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I N   S E N A T E

March 11, 2014

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Introduced by Sen. LIBOUS -- 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 ANY INTEREST IN THE APPLICANT'S FRANCHISE  
4     ENTITY BY A PERSON OR ENTITY DESCRIBED IN PARAGRAPH F OF SUBDIVISION  
5     SEVEN OF THIS SECTION.

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] JULY FIRST, TWO THOU-  
18    SAND SIX. NOTHING IN THIS SECTION SHALL PRECLUDE THE ESTABLISHMENT OF  
19    SUCH FACILITIES NECESSARY TO CONTINUE THE ONGOING OPERATION OF ANY HOLD-  
20    ER OF A CERTIFICATE OF REGISTRATION AUTHORIZED BY THIS SECTION OR OTHER-  
21    WISE APPROVED TO OPERATE TO A FRANCHISOR PROVIDED SUCH ORIGINAL CERTIF-  
22    ICATE OR APPROVAL WAS GRANTED PRIOR TO JULY FIRST, TWO THOUSAND SIX.

23    (II) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, THE COMMIS-  
24    SIONER SHALL NOT ISSUE ANY CERTIFICATE OF REGISTRATION, OR RENEW ANY  
25    CERTIFICATE, UNLESS THE ORIGINAL CERTIFICATE WAS ISSUED BEFORE JULY  
26    FIRST, TWO THOUSAND SIX, TO ANY MOTOR VEHICLE DEALER IN WHICH A FRANCHI-  
27    SOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS  
28    SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE,

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

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OR ANY SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, HAS ACQUIRED, OR POSSESSES, A CONTROLLING INTEREST IN THE FRANCHISE ENTITY EXCEPT:

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

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

S 3. Subdivision 1 of section 463 of the vehicle and traffic law is amended by adding a new paragraph (e) to read as follows:

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

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

(2) BY A PROVISION IN A FRANCHISE AGREEMENT THAT THE DEALER SELL, OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR; OR

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

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

NOTHING IN THIS SECTION SHALL PROHIBIT A FRANCHISOR FROM:

(A) PROVIDING INCENTIVES TO A DEALER THAT MAKES THE VOLUNTARY DECISION TO SELL OR SELL EXCLUSIVELY AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT, INCLUDING, BUT NOT LIMITED TO, GAP PRODUCTS OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, OR

(B) REQUIRING THAT A DEALER THAT SELLS AN EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN, OR SIMILAR PRODUCT THAT IS NOT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, DISCLOSE TO THE CONSUMER THE DISCLOSURES REQUIRED UNDER SECTION SEVEN THOUSAND NINE HUNDRED FIVE OF THE INSURANCE LAW, AND A SEPARATE STATEMENT, ACKNOWLEDGED BY THE CONSUMER, THAT THE EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN OR SIMILAR PRODUCT IS NOT OFFERED, ENDORSED OR SPONSORED BY THE FRANCHISOR, IF THAT IS THE CASE.

S 4. Paragraph (b) 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:

(b) To directly or indirectly coerce or attempt to coerce any franchised motor vehicle dealer to enter into any agreement with such franchisor or officer, agent or other representative thereof, or to do any other act prejudicial to the monetary interests or property rights of said dealer by threatening to [cancel any unexpired contractual agreement existing between such franchisor and] TERMINATE said dealer.

1 Provided, however, that good faith notice to any franchised motor vehi-  
2 cle dealer of said dealer's violation of any terms or provisions of such  
3 franchise shall not constitute a violation of this article.

