

5725

2013-2014 Regular Sessions

I N S E N A T E

June 7, 2013

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to automobile manufacturers and business practices by franchisors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 5 of section 415 of the vehicle and traffic law
2 is amended by adding a new paragraph b-2 to read as follows:
3 B-2. A STATEMENT INDICATING IF ANY INTEREST EXISTS IN THE APPLICANT'S
4 FRANCHISE ENTITY BY A PERSON OR ENTITY DESCRIBED IN PARAGRAPH F OF
5 SUBDIVISION SEVEN OF THIS SECTION, AND THE EXTENT OF SUCH INTEREST.
6 S 2. Paragraph f of subdivision 7 of section 415 of the vehicle and
7 traffic law, as added by chapter 490 of the laws of 2008, is amended to
8 read as follows:
9 f. EXCEPT AS PROVIDED IN PARAGRAPH (BB) OF SUBDIVISION TWO OF SECTION
10 FOUR HUNDRED SIXTY-THREE OF THIS TITLE:
11 (I) The commissioner shall not issue any certificate of registration
12 authorized by this section to any franchisor, MANUFACTURER, DISTRIBUTOR
13 BRANCH OR FACTORY BRANCH, as such [term is] TERMS ARE defined in section
14 four hundred sixty-two of this title, OR TO ANY SUBSIDIARY, AFFILIATE OR
15 CONTROLLED ENTITY THEREOF, except that the commissioner may renew such
16 certificate previously issued or otherwise approved to operate to a
17 franchisor prior to [May second, two thousand two] JANUARY FIRST, TWO
18 THOUSAND FOUR.
19 (II) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, THE COMMIS-
20 SIONER SHALL NOT ISSUE ANY CERTIFICATE OF REGISTRATION, OR RENEW ANY
21 CERTIFICATE ISSUED AFTER JANUARY FIRST, TWO THOUSAND FOUR TO ANY MOTOR
22 VEHICLE DEALER IN WHICH A FRANCHISOR, MANUFACTURER, DISTRIBUTOR,
23 DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS SUCH TERMS ARE DEFINED IN
24 SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE, OR ANY SUBSIDIARY, AFFIL-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11010-02-3

1 IATE OR CONTROLLED ENTITY THEREOF, HAS ACQUIRED, OR POSSESSES, A
2 CONTROLLING INTEREST IN THE FRANCHISE ENTITY EXCEPT:

3 (1) WHEN OPERATING SUCH FRANCHISE FOR A TEMPORARY PERIOD, NOT TO
4 EXCEED ONE YEAR, DURING THE TRANSITION FROM ONE OWNER OF THE MOTOR VEHI-
5 CLE DEALERSHIP TO ANOTHER, PROVIDED, HOWEVER, THAT SUCH TEMPORARY PERIOD
6 MAY BE EXTENDED ONCE FOR AN ADDITIONAL PERIOD NOT TO EXCEED ONE YEAR FOR
7 GOOD CAUSE. PROVIDED THAT FOR FRANCHISORS OF HOUSE COACHES, THE PERIOD
8 OF TEMPORARY OWNERSHIP OF A FRANCHISED HOUSE COACH DEALERSHIP MAY BE
9 EXTENDED IN ONE YEAR INCREMENTS FOR GOOD CAUSE SHOWN, EXCEPT THAT THE
10 AGGREGATE OF SUCH EXTENSIONS SHALL NOT EXCEED FIVE YEARS; OR

11 (2) WHEN OPERATING SUCH FRANCHISE TEMPORARILY UNDER A PLAN WITH AN
12 INDEPENDENT INDIVIDUAL WHO IS OBLIGATED TO MAKE A SIGNIFICANT INVESTMENT
13 IN THE DEALERSHIP THAT IS SUBJECT TO LOSS AND HAS AN OWNERSHIP INTEREST
14 OR EXPECTS TO ACQUIRE FULL OWNERSHIP IN A REASONABLE PERIOD UNDER
15 REASONABLE TERMS AND CONDITIONS, PROVIDED THAT A REASONABLE PERIOD SHALL
16 BE PRESUMED TO NOT EXCEED EIGHT YEARS.

17 S 3. Paragraph (d) of subdivision 1 of section 463 of the vehicle and
18 traffic law, as added by chapter 490 of the laws of 2008, is amended to
19 read as follows:

20 (d) To participate in any training program unless such program is
21 expressly limited to specific information necessary to sell or service
22 the models of vehicles the dealer is authorized to sell or service under
23 the dealer's franchise with that franchisor. A franchisor shall not
24 unreasonably require an owner or dealer principal of a dealership to
25 attend any meeting or training program. A franchisor who requires
26 participation in a training program as authorized by this paragraph
27 shall [to the largest extent practicable make all reasonable efforts to
28 limit or reimburse the expenses of a dealer incurred in attending such
29 program] PROVIDE THE TRAINING AT A LOCATION WITHIN A FIFTY MILE RADIUS
30 OF THE DEALER'S PLACE OF BUSINESS OR OTHERWISE REIMBURSE THE DEALER FOR
31 ALL TRAVEL, HOTEL AND MEAL EXPENSES AS WELL AS THE SALARIES OF DEALER-
32 SHIP EMPLOYEES FOR THE PERIOD OF THEIR ATTENDANCE AT THE REQUIRED TRAIN-
33 ING. Nothing in this paragraph shall be deemed to prohibit any training
34 program located within a dealer's own principal place of business.

