor vehicle franchisee would have paid the motor vehicle franchisor for the assembly if the assembly had not been supplied by the franchisor other than by the sale of that assembly to the motor vehicle franchisee.

f. The motor vehicle franchisor shall reimburse the motor vehicle franchisee for parts supplied and services rendered under a warranty within 30 days after approval of a claim for reimbursement. All claims for reimbursement shall be approved or disapproved within 30 days after receipt of the claim by the motor vehicle franchisor. When a claim is disapproved, the motor vehicle franchisee shall be notified in writing of the grounds for the disapproval. No claim that has been approved and paid shall be charged back to the motor vehicle franchisee unless it can be shown that the claim was false or fraudulent, that the services were not properly performed, that the parts or services were unnecessary to correct the defective condition, or that the motor vehicle franchisee failed to reasonably substantiate the claim in accordance with reasonable written requirements of the motor vehicle franchisor, provided that the motor vehicle franchisee had been notified of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose. A motor vehicle franchisor shall not audit a claim after the expiration of 12 months following the payment of the claim unless the motor vehicle franchisor has reasonable grounds to believe that the claim was fraudulent.

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

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

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

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

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

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

With respect to franchisor administered service or repair plans covering only routine maintenance service, this section applies only to those plans sold to customers on or after the effective date of P.L.1999, c.45.

i. A motor vehicle franchisor shall make payment to a motor vehicle franchisee pursuant to incentive, bonus, sales, performance or other programs within 30 days after receipt of a claim from the motor vehicle franchisee. When a claim is disapproved, the motor vehicle

franchisee shall be notified in writing of the grounds for disapproval. No claim shall be disapproved unless it can be shown that the claim was false or fraudulent, or that the motor vehicle franchisee failed to reasonably substantiate the claim in accordance with reasonable written requirements of the motor vehicle franchisor, provided that the motor vehicle franchisee had been notified of the requirements prior to the time the claim arose and the requirements were in effect at the time the claim arose. A motor vehicle franchisor shall not audit a claim after the expiration of 12 months following the payment of the claim.

6. Section 1 of P.L.1982, c.156 (C.56:10-16) is amended to read as follows:

C.56:10-16 Definitions.

1. a. "Committee" means the Motor Vehicle Franchise Committee established in section 2 of this act;

b. "Franchise" means a written arrangement for a definite or indefinite period in which a motor vehicle franchisor grants a right or license to use a trade name, trademark, service mark or related characteristics and in which there is a community of interest in the marketing of new motor vehicles at retail, by lease agreement or otherwise;

c. "Franchisee" means a natural person, corporation, partnership or entity to whom a franchise is granted by a motor vehicle franchisor;

d. "Motor vehicle" or "new motor vehicle" means only a newly manufactured motor vehicle, except a nonconventional type of motor vehicle, and includes all such vehicles propelled otherwise than by muscular power, and motorcycles, trailers and tractors, excepting such vehicles as run only upon rails or tracks and motorized bicycles; a "nonconventional type of motor vehicle" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway;

e. "Motor vehicle franchisor" means a natural person, corporation, partnership or entity engaged in the business of manufacturing, assembling or distributing new motor vehicles, who will under normal business conditions during the year, manufacture, assemble or distribute at least 10 new motor vehicles;

f. "Relevant market area" means a geographic area 14 miles in radius from a proposed franchise or business as it relates to the grant, reopening or reactivation of a franchise or the establishment, reopening or reactivation of a business; and a geographic area 8 miles in radius from a relocated franchise or business, but if there are no existing franchisees in the same line make within an 8-mile radius of the relocated franchise or business, then the relevant market area includes the next closest existing franchisee in the same line make within a 14-mile radius. Determining whether an existing franchisee is within the relevant market area of a proposed or relocated franchise or business, and ascertaining any other measurement of distance, shall be made by measuring the distance between the nearest surveyed boundary line of the existing franchise and the nearest surveyed boundary line of the proposed or relocated franchise or business.

