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I N A S S E M B L Y

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Introduced by M. of A. GANTT, HEASTIE, JAFFEE, McDONALD, ABINANTI, TEDISCO, WEISENBERG, FAHY, CUSICK, PRETLOW, SCHIMEL, CRESPO, McDONOUGH, WEPRIN, HAWLEY, SANTABARBARA, WALTER -- Multi-Sponsored by -- M. of A. CROUCH, DenDEKKER, MAYER, NOLAN, PERRY, STECK, THIELE -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the vehicle and traffic law, in relation to automobile manufacturers and unfair 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 AND SUBPARAGRAPH (III) OF THIS
11 PARAGRAPH:
12 (I) The commissioner shall not issue any certificate of registration
13 authorized by this section to any franchisor, MANUFACTURER, DISTRIBUTOR,
14 DISTRIBUTOR BRANCH OR FACTORY BRANCH, as such [term is] TERMS ARE
15 defined in section four hundred sixty-two of this title, OR TO ANY
16 SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, except that the
17 commissioner may renew such certificate previously issued or otherwise

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

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1 approved to operate to a franchisor prior to [May second, two thousand
2 two] JULY FIRST, TWO THOUSAND SIX. NOTHING IN THIS SECTION SHALL
3 PRECLUDE THE ESTABLISHMENT OF SUCH FACILITIES NECESSARY TO CONTINUE THE
4 ONGOING OPERATION OF ANY HOLDER OF A CERTIFICATE OF REGISTRATION AUTHOR-
5 IZED BY THIS SECTION OR OTHERWISE APPROVED TO OPERATE TO A FRANCHISOR
6 PROVIDED SUCH ORIGINAL CERTIFICATE OR APPROVAL WAS GRANTED PRIOR TO JULY
7 FIRST, TWO THOUSAND SIX.

8 (II) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, THE COMMIS-
9 SIONER SHALL NOT ISSUE ANY CERTIFICATE OF REGISTRATION, OR RENEW ANY
10 CERTIFICATE, UNLESS THE ORIGINAL CERTIFICATE WAS ISSUED BEFORE JULY
11 FIRST, TWO THOUSAND SIX, TO ANY MOTOR VEHICLE DEALER IN WHICH A FRANCHI-
12 SOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS
13 SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE,
14 OR ANY SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, HAS ACQUIRED,
15 OR POSSESSES, A CONTROLLING INTEREST IN THE FRANCHISE ENTITY EXCEPT:

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

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

30 (III) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PARAGRAPH OR ANY
31 PROVISION OF PARAGRAPH (BB) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED
32 SIXTY-THREE OF THIS TITLE, THE COMMISSIONER MAY RENEW ANY CERTIFICATE OF
33 REGISTRATION THAT WAS ISSUED TO A FRANCHISOR, MANUFACTURER, DISTRIBUTOR,
34 DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS SUCH TERMS ARE DEFINED IN
35 SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE, OR TO ANY SUBSIDIARY,
36 AFFILIATE OR CONTROLLED ENTITY THEREOF, PRIOR TO MARCH TWENTY-SIXTH, TWO
37 THOUSAND FOURTEEN; PROVIDED, HOWEVER, THAT SUCH FRANCHISOR, MANUFACTUR-
38 ER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH, OR ANY SUBSID-
39 IARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, IS A MANUFACTURER THAT
40 MANUFACTURES OR ASSEMBLES EXCLUSIVELY ZERO EMISSIONS VEHICLES, OR IS A
41 SUBSIDIARY, AFFILIATE, OR CONTROLLED ENTITY OF SUCH A MANUFACTURER; AND
42 PROVIDED FURTHER THAT A CONTROLLING INTEREST IN SUCH ORIGINAL FRANCHI-
43 SOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH OR
44 ANY SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY WAS NOT TRANSFERRED, SOLD
45 OR CONVEYED TO ANOTHER PERSON OR ENTITY, OTHER THAN TO A SUBSIDIARY,
46 AFFILIATE OR CONTROLLED ENTITY OF SUCH FRANCHISOR, MANUFACTURER,
47 DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH. FOR PURPOSES OF THIS
48 PARAGRAPH, ZERO EMISSION VEHICLES SHALL HAVE THE SAME MEANING AS UNDER
49 PART TWO HUNDRED EIGHTEEN OF TITLE SIX OF THE NEW YORK CODE OF RULES AND
50 REGULATIONS.