35 S 4. Subdivision 1 of section 463 of the vehicle and traffic law is
36 amended by adding a new paragraph (e) to read as follows:

37 (E) TO SELL, OFFER TO SELL, OR SELL EXCLUSIVELY AN EXTENDED SERVICE
38 CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT, INCLUDING, BUT
39 NOT LIMITED TO, GAP PRODUCTS, OFFERED, ENDORSED OR SPONSORED BY THE
40 FRANCHISOR BY THE FOLLOWING MEANS:

41 (1) BY A STATEMENT MADE BY THE FRANCHISOR THAT FAILURE TO DO SO WILL
42 SUBSTANTIALLY AND ADVERSELY IMPACT THE DEALER; OR

43 (2) BY A PROVISION IN A FRANCHISE AGREEMENT THAT THE DEALER SELL,
44 OFFER TO SELL, OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT,
45 EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT OFFERED, ENDORSED OR SPON-
46 SORED BY THE FRANCHISOR; OR

47 (3) BY MEASURING THE DEALER'S PERFORMANCE UNDER THE FRANCHISE BASED ON
48 THE SALE OF EXTENDED SERVICE CONTRACTS, EXTENDED MAINTENANCE PLANS OR
49 SIMILAR PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE MANUFACTURER OR
50 DISTRIBUTOR; OR

51 (4) BY REQUIRING THE DEALER TO ACTIVELY PROMOTE THE SALE OF EXTENDED
52 SERVICE CONTRACTS, EXTENDED MAINTENANCE PLANS OR SIMILAR PRODUCTS
53 OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR.

54 NOTHING IN THIS SECTION SHALL PROHIBIT A FRANCHISOR FROM:

55 (A) INCENTIVIZING A DEALER THAT MAKES THE VOLUNTARY DECISION TO OFFER
56 TO SELL, SELL OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED

1 MAINTENANCE PLAN OR SIMILAR PRODUCT, INCLUDING, BUT NOT LIMITED TO, GAP
2 PRODUCTS, OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, OR
3 (B) REQUIRING THAT A DEALER THAT SELLS AN EXTENDED SERVICE CONTRACT,
4 EXTENDED MAINTENANCE PLAN, OR SIMILAR PRODUCT THAT IS NOT OFFERED,
5 ENDORSED OR SPONSORED BY THE FRANCHISOR, DISCLOSE TO THE CONSUMER THE
6 DISCLOSURES REQUIRED UNDER SECTION SEVEN THOUSAND NINE HUNDRED FIVE OF
7 THE INSURANCE LAW.

8 S 5. Paragraph (b) of subdivision 2 of section 463 of the vehicle and
9 traffic law, as amended by chapter 490 of the laws of 2008, is amended
10 to read as follows:

11 (b) To directly or indirectly coerce or attempt to coerce any fran-
12 chised motor vehicle dealer to enter into any agreement with such fran-
13 chisor or officer, agent or other representative thereof, or to do any
14 other act prejudicial to the monetary interests or property rights of
15 said dealer by threatening to [cancel any unexpired contractual agree-
16 ment existing between such franchisor and] TERMINATE said dealer.
17 Provided, however, that good faith notice to any franchised motor vehi-
18 cle dealer of said dealer's violation of any terms or provisions of such
19 franchise shall not constitute a violation of this article.

20 S 6. Paragraph (c) of subdivision 2 of section 463 of the vehicle and
21 traffic law, as amended by chapter 490 of the laws of 2008, is amended
22 to read as follows:

23 (c) (1) To condition the renewal or extension of a franchise on a
24 franchised motor vehicle dealer's substantial renovation of the dealer's
25 place of business or on the construction, purchase, acquisition or
26 rental of a new place of business by the franchised motor vehicle dealer
27 unless the franchisor has advised the franchised motor vehicle dealer in
28 writing of its intent to impose such a condition within a reasonable
29 time prior to the effective date of the proposed date of renewal or
30 extension (but in no case less than one hundred eighty days) and
31 provided the franchisor demonstrates the need for such change in the
32 place of business and the reasonableness of such demand in view of the
33 need to service the public and the economic conditions existing in the
34 automobile industry at the time such action would be required of the
35 franchised motor vehicle dealer. As part of any such condition the fran-
36 chisor shall agree, in writing, to supply the dealer with a reasonable
37 quantity and mix of additional new motor vehicles which, as determined
38 by a reasonable analysis of market conditions, are projected to meet the
39 sales levels necessary to support the increased overhead incurred by the
40 franchised motor vehicle dealer by reason of such renovation,
41 construction, purchase, acquisition or rental of a new place of busi-
42 ness.

43 (2) TO REQUIRE OR ATTEMPT TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER
44 TO PURCHASE GOODS, BUILDING MATERIALS, OR SERVICES FOR THE DEALER'S
45 PLACE OF BUSINESS, INCLUDING, BUT NOT LIMITED TO, OFFICE FURNITURE,
46 DESIGN FEATURES, FLOORING, AND WALL COVERINGS, FROM A VENDOR CHOSEN BY
47 THE FRANCHISOR IF SUBSTANTIALLY SIMILAR GOODS, BUILDING MATERIALS, OR
48 SERVICES OF LIKE APPEARANCE AND QUALITY, ARE AVAILABLE FROM OTHER SOURC-
49 ES, PROVIDED, HOWEVER, THAT THE GOODS OR BUILDING MATERIALS ARE NOT
50 SUBJECT TO THE FRANCHISOR'S INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS.
51 NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO ALLOW A FRANCHISED
52 MOTOR VEHICLE DEALER TO IMPAIR OR ELIMINATE A FRANCHISOR'S INTELLECTUAL
53 PROPERTY OR TRADEMARK RIGHTS.