7. Section 3 of P.L.1982, c.156 (C.56:10-18) is amended to read as follows:

C.56:10-18 Conditions for franchise.

3. A motor vehicle franchisor may grant, relocate, reopen or reactivate a franchise or establish, relocate, reopen or reactivate a business, for the purpose of doing business on the

retail level, only if the franchise or business will not be injurious as determined pursuant to section 8 of P.L.1982, c.156 (C.56:10-23).

8. Section 4 of P.L.1982, c.156 (C.56:10-19) is amended to read as follows:

C.56:10-19 Notice to existing franchisee, protest, appeal.

4. A motor vehicle franchisor shall give its existing franchisees in the same line make within 20 miles of the proposed location for the proposed franchise or business as calculated using the methodology set forth in subsection f. of section 1 of P.L.1982, c.156 (C.56:10-16) not less than 90 days' advance written notice of its intention to grant, relocate, reopen or reactivate a franchise of the same line make or establish, relocate, reopen or reactivate a business. Any franchisee in the relevant market area of the proposed franchise or business may file with the committee a protest to the granting, relocating, reopening or reactivation of the franchise or the establishment, relocation, reopening or reactivation of the business within 30 days of receipt of the notice or 30 days after the end of any appeal procedure provided by the motor vehicle franchisor, whichever is later. Any motor vehicle franchisee entitled to file a protest that does not receive the written notice from the motor vehicle franchisor and consequently does not file a protest may file an action in the Superior Court against the motor vehicle franchisor and the court shall enjoin and nullify the grant, relocation, reopening or reactivation of the franchise or the establishment, relocation, reopening or reactivation of the business, regardless of whether a protest by such motor vehicle franchisee would have been successful. In any such action, a successful motor vehicle franchisee shall be entitled to an award of reasonable attorneys' fees, court costs and expenses. A protest shall set forth all reasons for objecting to the granting, reopening, or reactivation of a franchise and shall be accompanied by a concise statement of the facts and supporting affidavits for all issues raised in the protest. When a protest is filed, the chairman of the committee shall notify the motor vehicle franchisor and the franchisee in writing that it has been filed and shall forthwith determine either to transmit the protests to the Office of Administrative Law for hearing or to conduct a hearing directly.

9. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to read as follows:

C.56:10-20 Rights of franchisor.

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

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

b. Reopen or reactivate a franchise or business which has not been in operation for a period of two years or less at a site within two miles of the prior site, provided that the rights accorded to the franchisor herein shall not apply to a successor or assignee of the franchisor of the franchise or business at the time the franchise or business was closed or deactivated; or

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

10. Section 6 of P.L.1982, c.156 (C.56:10-21) is amended to read as follows:

C.56:10-21 Hearing on protest.

6. The hearing referred to in section 4 of P.L.1982, c.156 (C.56:10-19) shall be conducted as a contested case in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.). The franchisor shall have the burden of proving by a preponderance of the evidence that the proposed franchise or business will not be injurious. The testimony taken at the hearing shall be under oath and recorded verbatim, but the parties shall not be bound by the rules of evidence. True copies of any transcript and of any other record made of or at the hearing shall be furnished to any party upon request and at that party's expense. The committee may subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter involved in the hearing. The committee, at the request of any party, may subpoena and compel the attendance of such witnesses as the party may designate and require the production for examination of any books or papers relating to any matter involved in the hearing.

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

C.56:10-23 Factors for consideration if proposed franchise will harm public interest.

8. a. The grant, reopening or reactivation of a franchise or establishment, or the reopening or reactivation of a business shall be deemed injurious to existing franchisees or to the public interest unless the franchisor proves, by a preponderance of the evidence, that:

(1) The proposed franchise or business would materially enhance the availability of stable, adequate and reliable sales and service to purchasers of vehicles in the same line make in the market area served by the franchisees entitled to notice;

(2) The proposed franchise or business would not affect the stability of existing franchisees in the same line make;

(3) The existing franchisees in the same line make have not provided adequate representation of the line make in their market areas for a period of at least two years based on the availability of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

(4) The franchisor's action is in good faith.