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

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

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

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

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

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

13 NOTHING IN THIS SECTION SHALL PROHIBIT A FRANCHISOR FROM:

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

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

26 S 4. Paragraph (b) 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 (b) To directly or indirectly coerce or attempt to coerce any fran-
30 chised motor vehicle dealer to enter into any agreement with such fran-
31 chisor or officer, agent or other representative thereof, or to do any
32 other act prejudicial to the monetary interests or property rights of
33 said dealer by threatening to [cancel any unexpired contractual agree-
34 ment existing between such franchisor and] TERMINATE said dealer.
35 Provided, however, that good faith notice to any franchised motor vehi-
36 cle dealer of said dealer's violation of any terms or provisions of such
37 franchise shall not constitute a violation of this article.

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

41 (c) (1) To condition the renewal or extension of a franchise on a
42 franchised motor vehicle dealer's substantial renovation of the dealer's
43 place of business or on the construction, purchase, acquisition or
44 rental of a new place of business by the franchised motor vehicle dealer
45 unless the franchisor has advised the franchised motor vehicle dealer in
46 writing of its intent to impose such a condition within a reasonable
47 time prior to the effective date of the proposed date of renewal or
48 extension (but in no case less than one hundred eighty days) and
49 provided the franchisor demonstrates the need for such change in the
50 place of business and the reasonableness of such demand in view of the
51 need to service the public and the economic conditions existing in the
52 automobile industry at the time such action would be required of the
53 franchised motor vehicle dealer. As part of any such condition the fran-
54 chisor shall agree, in writing, to supply the dealer with a reasonable
55 quantity and mix of additional new motor vehicles which, as determined
56 by a reasonable analysis of market conditions, are projected to meet the

1 sales levels necessary to support the increased overhead incurred by the
2 franchised motor vehicle dealer by reason of such renovation,
3 construction, purchase, acquisition or rental of a new place of busi-
4 ness.

5 (2) TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO PURCHASE GOODS,
6 BUILDING MATERIALS, OR SERVICES FOR THE DEALER'S PLACE OF BUSINESS,
7 INCLUDING, BUT NOT LIMITED TO, OFFICE FURNITURE, DESIGN FEATURES, FLOOR-
8 ING, AND WALL COVERINGS, FROM A VENDOR CHOSEN BY THE FRANCHISOR IF
9 GOODS, BUILDING MATERIALS, OR SERVICES OF SUBSTANTIALLY SIMILAR QUALITY
10 AND DESIGN ARE AVAILABLE FROM OTHER SOURCES, PROVIDED, HOWEVER, THAT THE
11 GOODS OR BUILDING MATERIALS ARE NOT SUBJECT TO THE FRANCHISOR'S INTEL-
12 LECTUAL PROPERTY OR TRADEMARK RIGHTS AND THE FRANCHISED MOTOR VEHICLE
13 DEALER HAS RECEIVED THE FRANCHISOR'S APPROVAL, WHICH APPROVAL MAY NOT BE
14 UNREASONABLY WITHHELD. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO
15 ALLOW A FRANCHISED MOTOR VEHICLE DEALER TO IMPAIR OR ELIMINATE A
16 FRANCHISOR'S INTELLECTUAL PROPERTY OR TRADEMARK RIGHTS AND TRADE DRESS
17 USAGE GUIDELINES, OR TO IMPAIR OTHER INTELLECTUAL PROPERTY INTERESTS
18 OWNED OR CONTROLLED BY THE FRANCHISOR.