54 (3) EXCEPT AS NECESSARY TO COMPLY WITH A HEALTH OR SAFETY LAW, OR TO
55 COMPLY WITH A TECHNOLOGY REQUIREMENT COMPLIANCE, WHICH IS NECESSARY TO
56 SELL OR SERVICE A MOTOR VEHICLE THAT THE FRANCHISED MOTOR VEHICLE DEALER

1 IS AUTHORIZED OR LICENSED BY THE FRANCHISOR TO SELL OR SERVICE, TO
2 REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO:

3 (I) CONSTRUCT A NEW DEALER FACILITY OR MATERIALLY ALTER OR REMODEL AN
4 EXISTING DEALER FACILITY BEFORE THE DATE THAT IS TEN YEARS AFTER THE
5 DATE THE CONSTRUCTION OF THE NEW DEALER FACILITY AT THAT LOCATION WAS
6 COMPLETED REGARDLESS OF WHETHER UNDER THE OWNERSHIP OF THE CURRENT OR
7 PREVIOUS NEW MOTOR VEHICLE DEALER, IF THE CONSTRUCTION SUBSTANTIALLY
8 COMPLIED WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR PLANS THAT THE
9 FRANCHISOR PROVIDED OR APPROVED AT THE TIME THE CONSTRUCTION WAS
10 COMPLETED; OR

11 (II) MATERIALLY ALTER AN EXISTING DEALER FACILITY BEFORE THE DATE THAT
12 IS TEN YEARS AFTER THE DATE THE PREVIOUS ALTERATION OR REMODELING AT
13 THAT LOCATION WAS COMPLETED, IF THE PREVIOUS ALTERATION OR REMODELING
14 SUBSTANTIALLY COMPLIED WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR
15 PLANS THAT THE FRANCHISOR PROVIDED OR APPROVED;

16 AS USED IN THIS SUBPARAGRAPH, "MATERIALLY ALTER":

17 (I) MEANS A SIGNIFICANT ARCHITECTURAL, STRUCTURAL, DESIGN, REDESIGN OR
18 REMODEL MODIFICATION TO A DEALERSHIP FACILITY THAT IS DIRECTLY RELATED
19 TO THE EFFECTIVE SALE OR SERVICE OF A MOTOR VEHICLE FOR WHICH THE FRAN-
20 CHISED MOTOR VEHICLE DEALER HOLDS A VALID LICENSE TO SELL OR SERVICE;
21 AND

22 (II) DOES NOT INCLUDE ROUTINE MAINTENANCE, SUCH AS INTERIOR PAINTING,
23 REASONABLY NECESSARY TO KEEP A DEALERSHIP FACILITY IN ATTRACTIVE CONDI-
24 TION.

25 NOTHING IN THIS SUBPARAGRAPH SHALL PROHIBIT A FRANCHISOR FROM:

26 (I) PROVIDING A LUMP SUM PAYMENT TO ASSIST A FRANCHISED MOTOR VEHICLE
27 DEALER TO MAKE A FACILITY IMPROVEMENT OR TO PAY FOR A SIGN OR A FRANCHI-
28 SOR IMAGE ELEMENT, IF THE PAYMENT IS NOT DEPENDENT ON THE FRANCHISED
29 MOTOR VEHICLE DEALER SELLING OR PURCHASING A SPECIFIC NUMBER OF NEW
30 VEHICLES;

31 (II) CONTINUING A PROGRAM THAT IS IN EFFECT AS OF THE EFFECTIVE DATE
32 OF THIS PARAGRAPH WITH MORE THAN ONE FRANCHISED MOTOR VEHICLE DEALER IN
33 THE STATE OR TO RENEWING OR MODIFYING SUCH PROGRAM; OR

34 (III) PROVIDING REIMBURSEMENT TO A FRANCHISED MOTOR VEHICLE DEALER ON
35 REASONABLE, WRITTEN TERMS FOR A SUBSTANTIAL PORTION OF THE FRANCHISED
36 MOTOR VEHICLE DEALER'S COST OF MAKING A FACILITY IMPROVEMENT OR INSTALL-
37 ING SIGNAGE OR A FRANCHISOR IMAGE ELEMENT, PROVIDED THAT SUCH PROGRAM IS
38 NOT DEPENDENT UPON PER VEHICLE SALES OR PURCHASES BY THE FRANCHISED
39 MOTOR VEHICLE DEALER.

40 (4) TO DENY A FRANCHISED MOTOR VEHICLE DEALER A BRAND IMAGE STANDARD
41 PAYMENT, INCENTIVE OR ALLOWANCE IF THE FRANCHISED MOTOR VEHICLE DEALER,
42 WITH THE FRANCHISOR'S APPROVAL, HAS BEGUN RENOVATIONS OR CONSTRUCTION
43 INTENDED TO COMPLY WITH THE FRANCHISOR'S BRAND IMAGE STANDARD PROGRAM
44 AND THE FRANCHISOR HAS SUBSTANTIALLY CHANGED OR TERMINATED THE PROGRAM.

45 (5) TO FAIL TO TAKE INTO ACCOUNT ALL COMMERCIALY REASONABLE FACTORS,
46 INCLUDING, BUT NOT LIMITED TO, THE NUMBER OF SHIFTS THAT A DEALER WILL
47 EMPLOY IN ITS SERVICE OPERATION, WHEN DETERMINING FACILITY SPACE
48 REQUIREMENTS.

49 (6) TO REQUIRE OR ATTEMPT TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER
50 TO ESTABLISH OR MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES UNLESS JUSTI-
51 FIED BY CURRENT AND REASONABLY EXPECTED FUTURE LOCAL MARKET SHARE AND
52 ECONOMIC CONDITIONS, AND LOCAL MARKET SHARE EXISTING IN THE DEALER'S
53 RELEVANT MARKET AREA AT THE TIME THE REQUEST FOR EXCLUSIVE FACILITIES IS
54 MADE; PROVIDED THAT THE FOREGOING SHALL NOT RESTRICT THE TERMS AND
55 CONDITIONS OF ANY AGREEMENT FOR WHICH THE DEALER HAS VOLUNTARILY
56 ACCEPTED VALUABLE CONSIDERATION SEPARATE FROM THE FRANCHISED MOTOR VEHI-

CLE DEALER'S RIGHT TO SELL AND SERVICE MOTOR VEHICLES FOR THE FRANCHISOR. THE FACT THAT LOCAL, FACING COMPETITIVE BRAND DEALERSHIPS HAVE EXCLUSIVE DEALERSHIP FACILITIES SHALL CONSTITUTE NON-CONCLUSIVE EVIDENCE THAT CURRENT ECONOMIC CONDITIONS MAY JUSTIFY THE REQUIREMENT TO ESTABLISH AND MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES.