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

7 (c) (1) To condition the renewal or extension of a franchise on a  
8 franchised motor vehicle dealer's substantial renovation of the dealer's  
9 place of business or on the construction, purchase, acquisition or  
10 rental of a new place of business by the franchised motor vehicle dealer  
11 unless the franchisor has advised the franchised motor vehicle dealer in  
12 writing of its intent to impose such a condition within a reasonable  
13 time prior to the effective date of the proposed date of renewal or  
14 extension (but in no case less than one hundred eighty days) and  
15 provided the franchisor demonstrates the need for such change in the  
16 place of business and the reasonableness of such demand in view of the  
17 need to service the public and the economic conditions existing in the  
18 automobile industry at the time such action would be required of the  
19 franchised motor vehicle dealer. As part of any such condition the fran-  
20 chisor shall agree, in writing, to supply the dealer with a reasonable  
21 quantity and mix of additional new motor vehicles which, as determined  
22 by a reasonable analysis of market conditions, are projected to meet the  
23 sales levels necessary to support the increased overhead incurred by the  
24 franchised motor vehicle dealer by reason of such renovation,  
25 construction, purchase, acquisition or rental of a new place of busi-  
26 ness.

27 (2) TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO PURCHASE GOODS,  
28 BUILDING MATERIALS, OR SERVICES FOR THE DEALER'S PLACE OF BUSINESS,  
29 INCLUDING, BUT NOT LIMITED TO, OFFICE FURNITURE, DESIGN FEATURES, FLOOR-  
30 ING, AND WALL COVERINGS, FROM A VENDOR CHOSEN BY THE FRANCHISOR IF  
31 GOODS, BUILDING MATERIALS, OR SERVICES OF SUBSTANTIALLY SIMILAR QUALITY  
32 AND DESIGN ARE AVAILABLE FROM OTHER SOURCES, PROVIDED, HOWEVER, THAT THE  
33 GOODS OR BUILDING MATERIALS ARE NOT SUBJECT TO THE FRANCHISOR'S INTEL-  
34 LECTUAL PROPERTY OR TRADEMARK RIGHTS AND THE FRANCHISED MOTOR VEHICLE  
35 DEALER HAS RECEIVED THE FRANCHISOR'S APPROVAL, WHICH APPROVAL MAY NOT BE  
36 UNREASONABLY WITHHELD. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO  
37 ALLOW A FRANCHISED MOTOR VEHICLE DEALER TO IMPAIR OR ELIMINATE A  
38 FRANCHISOR'S INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS AND TRADE DRESS  
39 USAGE GUIDELINES, OR TO IMPAIR OTHER INTELLECTUAL PROPERTY INTERESTS  
40 OWNED OR CONTROLLED BY THE FRANCHISOR.

41 (3) EXCEPT AS NECESSARY TO COMPLY WITH A HEALTH OR SAFETY LAW, OR TO  
42 COMPLY WITH A TECHNOLOGY REQUIREMENT, WHICH IS NECESSARY TO SELL OR  
43 SERVICE A MOTOR VEHICLE THAT THE FRANCHISED MOTOR VEHICLE DEALER IS  
44 AUTHORIZED OR LICENSED BY THE FRANCHISOR TO SELL OR SERVICE, TO REQUIRE  
45 A FRANCHISED MOTOR VEHICLE DEALER TO CONSTRUCT A NEW DEALER FACILITY OR  
46 SUBSTANTIALLY ALTER OR REMODEL AN EXISTING DEALER FACILITY BEFORE THE  
47 DATE THAT IS TEN YEARS AFTER THE DATE THE CONSTRUCTION OF THE NEW DEALER  
48 FACILITY OR SUCH ALTERATION OR REMODELING AT THAT LOCATION WAS COMPLETED  
49 AND SHALL CONTINUE WITH ANY SUCCESSOR OWNER PROVIDED SUCH OWNER HAS BEEN  
50 DESIGNATED AND APPROVED BY THE FRANCHISOR IN THE FRANCHISE AGREEMENT,  
51 AND SUCH CONSTRUCTION, ALTERATION OR REMODELING SUBSTANTIALLY COMPLIED  
52 WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR PLANS THAT THE FRANCHISOR  
53 PROVIDED AT THE TIME THE CONSTRUCTION, ALTERATION, OR REMODELING WAS  
54 COMPLETED.