19 (3) EXCEPT AS NECESSARY TO COMPLY WITH A HEALTH OR SAFETY LAW, OR TO
20 COMPLY WITH A TECHNOLOGY REQUIREMENT, WHICH IS NECESSARY TO SELL OR
21 SERVICE A MOTOR VEHICLE THAT THE FRANCHISED MOTOR VEHICLE DEALER IS
22 AUTHORIZED OR LICENSED BY THE FRANCHISOR TO SELL OR SERVICE, TO REQUIRE
23 A FRANCHISED MOTOR VEHICLE DEALER TO CONSTRUCT A NEW DEALER FACILITY OR
24 SUBSTANTIALLY ALTER OR REMODEL AN EXISTING DEALER FACILITY BEFORE THE
25 DATE THAT IS TEN YEARS AFTER THE DATE THE CONSTRUCTION OF THE NEW DEALER
26 FACILITY OR SUCH ALTERATION OR REMODELING AT THAT LOCATION WAS COMPLETED
27 AND SHALL CONTINUE WITH ANY SUCCESSOR OWNER PROVIDED SUCH OWNER HAS BEEN
28 DESIGNATED AND APPROVED BY THE FRANCHISOR IN THE FRANCHISE AGREEMENT,
29 AND SUCH CONSTRUCTION, ALTERATION OR REMODELING SUBSTANTIALLY COMPLIED
30 WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR PLANS THAT THE FRANCHISOR
31 PROVIDED AT THE TIME THE CONSTRUCTION, ALTERATION, OR REMODELING WAS
32 COMPLETED.

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

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

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

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

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

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

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

52 (4) TO DENY A FRANCHISED MOTOR VEHICLE DEALER A FRANCHISOR IMAGE
53 ELEMENT PAYMENT, INCENTIVE OR ALLOWANCE IF THE FRANCHISED MOTOR VEHICLE
54 DEALER, WITH THE FRANCHISOR'S APPROVAL, BEGAN CONSTRUCTION, ALTERATIONS
55 OR REMODELING INTENDED TO COMPLY WITH THE FRANCHISOR'S IMAGE ELEMENT
56 PROGRAM BEFORE THE FRANCHISOR SUBSTANTIALLY CHANGED OR TERMINATED THE

1 PROGRAM PRIOR TO THE PROGRAM'S SCHEDULED ENDING DATE PROVIDED THE DEALER
2 IS OTHERWISE ELIGIBLE FOR PROGRAM PAYMENTS AND PROVIDED THAT AFTER SUCH
3 SUBSTANTIAL CHANGE OR TERMINATION, THE COMPENSATION PAYABLE TO THE DEAL-
4 ER SHALL BE LIMITED TO IMAGE ELEMENT PAYMENTS, INCENTIVES OR ALLOWANCES
5 THAT THE DEALER WOULD HAVE EARNED THROUGH PROGRAM'S SCHEDULED ENDING
6 DATE, PROVIDED THAT THE DEALER COMPLIES WITH ALL PROGRAM REQUIREMENTS,
7 AND PROVIDED, FURTHER, THAT SUCH PROGRAM OR PAYMENTS ARE NOT OTHERWISE
8 PROHIBITED BY LAW OR REGULATION.

9 (5) TO REQUIRE OR ATTEMPT TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER
10 TO ESTABLISH OR MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES UNLESS JUSTI-
11 FIED BY CURRENT AND REASONABLY EXPECTED FUTURE ECONOMIC CONDITIONS
12 EXISTING IN THE DEALER'S RELEVANT MARKET AREA AT THE TIME THE REQUEST
13 FOR EXCLUSIVE FACILITIES IS MADE; PROVIDED THAT THE FOREGOING SHALL NOT
14 RESTRICT THE TERMS AND CONDITIONS OF ANY AGREEMENT FOR WHICH THE DEALER
15 HAS VOLUNTARILY ACCEPTED VALUABLE CONSIDERATION SEPARATE FROM THE FRAN-
16 CHISED MOTOR VEHICLE DEALER'S RIGHT TO SELL AND SERVICE MOTOR VEHICLES
17 FOR THE FRANCHISOR. THE FACT THAT LOCAL MARKET SHARE, FACING COMPETITIVE
18 BRAND DEALERSHIPS HAVE EXCLUSIVE DEALERSHIP FACILITIES SHALL CONSTITUTE
19 EVIDENCE THAT CURRENT ECONOMIC CONDITIONS MAY JUSTIFY THE REQUIREMENT TO
20 ESTABLISH AND MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES.