(7) TO REQUIRE A SITE CONTROL PROVISION REGARDING THE DEALER'S PLACE OF BUSINESS TO SURVIVE OR CONTINUE AFTER THE TERMINATION OF SUCH DEALER'S FRANCHISE IF THE TERMINATION IS DUE TO THE DISCONTINUATION OF THE LINE-MAKE THAT WAS THE SUBJECT OF THE AGREEMENT.

S 7. Paragraph (o) of subdivision 2 of section 463 of the vehicle and traffic law, as amended by chapter 490 of the laws of 2008, is amended to read as follows:

(o) (1) Upon a termination of a franchise by a franchisor or franchised motor vehicle dealer under this article, to refuse to accept a return of new and unused current model motor vehicle inventory which has been acquired from the franchisor, new and unused noncurrent model motor vehicle inventory which has been acquired from the franchisor within one hundred [twenty] EIGHTY days of the effective date of the termination; supplies, parts, equipment, SIGNAGE and furnishings purchased from the franchisor or its approved sources and special tools. The obligation of the franchisor, EXCEPT WITH RESPECT TO SIGNAGE shall be limited to the repurchase of the above property which is unaltered and undamaged, in good and useable condition, and, in the case of supplies, parts and equipment to those items which are currently listed in the franchisor's supplies and parts list. IN THE CASE OF SIGNAGE, EQUIPMENT, FURNISHINGS, AND SPECIAL TOOLS, THE FRANCHISOR IS OBLIGATED TO REPURCHASE ANY FRANCHISOR REQUIRED OR APPROVED SIGNAGE, EQUIPMENT, FURNISHINGS, AND SPECIAL TOOLS PURCHASED WITHIN THE FIVE YEARS PRECEDING TERMINATION AND WHICH IS IN GOOD AND USEABLE CONDITION. Furthermore, the obligation of the franchisor to repurchase supplies upon a termination, cancellation or nonrenewal by a franchised motor vehicle dealer shall be limited to supplies mandated by the franchisor. Parts eligible for repurchase shall include parts which have been renumbered in the current parts list but which are identical in design and material to the currently numbered part. The return rights afforded the franchised motor vehicle dealer under the provisions of the paragraph shall be in addition to those, if any, provided in the franchise agreement.

(2) The franchisor shall pay fair and reasonable compensation for the above described property upon repurchase. In the case of new motor vehicle inventory, accessories and parts, fair and reasonable compensation shall in no instance be less than the net acquisition price paid by the franchised motor vehicle dealer to the franchisor or its approved sources. IN THE CASE OF EQUIPMENT, FURNISHINGS, AND SPECIAL TOOLS FAIR AND REASONABLE COMPENSATION SHALL BE THE PRICE PAID FOR THE ITEM, AND FOR THE SIGNAGE REASONABLE COMPENSATION SHALL BE THE PRICE PAID FOR SUCH ITEM LESS DEPRECIATION FOR EACH AS SET FORTH IN INTERNAL REVENUE CODE OF ONE-FIFTEENTH OF THE INITIAL COST PER YEAR STARTING THE YEAR FOLLOWING THE DEALER'S ACQUISITION OF THE ITEM. IN THE CASE OF A LEASE BY A FRANCHISEE FROM A FRANCHISOR OF SIGNAGE, EQUIPMENT, FURNISHINGS, AND SPECIAL TOOLS, SUCH LEASE SHALL BE TERMINATED WITHOUT PENALTY. Upon a termination of a franchise by a franchisor, within thirty days of such termination, the franchisor shall send to the franchised motor vehicle dealer instructions on the methodology by which the franchised motor vehicle dealer must ship the above described property to the franchisor; the franchisor shall then remit payment for such property, INCLUDING SHIP-

1 PING COSTS, to the franchised motor vehicle dealer within sixty days
2 after receipt of such property.

3 (3) Upon a termination of a franchise by a franchised motor vehicle
4 dealer where the franchise consists primarily of the distribution and
5 sale of house coaches, the franchisor's repurchase obligations set forth
6 in this paragraph shall not apply.

7 (4) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS SUBDIVISION, IN THE
8 EVENT A FRANCHISOR TERMINATES A FRANCHISE WITHOUT DUE CAUSE, THE FRAN-
9 CHISOR SHALL COMPENSATE THE DEALER FOR ANY FRANCHISOR REQUIRED OR
10 APPROVED FACILITY UPGRADES WHICH WERE COMPLETED BY THE DEALER WITHIN
11 FIVE YEARS OF THE DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE
12 LINE MAKE. FOR THE PURPOSES OF THIS SECTION, COMPLETION SHALL BE DEEMED
13 TO OCCUR AT THE LATER OF THE FRANCHISOR'S FINAL APPROVAL OF THE ALTER-
14 ATION OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. THE COMPENSATION
15 REQUIRED UNDER THIS SECTION SHALL BE IN AN AMOUNT EQUAL TO THE DEALER'S
16 COST FOR THE FACILITY UPGRADES LESS THE AMOUNT FOR DEPRECIATION AS SET
17 FORTH IN INTERNAL REVENUE CODE OF ONE THIRTY-NINTH OF THE TOTAL INITIAL
18 COST OF SUCH RENOVATIONS PER YEAR STARTING THE YEAR FOLLOWING THE DEAL-
19 ER'S COMPLETION OF THE FACILITY UPGRADES.

20 (5) IN ADDITION TO THE REQUIREMENTS OF SUBPARAGRAPH FOUR OF THIS PARA-
21 GRAPH, IN THE EVENT A FRANCHISOR TERMINATES A FRANCHISE WITHOUT DUE
22 CAUSE THE FRANCHISOR SHALL COMPENSATE THE DEALER IN AN AMOUNT EQUAL TO
23 THE AMOUNT REMAINING ON THE TERMINATED DEALER'S DEALER MANAGEMENT
24 COMPUTER SYSTEM LEASE OR CONTRACT IF THE DEALER MANAGEMENT COMPUTER
25 SYSTEM WILL NO LONGER BE UTILIZED AS A RESULT OF THE TERMINATION.