55 (I) AS USED IN THIS SUBPARAGRAPH, "SUBSTANTIALLY ALTER":

1 (A) REFERS TO AN ALTERATION THAT HAS A MAJOR IMPACT ON THE ARCHITEC-  
2 TURAL FEATURES, CHARACTERISTICS, OR INTEGRITY OF A STRUCTURE OR LOT; AND

3 (B) DOES NOT INCLUDE ROUTINE MAINTENANCE, SUCH AS INTERIOR PAINTING,  
4 REASONABLY NECESSARY TO KEEP A DEALERSHIP FACILITY IN ATTRACTIVE CONDI-  
5 TION.

6 (II) NOTHING IN THIS PARAGRAPH (C) SHALL PROHIBIT A FRANCHISOR FROM:

7 (A) CONTINUING A FACILITY IMPROVEMENT PROGRAM THAT IS IN EFFECT AS OF  
8 THE EFFECTIVE DATE OF THIS PARAGRAPH WITH MORE THAN ONE FRANCHISED MOTOR  
9 VEHICLE DEALER IN THE STATE OR TO RENEWING OR MODIFYING SUCH PROGRAM; OR

10 (B) PROVIDING LUMP SUM OR REGULARLY-SCHEDULED PAYMENTS TO ASSIST A  
11 FRANCHISED MOTOR VEHICLE DEALER IN MAKING A FACILITY IMPROVEMENT,  
12 INCLUDING CONSTRUCTION, ALTERATION OR REMODELING, OR INSTALLING SIGNAGE  
13 OR A FRANCHISOR IMAGE ELEMENT;

14 (C) PROVIDING REIMBURSEMENT TO A FRANCHISED MOTOR VEHICLE DEALER ON  
15 REASONABLE, WRITTEN TERMS FOR A PORTION OF THE FRANCHISED MOTOR VEHICLE  
16 DEALER'S COST OF MAKING A FACILITY IMPROVEMENT, INCLUDING CONSTRUCTION,  
17 ALTERATION OR REMODELING, THE PURCHASE OF GOODS, BUILDING MATERIALS OR  
18 SERVICES, OR INSTALLING SIGNAGE OR A FRANCHISOR IMAGE ELEMENT.

19 (4) TO DENY A FRANCHISED MOTOR VEHICLE DEALER A FRANCHISOR IMAGE  
20 ELEMENT PAYMENT, INCENTIVE OR ALLOWANCE IF THE FRANCHISED MOTOR VEHICLE  
21 DEALER, WITH THE FRANCHISOR'S APPROVAL, BEGAN CONSTRUCTION, ALTERATIONS  
22 OR REMODELING INTENDED TO COMPLY WITH THE FRANCHISOR'S IMAGE ELEMENT  
23 PROGRAM BEFORE THE FRANCHISOR SUBSTANTIALLY CHANGED OR TERMINATED THE  
24 PROGRAM PRIOR TO THE PROGRAM'S SCHEDULED ENDING DATE PROVIDED THE DEALER  
25 IS OTHERWISE ELIGIBLE FOR PROGRAM PAYMENTS AND PROVIDED THAT AFTER SUCH  
26 SUBSTANTIAL CHANGE OR TERMINATION, THE COMPENSATION PAYABLE TO THE DEAL-  
27 ER SHALL BE LIMITED TO IMAGE ELEMENT PAYMENTS, INCENTIVES OR ALLOWANCES  
28 THAT THE DEALER WOULD HAVE EARNED THROUGH PROGRAM'S SCHEDULED ENDING  
29 DATE, PROVIDED THAT THE DEALER COMPLIES WITH ALL PROGRAM REQUIREMENTS,  
30 AND PROVIDED, FURTHER, THAT SUCH PROGRAM OR PAYMENTS ARE NOT OTHERWISE  
31 PROHIBITED BY LAW OR REGULATION.