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

(1) for the 24-month period prior to notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19), the average market penetration of the franchisees given notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19), in the area of primary responsibility or territory assigned to such franchises, is at least equal to the average market penetration of all franchisees in the same line make in this State;

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

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

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

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

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

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

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

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

d. In determining whether the relocation of an existing franchise or business will be injurious to existing franchisees or the public interest, the committee shall consider in making its determination, whether the franchisor has proven, by a preponderance of the evidence, that:

(1) The relocation would materially enhance the availability of stable, adequate and reliable sales and service to purchasers of vehicles in the same line make in the market areas served by the franchisees entitled to notice;

(2) The relocation would not affect the stability of the existing franchises in the same line make;

(3) The existing franchisees in the same line make have not provided adequate representation of the line make in their market areas for a period of at least two years based on the availability of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

(4) The relocation is in good faith; and

(5) The effect on the relocating dealer of the denial of its relocation outweighs the injury to an existing franchisee.

C.56:10-30 Alternate dispute resolution proceedings relative to franchise termination.

12. a. Upon timely institution of an action or alternate dispute resolution proceeding to enjoin the termination of a motor vehicle franchise on the ground that such termination would be in violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), the termination shall be automatically stayed pending the final disposition of such action or proceeding, and the motor vehicle franchisor shall accord the motor vehicle franchisee all rights and privileges of a franchisee as if notice of termination had not been given.

b. A successful motor vehicle franchisee in an action or alternate dispute resolution proceeding to enjoin the termination of a motor vehicle franchise shall be entitled to an injunction barring termination of the motor vehicle franchise in addition to any other relief provided for in section 10 of P.L.1971, c.356 (C.56:10-10).

c. In any action or alternate dispute resolution proceeding with respect to the termination of a motor vehicle franchise, the motor vehicle franchisor shall have the burden of proving that termination of the motor vehicle franchise does not violate section 5 of P.L.1971, c.356 (C.56:10-5). In proving good cause for termination in any such action, the

motor vehicle franchisor shall be limited to the grounds for termination set forth in the written notice provided for in section 5 of P.L.1971, c.356 (C.56:10-5).

d. Notwithstanding the giving of notice of termination of a motor vehicle franchise pursuant to section 5 of P.L.1971, c.356 (C.56:10-5), at any time prior to the date on which the termination becomes effective, the motor vehicle franchisee may enter into an agreement for, and submit to the motor vehicle franchisor, notice of the transfer, assignment or sale of the motor vehicle franchise to another person. Thereupon, the motor vehicle franchisor shall proceed as provided for in section 6 of P.L.1971, c.356 (C.56:10-6). Upon approval of the transfer, assignment or sale by the motor vehicle franchisor and upon consummation of same, the notice of termination of the motor vehicle franchise shall be deemed withdrawn, and the transferee shall receive the motor vehicle franchise free and clear of all grounds for termination. Notwithstanding the terms of any notice, any court order or any other provision of law, a motor vehicle franchise termination shall not become effective while a notice of transfer, assignment or sale is pending with a motor vehicle franchisor.

C.56:10-31 Request for additional information by franchisor.

13. If a motor vehicle franchisor desires information about a transaction or a proposed transferee, in addition to that provided with the notice of intent pursuant to section 6 of P.L.1971, c.356 (C.56:10-6), the motor vehicle franchisor shall request all such additional information in writing within 15 days of receipt of the notice of intent. A request for additional information shall not extend the time within which the motor vehicle franchisor must approve or disapprove the transfer, provided that the additional information is submitted to the motor vehicle franchisor within 30 days after the additional information is requested by the motor vehicle franchisor. If the additional information is submitted to the motor vehicle franchisor more than 30 days after the request for that information, the time period for the motor vehicle franchisor to approve or disapprove the transfer shall be extended so that the motor vehicle franchisor has 30 days to approve or disapprove the transfer after receipt of the additional information.

14. This act shall take effect immediately.

Approved May 4, 2011.