26 S. 8. Paragraph (z) of subdivision 2 of section 463 of the vehicle and
27 traffic law, as amended by chapter 490 of the laws of 2008, is amended
28 to read as follows:

29 (z) To [charge back or otherwise hold liable a franchised motor vehi-
30 cle dealer for sales incentives or charges related to a] REFUSE TO ALLO-
31 CATE, SELL OR DELIVER MOTOR VEHICLES, TO CHARGE BACK OR WITHHOLD
32 PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE FRANCHISEE IS OTHERWISE
33 ELIGIBLE UNDER A SALES PROMOTION, PROGRAM OR CONTEST, OR TO TAKE ANY
34 ADVERSE ACTION AGAINST A FRANCHISEE, INCLUDING CHARGE BACKS, REDUCING
35 VEHICLE ALLOCATIONS, OR TERMINATING OR THREATENING TO TERMINATE A FRAN-
36 CHISE IN CONNECTION WITH OR AS A RESULT OF ANY new motor vehicle sold by
37 the franchised motor vehicle dealer and subsequently exported, [provid-
38 ing such dealer can demonstrate that he exercised] UNLESS THE MANUFAC-
39 Turer demonstrated that the dealer failed to exercise due diligence and
40 demonstrated that the sale was NOT made in good faith and [without] WITH
41 knowledge of the purchaser's intention to export the motor vehicle[, or
42 that such dealer reasonably relied on approvals from the franchisor to
43 complete a sale]. A franchised motor vehicle dealer which causes a new
44 motor vehicle to be registered in this state or in a foreign state and
45 causes to be collected the appropriate sales and use tax DUE OR THAT
46 SUCH DEALER REASONABLY RELIED ON APPROVALS FROM THE FRANCHISOR TO
47 COMPLETE THE SALE shall be presumed to have exercised due diligence. IT
48 SHALL ALSO BE PRESUMED THAT THE DEALER EXERCISED DUE DILIGENCE IF THE
49 FRANCHISOR'S CAPTIVE FINANCE COMPANY HAS APPROVED AND PROVIDED FINANCING
50 FOR ANY SUCH TRANSACTION. A FRANCHISOR SEEKING TO IMPOSE A CHARGE BACK
51 AS A RESULT OF A MOTOR VEHICLE EXPORT SHALL HAVE THE BURDEN TO ESTABLISH
52 THAT THE DEALER HAD REASON TO KNOW THE MOTOR VEHICLE WOULD BE EXPORTED
53 IF THE DEALER EXERCISED DUE DILIGENCE AS SET FORTH ABOVE. A FRANCHISOR
54 SEEKING TO IMPOSE A CHARGE BACK AS A RESULT OF A MOTOR VEHICLE EXPORT
55 SHALL PROVIDE WRITTEN NOTICE TO THE DEALER OF SUCH INTENT ALONG WITH THE
56 SPECIFIC AMOUNT OF THE PROPOSED CHARGE BACK AND THE VEHICLE OR VEHICLES

1 ALLEGEDLY EXPORTED. THE FRANCHISOR SHALL NOT IMPOSE THE EXPORT CHARGE
2 BACK, DEBIT THE DEALER'S ACCOUNT, OR OTHERWISE SEEK TO OBTAIN ALL OR ANY
3 PART OF THE EXPORT CHARGE BACK FUNDS UNTIL FORTY-FIVE DAYS AFTER THE
4 FRANCHISOR HAS ESTABLISHED THAT THE DEALER HAD REASON TO KNOW THE MOTOR
5 VEHICLE WOULD BE EXPORTED WHEN THE DEALER SOLD AND DELIVERED THE MOTOR
6 VEHICLE AND ALL INTERNAL DISPUTE RESOLUTION PROCEDURES HAVE BEEN
7 COMPLETED AND/OR AN ADJUDICATION HAS BEEN COMPLETED PURSUANT TO THE
8 PROCEDURE SET FORTH IN SECTION FOUR HUNDRED SIXTY-NINE OF THIS ARTICLE.
9 A DEALER RECEIVING NOTICE OF A PROPOSED EXPORT CHARGE BACK FROM THE
10 FRANCHISOR SHALL BE ENTITLED TO FILE A PROTEST PURSUANT TO THE PROCEDURE
11 SET FORTH IN SECTION FOUR HUNDRED SIXTY-NINE OF THIS ARTICLE AFTER ALL
12 FRANCHISOR INTERNAL DISPUTE RESOLUTION PROCEDURES HAVE BEEN COMPLETED,
13 WITHIN THIRTY DAYS OF RECEIPT OF THE FRANCHISOR'S NOTICE OF PROPOSED
14 EXPORT CHARGE BACK OR WITHIN THIRTY DAYS OF COMPLETION OF THE
15 FRANCHISOR'S INTERNAL DISPUTE RESOLUTION PROCEDURES, WHICHEVER IS LATER.
16 S 9. Subparagraph 1 of paragraph (cc) of subdivision 2 of section 463
17 of the vehicle and traffic law, as added by chapter 490 of the laws of
18 2008, is amended to read as follows:

19 (1) To enter into a franchise establishing an additional new motor
20 vehicle dealer or relocating an existing new motor vehicle dealer into
21 the relevant market area of an existing [franchise] FRANCHISED motor
22 vehicle dealer of the same line make unless the franchisor provides
23 notice pursuant to the terms of this subdivision. All dealers that have
24 a relevant market area that encompasses the proposed site shall be enti-
25 tled to written notice, via certified mail return receipt requested,
26 informing them of the proposed addition or relocation. Any new motor
27 vehicle dealer may institute an action as provided in section four
28 hundred sixty-nine of this article to protest the establishment or relo-
29 cation of the new motor vehicle dealer following receipt of such notice,
30 or following the end of any appeal procedure provided by the franchisor.
31 In any action brought by the dealer, the franchisor shall have the
32 burden of proving that there exists good cause for any such addition or
33 relocation. Institution of an action pursuant to this subdivision shall
34 serve to stay, without bond, the proposed addition or relocation until a
35 final judgment has been rendered in a proceeding or action as provided
36 in section four hundred sixty-nine of this article. FOR PURPOSES OF
37 THIS SECTION, ANY EXISTING FRANCHISED MOTOR VEHICLE DEALER SHALL ALSO BE
38 ENTITLED TO PROTEST AN ESTABLISHMENT OF A NEW MOTOR VEHICLE DEALER IF
39 SUCH EXISTING DEALER CAN ESTABLISH THAT DURING ANY TWELVE MONTH PERIOD
40 IN THE THIRTY-SIX MONTH PERIOD PRECEDING THE NOTICE, SUCH EXISTING DEAL-
41 ER OR ITS PREDECESSOR MADE TWENTY-FIVE PERCENT OR MORE OF ITS RETAIL
42 SALES (NOT INCLUDING ANY SALES THROUGH A FLEET PROGRAM) OF NEW MOTOR
43 VEHICLES TO PERSONS WHOSE REGISTERED HOUSEHOLD ADDRESSES WERE LOCATED
44 WITHIN THE RELEVANT MARKET AREA OF THE PROPOSED LOCATION OF THE NEW
45 DEALER. ANY NOTICE GIVEN BY A FRANCHISOR PURSUANT TO THIS SUBDIVISION
46 SHALL PRECISELY STATE THE LOCATION OF THE PROPOSED NEW DEALER AND
47 PROVIDE DETAIL SUFFICIENT TO DETERMINE THE RELEVANT MARKET AREA OF SUCH
48 NEW DEALER.

49 S 10. Paragraph (ee) of subdivision 2 of section 463 of the vehicle
50 and traffic law, as added by chapter 490 of the laws of 2008, is amended
51 to read as follows:

52 (ee) To fail to reimburse a dealer in full for the actual cost of
53 providing a loaner vehicle to any customer who is having a vehicle
54 serviced at the dealership if the provision of such a loaner vehicle is
55 required by the franchisor OR IF THE PROVISION OF LOANER VEHICLES IS
56 REQUIRED TO EARN BENEFITS UNDER ANY INCENTIVE PROGRAMS ESTABLISHED BY

1 THE FRANCHISOR OR BY ANY RELATED ENTITY. For the purposes of this para-
2 graph, actual cost shall not exceed the average cost in the dealer's
3 region for the rental of a substantially similar make and model as the
4 vehicle being serviced.

5 S 11. Subparagraph 2 of paragraph (ff) of subdivision 2 of section 463
6 of the vehicle and traffic law, as added by chapter 490 of the laws of
7 2008, is amended to read as follows:

8 (2) For purposes of this paragraph, the term "modify" or "modifica-
9 tion" means any change or replacement of any franchise if such change or
10 replacement may substantially and adversely affect the new motor vehicle
11 dealer's rights, obligations, investment or return on investment INCLUD-
12 ING, BUT NOT LIMITED TO, ANY CHANGE IN THE DEALER'S ASSIGNED GEOGRAPH-
13 ICAL AREA OF RESPONSIBILITY FOR SALES AND/OR SERVICE.

14 S 12. Subdivision 2 of section 463 of the vehicle and traffic law is
15 amended by adding three new paragraphs (ii), (jj) and (kk) to read as
16 follows:

17 (II) TO ALLOCATE NEW MOTOR VEHICLES TO OR EVALUATE THE PERFORMANCE OF
18 A FRANCHISED MOTOR VEHICLE DEALER BASED ON, OR OFFER ANY DISCOUNT,
19 INCENTIVE, BONUS, REBATE, PROGRAM, ALLOWANCE OR CREDIT THAT DIFFEREN-
20 TIATES BETWEEN VEHICLE SALES BY A FRANCHISED MOTOR VEHICLE DEALER WITHIN
21 A TERRITORY OR GEOGRAPHIC AREA ASSIGNED TO SUCH DEALER AND VEHICLE SALES
22 OUTSIDE OF SUCH TERRITORY OR GEOGRAPHIC AREA.

23 (JJ) TO UTILIZE A DISCRIMINATORY, UNREASONABLE, ARBITRARY OR UNFAIR
24 SYSTEM OF ALLOCATION OF NEW MOTOR VEHICLE INVENTORY. BEFORE APPLYING OR
25 AMENDING A SYSTEM OF ALLOCATION OF NEW MOTOR VEHICLES INVENTORY, A FRAN-
26 CHISOR SHALL COMMUNICATE ITS SYSTEM OF ALLOCATION IN WRITING IN A CLEAR
27 AND CONCISE MANNER TO ALL SAME LINE-MAKE DEALERS LOCATED IN THIS STATE.

28 (KK) TO REFUSE TO DISCLOSE TO ANY FRANCHISED MOTOR VEHICLE DEALER THE
29 MANNER AND MODE OF DISTRIBUTION OF VEHICLES IN THE FRANCHISED MOTOR
30 VEHICLE DEALER'S LINE MAKE WITHIN THE STATE, AND AN EXPLANATION OF THE
31 DERIVATION OF THE ALLOCATION SYSTEM, INCLUDING ITS MATHEMATICAL FORMULA,
32 IF ANY, IN A CLEAR AND COMPREHENSIBLE FORM.