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

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

28 (o) (1) Upon a termination of a franchise by a franchisor or fran-
29 chised motor vehicle dealer under this article, to refuse to accept a
30 return of new and unused current model motor vehicle inventory which has
31 been acquired from the franchisor, new and unused noncurrent model motor
32 vehicle inventory which has been acquired from the franchisor within one
33 hundred [twenty] EIGHTY days of the effective date of the termination;
34 supplies, parts, equipment, SIGNAGE, SPECIAL TOOLS, and furnishings
35 purchased from the franchisor or its approved sources [and special
36 tools]. The obligation of the franchisor, EXCEPT WITH RESPECT TO SIGNAGE
37 shall be limited to the repurchase of the above property which is unal-
38 tered and undamaged, in good and useable condition, and, in the case of
39 supplies, parts and equipment to those items which are currently listed
40 in the franchisor's supplies and parts list. IN THE CASE OF SIGNAGE,
41 THE FRANCHISOR SHALL BE OBLIGATED TO REPURCHASE ANY FRANCHISOR REQUIRED
42 SIGNAGE, PURCHASED WITHIN THE FIVE YEARS PRECEDING TERMINATION AND WHICH
43 IS IN GOOD AND USEABLE CONDITION LESS DEPRECIATION AS SET FORTH IN THE
44 INTERNAL REVENUE CODE OF ONE-FIFTEENTH OF THE INITIAL COST PER YEAR
45 STARTING THE YEAR FOLLOWING THE DEALER'S ACQUISITION OF THE ITEM.
46 Furthermore, the obligation of the franchisor to repurchase supplies
47 upon a termination, cancellation or nonrenewal by a franchised motor
48 vehicle dealer shall be limited to supplies mandated by the franchisor.
49 Parts eligible for repurchase shall include parts which have been renum-
50 bered in the current parts list but which are identical in design and
51 material to the currently numbered part. The return rights afforded the
52 franchised motor vehicle dealer under the provisions of the paragraph
53 shall be in addition to those, if any, provided in the franchise agree-
54 ment.

55 (2) The franchisor shall pay fair and reasonable compensation for the
56 above described property upon repurchase. In the case of new motor vehi-

1 cle inventory, accessories and parts, fair and reasonable compensation
2 shall in no instance be less than the net acquisition price paid by the
3 franchised motor vehicle dealer to the franchisor or its approved sources. Upon a termination of a franchise by a franchisor, within thirty
4 days of such termination, the franchisor shall send to the franchised
5 motor vehicle dealer instructions on the methodology by which the franchised motor vehicle dealer must ship the above described property to
6 the franchisor; the franchisor shall then remit payment for such property
7 to the franchised motor vehicle dealer within sixty days after
8 receipt of such property.

9
10
11 (3) Upon a termination of a franchise by a franchised motor vehicle
12 dealer where the franchise consists primarily of the distribution and
13 sale of house coaches, the franchisor's repurchase obligations set forth
14 in this paragraph shall not apply.

