

CHAPTER 24

AN ACT concerning the sale of zero emission motor vehicles, amending R.S.39:10-19 and P.L.1999, c.45, amending and supplementing P.L.1985, c.361, and supplementing P.L.2003, c.266 (C.26:2C-8.15 et al.).

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

1. R.S.39:10-19 is amended to read as follows:

Dealer's license; eligibility, term, fee.

39:10-19. No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, nor shall a person engage in activity that would qualify the person as a leasing dealer, as defined in section 2 of P.L.1994, c.190 (C.56:12-61), unless: a. the person is a licensed real estate broker acting as an agent or broker in the sale of mobile homes without their own motor power other than recreation vehicles as defined in section 3 of P.L.1990, c.103 (C.39:3-10.11), or manufactured homes as defined in section 3 of P.L.1983, c.400 (C.54:4-1.4); or b. the person is authorized to do so under the provisions of this chapter and P.L.1985, c.361 (C.56:10-26 et seq.).

The chief administrator may, upon application in such form as the chief administrator prescribes, license any proper person as such dealer or leasing dealer. A licensed real estate broker shall be entitled to act as an agent or broker in the sale of a mobile or manufactured home as defined in subsection a. of this section without obtaining a license from the chief administrator. For the purposes of this chapter, a "licensed real estate broker" means a real estate broker licensed by the New Jersey Real Estate Commission pursuant to the provisions of chapter 15 of Title 45 of the Revised Statutes. Any sale or transfer of a mobile or manufactured home, in which a licensed real estate broker acts as a broker or agent pursuant to this section, which sale or transfer is subject to any other requirements of R.S.39:10-1 et seq., shall comply with all of those requirements.

No person who has been convicted of a crime, arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle, shall be eligible to receive a license. For the purposes of this section, each applicant for a license shall submit to the chief administrator the applicant's name, address, fingerprints, and written consent for a criminal history record background check to be performed. The chief administrator is hereby authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules, and regulations, for purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the chief administrator in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

Each applicant for a license shall at the time such license is issued have established and maintained, or by that application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the

laws of this State and with any rules and regulations made by the board governing the equipment, use, and operation of motor vehicles within the State. However, a leasing dealer, who is not engaged in the business of buying, selling, or dealing in motor vehicles in the State, shall not be required to maintain a place of business with floor space available for the servicing or display of motor vehicles or to have an exterior sign at the lessor's place of business.

A license fee of \$200 shall be paid by an applicant upon the applicant's initial application for a license. The chief administrator may renew an applicant's license upon application for renewal on a form prescribed by the chief administrator and accompanied by a renewal fee of \$200. Every license shall expire 24 months from the date on which it is issued. The chief administrator may, at the chief administrator's discretion and for good cause shown, extend an applicant's license for an additional period not to exceed 12 months from the date on which it is scheduled to expire. The chief administrator may, at the chief administrator's discretion and for good cause shown, issue a license which shall expire on a date fixed by the chief administrator. The fee for licenses with an expiration date fixed by the chief administrator shall be fixed by the chief administrator in an amount proportionately less or greater than the fee established herein.

For the purposes of this section, a leasing dealer or an assignee of a leasing dealer whose leasing activities are limited to buying motor vehicles for the purpose of leasing them and selling motor vehicles at the termination of a lease shall not be deemed to be engaged in the business of buying, selling, or dealing in motor vehicles in this State.

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 practices 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. Except as provided pursuant to section 6 of P.L.2015, c.24 (C.56:10-27.1), 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 1 of P.L.1985, c.361 (C.56:10-26) is amended to read as follows:

C.56:10-26 Definitions.

1. As used in this act:

"Consumer" means the purchaser, other than for resale, of a motor vehicle.

"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.

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

"Motor vehicle franchisee" means a person to whom a franchise is granted by a motor vehicle franchisor and who or which holds a current valid motor vehicle dealer's license issued pursuant to R.S.39:10-19 and has an established place of business.