33 S 13. Subdivision 1 of section 465 of the vehicle and traffic law, as
34 amended by chapter 490 of the laws of 2008, is amended to read as
35 follows:

36 1. Every franchisor shall properly fulfill any warranty agreement
37 and/or franchisor's service contract and shall compensate each of its
38 franchised motor vehicle dealers for warranty parts and labor in amounts
39 which reflect fair and reasonable compensation for such work. All
40 warranty claims and/or claims under a franchisor's service contract made
41 by franchised motor vehicle dealers shall be paid within thirty days
42 following their approval. For parts reimbursement, other than compo-
43 nents, systems, fixtures, appliances, furnishings, accessories and
44 features of a house coach that are designed, used and maintained prima-
45 rily for nonvehicular residential purposes, and for labor reimbursement,
46 fair and reasonable compensation shall not be less than the price and
47 rate charged by the franchised motor vehicle dealer for like services to
48 non-warranty and/or non-service contract customers. For purposes of this
49 section, the price and rate charged by the franchised motor vehicle
50 dealer for parts may be established by submitting to the franchisor one
51 hundred sequential nonwarranty customer-paid service repair orders or
52 the number of sequential nonwarranty customer-paid service repair orders
53 written within a ninety day period, whichever is less, covering repairs
54 made no more than one hundred eighty days before the submission, and
55 declaring the price and rate, including average markup for the fran-
56 chised motor vehicle dealer as its reimbursement rate. The reimbursement

1 rate so declared shall go into effect thirty days following the declara-
2 tion and shall be presumed to be fair and reasonable, however a franchi-
3 sor may rebut such presumption by showing that such rate so established
4 is unfair and unreasonable in light of the practices of all other fran-
5 chised motor vehicle dealers in the vicinity offering the same line
6 make. The franchised motor vehicle dealer shall not request a change in
7 the reimbursement rate more often than twice in each calendar year. In
8 establishing the labor reimbursement rate, the franchisor shall not
9 require a franchised motor vehicle dealer to establish said rate by a
10 methodology, or by requiring information, that is unduly burdensome or
11 time consuming to provide, including, but not limited to, a transaction
12 by transaction calculation. FOR THE PURPOSES OF THIS SECTION, THE
13 FOLLOWING PARTS OR TYPES OF REPAIRS SHALL BE EXCLUDED FROM THE PARTS
14 AND/OR LABOR CALCULATIONS AND THE FRANCHISOR'S REIMBURSEMENT REQUIRE-
15 MENTS UNDER THIS SECTION: (A) PARTS SOLD AT WHOLESALE; (B) TIRES; (C)
16 ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY SUCH
17 AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS; (D)
18 ENGINE ASSEMBLIES AND TRANSMISSION ASSEMBLIES; (E) VEHICLE RECONDITION-
19 ING; AND (F) BATTERIES. IF THE FRANCHISOR REJECTS THE DECLARATION OR
20 ATTEMPTS TO REBUT THE DECLARATION BECAUSE OF AN ERROR IN THE DEALER'S
21 SUBMISSION, THE FRANCHISOR SHALL IDENTIFY WITH SPECIFICITY THE REASON
22 FOR REJECTION AND IDENTIFY THE ERROR OR ERRORS WITHIN THE SUBMISSION. IN
23 THE EVENT THE FRANCHISOR REJECTS OR REBUTS THE DEALER'S INITIAL DECLARA-
24 TION, THE DEALER SHALL HAVE THE OPPORTUNITY TO CURE THE DECLARATION BY
25 ADDRESSING THE ALLEGED ERROR OR ERRORS IDENTIFIED BY THE FRANCHISOR, BUT
26 THE FRANCHISOR SHALL NOT REQUIRE THE DEALER TO RESUBMIT THE ENTIRE
27 DECLARATION. THE FRANCHISOR SHALL RESPOND TO THE DEALER'S ATTEMPT TO
28 CURE WITHIN THIRTY DAYS OF RECEIVING THE DEALER'S SUBMISSION AND ATTEMPT
29 TO CURE. FOR THE PURPOSES OF CURING THE DECLARATION, THE ONE HUNDRED
30 EIGHTY DAY REQUIREMENT FOR THE REPAIR ORDERS SHALL BE STAYED FROM THE
31 DATE OF INITIAL SUBMISSION. IF THE DEALER DOES NOT AGREE WITH THE
32 FRANCHISOR'S RESPONSE AFTER ITS ATTEMPT TO CURE, THE DEALER MAY FILE A
33 PROTEST NOT LATER THAN THIRTY DAYS AFTER RECEIPT OF THAT RESPONSE BY THE
34 FRANCHISOR. IN ANY HEARING HELD PURSUANT TO THIS SUBDIVISION, THE FRAN-
35 CHISOR SHALL HAVE THE BURDEN OF PROVING THAT THE RATE DECLARED BY THE
36 DEALER WAS UNFAIR AND UNREASONABLE AS DESCRIBED IN THIS SUBDIVISION AND
37 THAT THE PROPOSED ADJUSTMENT OF THE AVERAGE PERCENTAGE MARKUP OR
38 REJECTION OF THE SUBMISSION IS FAIR AND REASONABLE PURSUANT TO THE
39 PROVISIONS OF THIS SUBDIVISION.

40 S. 14. Subdivisions 3, 4, 6 and 7 of section 465 of the vehicle and
41 traffic law, as added by chapter 490 of the laws of 2008, are amended to
42 read as follows:

43 3. No franchisor shall conduct an audit or charge back any warranty
44 [or] PAYMENT, OR ANY sales [incentive payment], ADVERTISING OR MARKETING
45 INCENTIVE PAYMENT ("INCENTIVE PAYMENTS") or otherwise hold a franchised
46 motor vehicle dealer liable for charges more than one year, or five
47 years in the case of fraud, after the date the franchisor made such
48 payment to the dealer.