32 (5) TO REQUIRE OR ATTEMPT TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER  
33 TO ESTABLISH OR MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES UNLESS JUSTI-  
34 FIED BY CURRENT AND REASONABLY EXPECTED FUTURE ECONOMIC CONDITIONS  
35 EXISTING IN THE DEALER'S RELEVANT MARKET AREA AT THE TIME THE REQUEST  
36 FOR EXCLUSIVE FACILITIES IS MADE; PROVIDED THAT THE FOREGOING SHALL NOT  
37 RESTRICT THE TERMS AND CONDITIONS OF ANY AGREEMENT FOR WHICH THE DEALER  
38 HAS VOLUNTARILY ACCEPTED VALUABLE CONSIDERATION SEPARATE FROM THE FRAN-  
39 CHISED MOTOR VEHICLE DEALER'S RIGHT TO SELL AND SERVICE MOTOR VEHICLES  
40 FOR THE FRANCHISOR. THE FACT THAT LOCAL MARKET SHARE, FACING COMPETITIVE  
41 BRAND DEALERSHIPS HAVE EXCLUSIVE DEALERSHIP FACILITIES SHALL CONSTITUTE  
42 EVIDENCE THAT CURRENT ECONOMIC CONDITIONS MAY JUSTIFY THE REQUIREMENT TO  
43 ESTABLISH AND MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES.

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

48 S 6. Paragraph (o) of subdivision 2 of section 463 of the vehicle and  
49 traffic law, as amended by chapter 490 of the laws of 2008, is amended  
50 to read as follows:

51 (o) (1) Upon a termination of a franchise by a franchisor or fran-  
52 chised motor vehicle dealer under this article, to refuse to accept a  
53 return of new and unused current model motor vehicle inventory which has  
54 been acquired from the franchisor, new and unused noncurrent model motor  
55 vehicle inventory which has been acquired from the franchisor within one  
56 hundred [twenty] EIGHTY days of the effective date of the termination;

1 supplies, parts, equipment, SIGNAGE, SPECIAL TOOLS, and furnishings  
2 purchased from the franchisor or its approved sources [and special  
3 tools]. The obligation of the franchisor, EXCEPT WITH RESPECT TO SIGNAGE  
4 shall be limited to the repurchase of the above property which is unal-  
5 tered and undamaged, in good and useable condition, and, in the case of  
6 supplies, parts and equipment to those items which are currently listed  
7 in the franchisor's supplies and parts list. IN THE CASE OF SIGNAGE,  
8 THE FRANCHISOR SHALL BE OBLIGATED TO REPURCHASE ANY FRANCHISOR REQUIRED  
9 SIGNAGE, PURCHASED WITHIN THE FIVE YEARS PRECEDING TERMINATION AND WHICH  
10 IS IN GOOD AND USEABLE CONDITION LESS DEPRECIATION AS SET FORTH IN THE  
11 INTERNAL REVENUE CODE OF ONE-FIFTEENTH OF THE INITIAL COST PER YEAR  
12 STARTING THE YEAR FOLLOWING THE DEALER'S ACQUISITION OF THE ITEM.  
13 Furthermore, the obligation of the franchisor to repurchase supplies  
14 upon a termination, cancellation or nonrenewal by a franchised motor  
15 vehicle dealer shall be limited to supplies mandated by the franchisor.  
16 Parts eligible for repurchase shall include parts which have been renum-  
17 bered in the current parts list but which are identical in design and  
18 material to the currently numbered part. The return rights afforded the  
19 franchised motor vehicle dealer under the provisions of the paragraph  
20 shall be in addition to those, if any, provided in the franchise agree-  
21 ment.

22 (2) The franchisor shall pay fair and reasonable compensation for the  
23 above described property upon repurchase. In the case of new motor vehi-  
24 cle inventory, accessories and parts, fair and reasonable compensation  
25 shall in no instance be less than the net acquisition price paid by the  
26 franchised motor vehicle dealer to the franchisor or its approved sourc-  
27 es. Upon a termination of a franchise by a franchisor, within thirty  
28 days of such termination, the franchisor shall send to the franchised  
29 motor vehicle dealer instructions on the methodology by which the fran-  
30 chised motor vehicle dealer must ship the above described property to  
31 the franchisor; the franchisor shall then remit payment for such proper-  
32 ty to the franchised motor vehicle dealer within sixty days after  
33 receipt of such property.