"Motor vehicle franchisor" means a person engaged in the business of manufacturing, assembling or distributing new motor vehicles, or importing into the United States new motor vehicles manufactured or assembled in a foreign country, who will under normal business conditions during the year, manufacture, assemble, distribute or import at least 10 new motor vehicles.

"New motor vehicle" means a newly manufactured motor vehicle.

"Person" means a natural person, corporation, partnership, trust, or other entity and, in the case of an entity, it shall include any other entity which has a majority interest in that entity or effectively controls that other entity as well as the individual officers, directors, and other persons in active control of the activities of each such entity.

"Place of business" means a fixed geographical location at which the motor vehicle franchisor's motor vehicles are offered for sale and sold, but shall not include an office, a warehouse, a place of storage, a residence or a vehicle.

"Zero emission vehicle" means a motor vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, but shall not include an advanced technology partial zero emission vehicle, a partial zero emission vehicle, or a hybrid electric vehicle.

4. Section 2 of P.L.1985, c.361 (C.56:10-27) is amended to read as follows:

C.56:10-27 Sales through franchises only.

2. Except as provided pursuant to section 6 of P.L.2015, c.24 (C.56:10-27.1), it shall be a violation of this act for any motor vehicle franchisor, directly or indirectly, through any officer, agent, employee, broker or any shareholder of the franchisor, except a shareholder of 1% or less of the outstanding shares of any class of securities of a franchisor which is a publicly traded corporation, or other person, to offer to sell or sell motor vehicles, to a consumer, other than an employee of the franchisor, except through a motor vehicle franchisee.

5. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to read as follows:

C.56:10-28 Prohibition of ownership by franchisor.

3. Except as provided pursuant to section 6 of P.L.2015, c.24 (C.56:10-27.1), it shall be a violation of this act for a motor vehicle franchisor, directly or indirectly, through any officer, agent, employee, broker or any shareholder of the franchisor, except a shareholder of 1% or less of the outstanding shares of any class of securities of a franchisor which is a publicly traded corporation, or other person, to own or operate a place of business as a motor vehicle franchisee, except that this section shall not prohibit the ownership or operation of a place of business by a motor vehicle franchisor for a period, not to exceed 24 consecutive months, during the transition from one motor vehicle franchisee to another; or the investment

in a motor vehicle franchisee by a motor vehicle franchisor if the investment is for the sole purpose of enabling a partner or shareholder in that motor vehicle franchisee to acquire an interest in that motor vehicle franchisee and that partner or shareholder is not otherwise employed by or associated with the motor vehicle franchisor and would not otherwise have the requisite capital investment funds to invest in the motor vehicle franchisee, and has the right to purchase the entire equity interest of the motor vehicle franchisor in the motor vehicle franchisee within a reasonable period of time not to exceed 10 years.

C.56:10-27.1 Sale of zero emission vehicle.

6. Notwithstanding the provisions of any law, rule or regulation to the contrary, a motor vehicle franchisor licensed pursuant to R.S.39:10-19 on or prior to January 1, 2014 and exclusively manufacturing zero emission vehicles may buy from and sell, offer to sell, or deal to a consumer a zero emission vehicle, provided that the franchisor owns or operates, directly or indirectly:

- (1) no more than four places of business in the State; and
- (2) at least one retail facility for the servicing, including warranty servicing, of zero emission vehicles sold, offered for sale, or otherwise distributed in this State. This facility shall be furnished with all the equipment required to service a zero emission vehicle.

A franchisor shall not be required to establish or operate a place of business at a retail facility for the servicing of zero emission vehicles.

C.54:32B-8.55a Report of number of zero emission vehicles sold.

7. Before March 1 annually, all motor vehicle franchisors and motor vehicle franchisees in the State, as defined pursuant to section 1 of P.L.1985, c.361 (C.56:10-26), shall report to the Division of Taxation the number of zero emission vehicles sold in the State each calendar year and exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) pursuant to section 11 of P.L.2003, c.266 (C.54:32B-8.55).

8. This act shall take effect immediately.

Approved March 18, 2015.