49 (A) IF THE FRANCHISOR DOES NOT PROVIDE THE DEALER-PRINCIPALS OR THE
50 DEALER-PRINCIPALS' DESIGNEES WITH A REPORT NOTING SPECIFICALLY ANY DEFICI-
51 CIENCIES OR ERRORS IN THE DEALER'S CLAIMS OR SUBMISSIONS IN ANY SIX
52 MONTH PERIOD, THE FRANCHISOR SHALL NOT DENY OR CHARGE BACK ANY INCENTIVE
53 PAYMENT OR WARRANTY CLAIM FOR THAT SIX MONTH PERIOD OR ANY EARLIER PERI-
54 OD. THE FRANCHISOR SHALL NOT DENY OR CHARGE BACK ANY INCENTIVE PAYMENT
55 OR WARRANTY CLAIM ON ANY SUBSEQUENT AUDIT IF THE DEALER HAS SUBSTANTIAL-

1 LY COMPLIED WITH THE FRANCHISOR'S REASONABLE RECORDKEEPING OR CLAIMS
2 PROCEDURE.

3 (B) IN CONNECTION WITH A CLAIM FOR WARRANTY REIMBURSEMENTS, THE DEAL-
4 ER'S FAILURE TO DOCUMENT PROPERLY ONE PART OF A WARRANTY REPAIR THAT
5 CONTAINS MORE THAN ONE PART SHALL NOT BE THE BASIS TO CHARGE BACK THE
6 ENTIRE REPAIR. THE FRANCHISOR SHALL NOT DENY OR CHARGE BACK A WARRANTY
7 CLAIM FOR WORK THAT IS PERFORMED OR PARTS THAT ARE REPLACED IN SUBSTAN-
8 TIAL COMPLIANCE WITH THE FRANCHISOR'S REASONABLE RECORDKEEPING OR CLAIMS
9 PROCEDURES EVEN IF DOCUMENTATION FOR ANY WORK PERFORMED AND/OR FOR PARTS
10 THAT ARE REPLACED IN THE SAME REPAIR MAY NOT SUBSTANTIALLY COMPLY WITH
11 THE FRANCHISOR'S REASONABLE RECORDKEEPING OR CLAIMS PROCEDURES.

12 4. A franchisor shall not charge a dealer back subsequent to the
13 payment of a warranty [or], sales [incentive], ADVERTISING OR MARKETING
14 INCENTIVE claim unless a representative of the franchisor has met in
15 person at the dealership, or by telephone, with an officer or employee
16 of the dealer designated by the dealer and explained in detail the basis
17 for each of the proposed charge backs and thereafter given the dealer's
18 representative a reasonable opportunity at the meeting, or during the
19 telephone call, to explain the dealer's position relating to each of the
20 proposed charge backs. In the event the dealer was selected for audit or
21 review on the basis that some or all of the dealer's claims were viewed
22 as excessive in comparison to average, mean or aggregate data accumu-
23 lated by the franchisor, or in relation to claims submitted by a group
24 of other franchisees, the franchisor shall, at or prior to the meeting
25 or telephone call with the dealer's representative, provide the dealer
26 with a written statement containing the basis or methodology upon which
27 the dealer was selected for audit or review.

28 6. A franchisor shall not deny or charge back a sales [incentive],
29 ADVERTISING OR MARKETING INCENTIVE payment made to a dealer unless the
30 claim was materially false or fraudulent or [that] the dealer failed to
31 reasonably substantiate the claim [either] in accordance with the
32 manufacturer's reasonable procedures.

33 7. After all internal dispute resolution processes provided through
34 the franchisor have been resolved, the franchisor shall give notice to
35 the dealer of the final amount of a proposed warranty [or], sales
36 [incentive], ADVERTISING OR MARKETING INCENTIVE charge back. If the
37 dealer institutes an action pursuant to this article within thirty days
38 of receipt of such notice, the proposed charge back shall be stayed,
39 without bond, during the pendency of such action and until the final
40 judgment has been rendered in an adjudicatory proceeding or action as
41 provided in section four hundred sixty-nine of this article. THE FRAN-
42 CHISOR SHALL NOT IMPOSE THE CHARGEBACK, DEBIT THE DEALER'S ACCOUNT, OR
43 OTHERWISE SEEK TO OBTAIN ALL OR ANY PART OF THE CHARGEBACK FUNDS FROM
44 THE DEALER DURING THE THIRTY-DAY PERIOD IN WHICH THE DEALER HAS THE
45 OPPORTUNITY TO FILE AN ACTION AS SET FORTH ABOVE.

46 S 15. Section 467 of the vehicle and traffic law, as amended by chap-
47 ter 490 of the laws of 2008, is amended to read as follows:

48 S 467. Dealership facilities assistance upon termination, cancellation
49 or nonrenewal. Upon a permitted termination, cancellation or nonrenewal
50 by the franchisor, unless such termination, cancellation or nonrenewal
51 is for a reason or reasons set forth in subparagraph three of paragraph
52 (d) of subdivision two of section four hundred sixty-three of this arti-
53 cle, the franchisor shall assume the obligations for any lease of the
54 dealership facilities or arrange for a new lease of the dealership
55 facilities or pay the dealer the lease payments for one year, whatever
56 is less, or negotiate a lease termination for the dealership facilities

1 at the franchisor's expense. If the facilities are owned by the fran-
2 chised motor vehicle dealer, REGARDLESS OF WHETHER THE FACILITIES ARE
3 HELD IN THE NAME OF THE FRANCHISED MOTOR VEHICLE DEALER ENTITY, THE
4 DEALER-OPERATOR PERSONALLY, OR ANOTHER ENTITY CONTROLLED BY THE DEALER-
5 OPERATOR, the franchisor shall pay such dealer a sum equivalent to the
6 reasonable rental value of the dealership facility for one year,
7 provided the franchised motor vehicle dealer shall mitigate damages in
8 the case of an owned facility.

9 S 16. Severability. If any clause, sentence, paragraph, section or
10 part of this act shall be adjudged by any court of competent jurisdic-
11 tion to be invalid and after exhaustion of all further judicial review,
12 the judgment shall not affect, impair or invalidate the remainder there-
13 of, but shall be confined in its operation to the clause, sentence,
14 paragraph, section or part of this act directly involved in the contro-
15 versy in which the judgment shall have been rendered.

16 S 17. This act shall take effect immediately.