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

38 (4) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS SUBDIVISION, IN THE  
39 EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO TERMINATION OF A LINE  
40 MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER FOR ANY FRANCHISOR  
41 REQUIRED FACILITY CONSTRUCTION, ALTERATIONS OR REMODELING, OR  
42 CONSTRUCTION, ALTERATIONS OR REMODELING REQUIRED FOR PARTICIPATION IN  
43 ANY INCENTIVE PROGRAMS WHICH WERE COMPLETED BY THE DEALER WITHIN THREE  
44 YEARS OF THE DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE  
45 MAKE. FOR THE PURPOSES OF THIS SECTION, COMPLETION SHALL BE DEEMED TO  
46 OCCUR AT THE LATER OF THE FRANCHISOR'S FINAL APPROVAL OF THE  
47 CONSTRUCTION, ALTERATIONS, OR REMODELING OR THE ISSUANCE OF A CERTIF-  
48 ICATE OF OCCUPANCY. THE COMPENSATION REQUIRED UNDER THIS SECTION SHALL  
49 BE IN AN AMOUNT EQUAL TO THE DEALER'S COST FOR THE FACILITY UPGRADES  
50 LESS ANY ASSISTANCE PROVIDED TO THE DEALER WITHIN THREE YEARS OF THE  
51 DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE MAKE BY THE  
52 MANUFACTURER OR DISTRIBUTOR, AND LESS THE AMOUNT FOR DEPRECIATION AS SET  
53 FORTH IN INTERNAL REVENUE CODE OF ONE THIRTY-NINTH OF THE TOTAL INITIAL  
54 COST OF SUCH CONSTRUCTION, ALTERATIONS, OR REMODELING PER YEAR STARTING  
55 THE YEAR FOLLOWING THE DEALER'S COMPLETION OF THE FACILITY CONSTRUCTION,  
56 ALTERATIONS, OR REMODELING.

(5) IN ADDITION TO THE REQUIREMENTS OF SUBPARAGRAPH FOUR OF THIS PARAGRAPH, IN THE EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO A TERMINATION OF A LINE MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER IN AN AMOUNT EQUAL TO THE AMOUNT REMAINING ON THE TERMINATED DEALER'S MANAGEMENT COMPUTER SYSTEM LEASE OR CONTRACT, OR ONE YEAR OF LEASE PAYMENTS, WHICHEVER IS LESS IF THE DEALER MANAGEMENT COMPUTER SYSTEM WILL NO LONGER BE UTILIZED AS A RESULT OF THE TERMINATION AND THE FRANCHISOR REQUIRED THE DEALER TO UTILIZE THE PARTICULAR DEALER MANAGEMENT COMPUTER SYSTEM.

S 7. Paragraph (z) 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:

(z) To [charge back or otherwise hold liable a franchised motor vehicle dealer for sales incentives or charges related to a] REFUSE TO ALLOCATE, SELL, OR DELIVER MOTOR VEHICLES, TO CHARGE BACK OR WITHHOLD PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE FRANCHISEE IS OTHERWISE ELIGIBLE, OR TO TAKE OR THREATEN TO TAKE ANY ADVERSE ACTION AGAINST A FRANCHISED MOTOR VEHICLE DEALER, IN CONNECTION WITH OR AS A RESULT OF ANY new motor vehicle sold by the franchised motor vehicle dealer and subsequently exported, providing such dealer can demonstrate that he exercised due diligence and that the sale was made in good faith [and without knowledge] INCLUDING THAT THE DEALER DID NOT KNOW NOR REASONABLY SHOULD HAVE KNOWN of the purchaser's intention to export the motor vehicle[, or that such dealer reasonably relied on approvals from the franchisor to complete a sale]. A franchised motor vehicle dealer which causes a new motor vehicle to be registered in this state or in a foreign state and causes to be collected the appropriate sales and use tax, OR THAT REASONABLY RELIED ON A FRANCHISOR TO COMPLETE A SALE shall be presumed to have exercised GOOD FAITH AND due diligence. PRIOR TO TAKING AN ADVERSE ACTION, INCLUDING A CHARGE BACK, AS A RESULT OF AN EXPORT, A FRANCHISOR SHALL PROVIDE WRITTEN NOTICE TO THE FRANCHISED MOTOR VEHICLE DEALER OF THE ADVERSE ACTION, AND, IF A CHARGE BACK, THE SPECIFIC AMOUNT OF THE CHARGE BACK, AND THE VEHICLE OR VEHICLES AT ISSUE. A DEALER SHALL NOT BE LIABLE FOR THE DELIVERY OF ANY VEHICLE SOLD THROUGH A FRANCHISOR'S FLEET PROGRAM FOR ANY SUCH DELIVERY IN WHICH THE SALE OR LEASE WAS NOT INITIATED OR NEGOTIATED BY THE DEALER AND ITS FUNCTION WAS TO PROVIDE DELIVERY ON BEHALF OF THE FRANCHISOR.

S 8. Subdivision 2 of section 463 of the vehicle and traffic law is amended by adding three new paragraphs (ii), (jj) and (kk) to read as follows:

(II) TO ALLOCATE NEW MOTOR VEHICLES TO A FRANCHISED MOTOR VEHICLE DEALER BASED ON A PROGRAM THAT DIFFERENTIATES BETWEEN VEHICLE SALES BY A FRANCHISED MOTOR VEHICLE DEALER WITHIN A TERRITORY OR GEOGRAPHIC AREA ASSIGNED TO SUCH DEALER AND VEHICLE SALES OUTSIDE OF SUCH TERRITORY OR GEOGRAPHIC AREA.

(JJ) TO UTILIZE A DISCRIMINATORY, UNREASONABLE, ARBITRARY OR UNFAIR SYSTEM OF ALLOCATION OF NEW MOTOR VEHICLE INVENTORY. A FRANCHISOR SHALL COMMUNICATE ITS SYSTEM OF ALLOCATION IN WRITING IN A CLEAR AND CONCISE MANNER TO ALL SAME LINE-MAKE DEALERS LOCATED IN THIS STATE.

(KK) TO REFUSE TO DISCLOSE TO ANY FRANCHISED MOTOR VEHICLE DEALER THE MANNER AND MODE OF DISTRIBUTION OF VEHICLES IN THE FRANCHISED MOTOR VEHICLE DEALER'S LINE MAKE WITHIN THE STATE, AND AN EXPLANATION OF THE ALLOCATION SYSTEM, INCLUDING THE METHODOLOGY USED, IN A CLEAR AND COMPREHENSIBLE FORM.

1 S 9. Subdivision 1 of section 465 of the vehicle and traffic law, as  
2 amended by chapter 490 of the laws of 2008, is amended to read as  
3 follows:

4 1. Every franchisor shall properly fulfill any warranty agreement  
5 and/or franchisor's service contract and shall compensate each of its  
6 franchised motor vehicle dealers for warranty parts and labor in amounts  
7 which reflect [fair and] reasonable compensation for such work. All  
8 warranty claims and/or claims under a franchisor's service contract made  
9 by franchised motor vehicle dealers shall be paid within thirty days  
10 following their approval. For parts reimbursement, other than compo-  
11 nents, systems, fixtures, appliances, furnishings, accessories and  
12 features of a house coach that are designed, used and maintained prima-  
13 rily for nonvehicular residential purposes, and for labor reimbursement,  
14 [fair and] reasonable compensation shall not be less than the price and  
15 rate charged by the franchised motor vehicle dealer for like services to  
16 non-warranty and/or non-service contract customers. For purposes of this  
17 section, the price and rate charged by the franchised motor vehicle  
18 dealer for parts may be established by submitting to the franchisor one  
19 hundred sequential nonwarranty customer-paid service repair orders or  
20 the number of sequential nonwarranty customer-paid service repair orders  
21 written within a ninety day period, whichever is less, covering repairs  
22 made no more than one hundred eighty days before the submission, and  
23 declaring the price and rate, including average markup for the fran-  
24 chised motor vehicle dealer as its reimbursement rate. The reimbursement  
25 rate so declared shall go into effect thirty days following the declara-  
26 tion and shall be presumed to be [fair and] reasonable, however a fran-  
27 chisor may rebut such presumption by showing that such rate so estab-  
28 lished is [unfair and] unreasonable in light of the practices of all  
29 other franchised motor vehicle dealers in the vicinity offering the same  
30 line make. The franchised motor vehicle dealer shall not request a  
31 change in the reimbursement rate more often than [twice] ONCE in each  
32 calendar year. In establishing the labor reimbursement rate, the fran-  
33 chisor shall not require a franchised motor vehicle dealer to establish  
34 said rate by a methodology, or by requiring information, that is unduly  
35 burdensome or time consuming to provide, including, but not limited to,  
36 a transaction by transaction calculation. FOR THE PURPOSES OF THIS  
37 SECTION, THE FOLLOWING PARTS OR TYPES OF REPAIRS SHALL BE EXCLUDED FROM  
38 THE PARTS AND/OR LABOR CALCULATIONS AND THE FRANCHISOR'S REIMBURSEMENT  
39 REQUIREMENTS UNDER THIS SECTION: (A) PARTS SOLD AT WHOLESALE; (B) TIRES;  
40 (C) ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY  
41 SUCH AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS;  
42 (D) VEHICLE RECONDITIONING; AND (E) BATTERIES REPLACED AS PART OF A  
43 ROUTINE MAINTENANCE OPERATION. IF THE FRANCHISOR REJECTS THE DECLARATION  
44 OR ATTEMPTS TO REBUT THE DECLARATION BECAUSE OF AN ERROR IN THE DEALER'S  
45 SUBMISSION, THE FRANCHISOR SHALL IDENTIFY WITH SPECIFICITY THE REASON  
46 FOR REJECTION AND IDENTIFY THE ERROR OR ERRORS WITHIN THE SUBMISSION. IN  
47 THE EVENT THE FRANCHISOR REJECTS OR REBUTS THE DEALER'S INITIAL DECLARA-  
48 TION, THE DEALER SHALL HAVE THE OPPORTUNITY, WITHIN SIXTY DAYS TO RESUB-  
49 MIT THE FULL AND CORRECTED DECLARATION ADDRESSING THE ALLEGED ERROR(S)  
50 IDENTIFIED BY THE FRANCHISOR. THE FRANCHISOR SHALL RESPOND WITHIN SIXTY  
51 DAYS. THE ONE HUNDRED EIGHTY DAY REQUIREMENT FOR THE REPAIR ORDERS SHALL  
52 BE STAYED FROM THE DATE OF INITIAL SUBMISSION. IN ANY ACTION OR PROCEED-  
53 ING HELD PURSUANT TO THIS SUBDIVISION, THE FRANCHISOR SHALL HAVE THE  
54 BURDEN OF PROVING THAT THE RATE DECLARED BY THE DEALER WAS UNREASONABLE  
55 AS DESCRIBED IN THIS SUBDIVISION AND THAT THE PROPOSED ADJUSTMENT OF THE

1 AVERAGE PERCENTAGE MARKUP OR REJECTION OF THE SUBMISSION IS REASONABLE  
2 PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

3 S 10. Subdivisions 3, 4, 6 and 7 of section 465 of the vehicle and  
4 traffic law, as added by chapter 490 of the laws of 2008, are amended to  
5 read as follows:

6 3. No franchisor shall conduct an audit or charge back any warranty  
7 [or] PAYMENT, OR ANY sales [incentive payment], ADVERTISING OR MARKETING  
8 INCENTIVE PAYMENT ("INCENTIVE PAYMENTS") or otherwise hold a franchised  
9 motor vehicle dealer liable for charges more than one year, or five  
10 years in the case of fraud, after the date the franchisor made such  
11 payment to the dealer, WITHOUT PROVIDING A NOTICE TO A FRANCHISED MOTOR  
12 VEHICLE DEALER OF, OR A MECHANISM THAT MAKES AVAILABLE TO A FRANCHISED  
13 MOTOR VEHICLE DEALER, INFORMATION REGARDING ERRORS OR ISSUES REGARDING  
14 SUCH DEALER'S WARRANTY, SALES, ADVERTISING OR MARKETING INCENTIVE CLAIMS  
15 THAT ARE THE SUBJECT OF THE AUDIT OR CHARGEBACK. NOTHING IN THIS SECTION  
16 SHALL BE DEEMED TO GRANT A DEALER THE RIGHT TO ACCESS ANY FILE HELD BY  
17 THE MANUFACTURER EVALUATING SUCH DEALER. IN CONNECTION WITH A CLAIM FOR  
18 WARRANTY REIMBURSEMENTS, THE DEALER'S FAILURE TO DOCUMENT PROPERLY ONE  
19 PART OF A WARRANTY REPAIR THAT CONTAINS MORE THAN ONE PART SHALL NOT BE  
20 THE SOLE BASIS TO CHARGE BACK THE ENTIRE REPAIR. A MANUFACTURER SHALL  
21 NOT DENY A CLAIM SUBMITTED UNDER THIS SECTION BASED SOLELY ON A DEALER'S  
22 INCIDENTAL FAILURE TO COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIRE-  
23 MENT, A CLERICAL ERROR, OR OTHER ADMINISTRATIVE TECHNICALITY, PROVIDED  
24 THAT THE FAILURE DOES NOT CALL INTO QUESTION THE LEGITIMACY OF THE CLAIM  
25 AND THAT THE DEALER CORRECTS THE CLAIM ACCORDING TO FRANCHISOR GUIDE-  
26 LINES.

27 4. A franchisor shall not charge a dealer back subsequent to the  
28 payment of a warranty [or], sales [incentive], ADVERTISING OR MARKETING  
29 INCENTIVE claim unless a representative of the franchisor has met in  
30 person at the dealership, or by telephone, with an officer or employee  
31 of the dealer designated by the dealer and explained in detail the basis  
32 for each of the proposed charge backs and thereafter given the dealer's  
33 representative a reasonable opportunity at the meeting, or during the  
34 telephone call, to explain the dealer's position relating to each of the  
35 proposed charge backs. In the event the dealer was selected for audit or  
36 review on the basis that some or all of the dealer's claims were viewed  
37 as excessive in comparison to average, mean or aggregate data accumu-  
38 lated by the franchisor, or in relation to claims submitted by a group  
39 of other franchisees, the franchisor shall, at or prior to the meeting  
40 or telephone call with the dealer's representative, provide the dealer  
41 with a written statement containing the basis or methodology upon which  
42 the dealer was selected for audit or review.

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

48 7. After all internal dispute resolution processes provided through  
49 the franchisor have been resolved, the franchisor shall give notice to  
50 the dealer of the final amount of a proposed warranty [or], sales  
51 [incentive], ADVERTISING OR MARKETING INCENTIVE charge back. If the  
52 dealer institutes an action pursuant to this article within thirty days  
53 of receipt of such notice, the proposed charge back shall be stayed,  
54 without bond, during the pendency of such action and until the final  
55 judgment has been rendered in an adjudicatory proceeding or action as  
56 provided in section four hundred sixty-nine of this article. THE FRAN-



1 CHISOR SHALL NOT IMPOSE THE CHARGEBACK, DEBIT THE DEALER'S ACCOUNT, OR  
2 OTHERWISE SEEK TO OBTAIN ALL OR ANY PART OF THE CHARGEBACK FUNDS FROM  
3 THE DEALER DURING THE THIRTY-DAY PERIOD IN WHICH THE DEALER HAS THE  
4 OPPORTUNITY TO FILE AN ACTION AS SET FORTH ABOVE.

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

12 S 12. This act shall take effect immediately.