15 (4) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS SUBDIVISION, IN THE
16 EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO TERMINATION OF A LINE
17 MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER FOR ANY FRANCHISOR
18 REQUIRED FACILITY CONSTRUCTION, ALTERATIONS OR REMODELING, OR
19 CONSTRUCTION, ALTERATIONS OR REMODELING REQUIRED FOR PARTICIPATION IN
20 ANY INCENTIVE PROGRAMS WHICH WERE COMPLETED BY THE DEALER WITHIN THREE
21 YEARS OF THE DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE
22 MAKE. FOR THE PURPOSES OF THIS SECTION, COMPLETION SHALL BE DEEMED TO
23 OCCUR AT THE LATER OF THE FRANCHISOR'S FINAL APPROVAL OF THE
24 CONSTRUCTION, ALTERATIONS, OR REMODELING OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. THE COMPENSATION REQUIRED UNDER THIS SECTION SHALL
25 BE IN AN AMOUNT EQUAL TO THE DEALER'S COST FOR THE FACILITY UPGRADES
26 LESS ANY ASSISTANCE PROVIDED TO THE DEALER WITHIN THREE YEARS OF THE
27 DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE MAKE BY THE
28 MANUFACTURER OR DISTRIBUTOR, AND LESS THE AMOUNT FOR DEPRECIATION AS SET
29 FORTH IN INTERNAL REVENUE CODE OF ONE THIRTY-NINTH OF THE TOTAL INITIAL
30 COST OF SUCH CONSTRUCTION, ALTERATIONS, OR REMODELING PER YEAR STARTING
31 THE YEAR FOLLOWING THE DEALER'S COMPLETION OF THE FACILITY CONSTRUCTION,
32 ALTERATIONS, OR REMODELING.

33
34 (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
35 AMOUNT EQUAL TO THE AMOUNT REMAINING ON THE TERMINATED DEALER'S MANAGEMENT COMPUTER SYSTEM LEASE OR CONTRACT, OR ONE YEAR OF LEASE PAYMENTS,
36 WHICHEVER IS LESS IF THE DEALER MANAGEMENT COMPUTER SYSTEM WILL NO LONGER BE UTILIZED AS A RESULT OF THE TERMINATION AND THE FRANCHISOR
37 REQUIRED THE DEALER TO UTILIZE THE PARTICULAR DEALER MANAGEMENT COMPUTER
38 SYSTEM.

39
40
41 S 7. Paragraph (z) of subdivision 2 of section 463 of the vehicle and
42 traffic law, as amended by chapter 490 of the laws of 2008, is amended
43 to read as follows:

44
45 (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
46 PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE FRANCHISEE IS OTHERWISE
47 ELIGIBLE, OR TO TAKE OR THREATEN TO TAKE ANY ADVERSE ACTION AGAINST A
48 FRANCHISED MOTOR VEHICLE DEALER, IN CONNECTION WITH OR AS A RESULT OF
49 ANY new motor vehicle sold by the franchised motor vehicle dealer and
50 subsequently exported, providing such dealer can demonstrate that he
51 exercised due diligence and that the sale was made in good faith [and
52 without knowledge] INCLUDING THAT THE DEALER DID NOT KNOW NOR REASONABLY
53 SHOULD HAVE KNOWN of the purchaser's intention to export the motor vehicle

1 cle[, or that such dealer reasonably relied on approvals from the fran-
2 chisor to complete a sale]. A franchised motor vehicle dealer which
3 causes a new motor vehicle to be registered in this state or in a
4 foreign state and causes to be collected the appropriate sales and use
5 tax, OR THAT REASONABLY RELIED ON A FRANCHISOR TO COMPLETE A SALE shall
6 be presumed to have exercised GOOD FAITH AND due diligence. PRIOR TO
7 TAKING AN ADVERSE ACTION, INCLUDING A CHARGE BACK, AS A RESULT OF AN
8 EXPORT, A FRANCHISOR SHALL PROVIDE WRITTEN NOTICE TO THE FRANCHISED
9 MOTOR VEHICLE DEALER OF THE ADVERSE ACTION, AND, IF A CHARGE BACK, THE
10 SPECIFIC AMOUNT OF THE CHARGE BACK, AND THE VEHICLE OR VEHICLES AT
11 ISSUE. A DEALER SHALL NOT BE LIABLE FOR THE DELIVERY OF ANY VEHICLE SOLD
12 THROUGH A FRANCHISOR'S FLEET PROGRAM FOR ANY SUCH DELIVERY IN WHICH THE
13 SALE OR LEASE WAS NOT INITIATED OR NEGOTIATED BY THE DEALER AND ITS
14 FUNCTION WAS TO PROVIDE DELIVERY ON BEHALF OF THE FRANCHISOR.

15 S 8. Subparagraph 2 of paragraph (bb) of subdivision 2 of section 463
16 of the vehicle and traffic law, as amended by chapter 490 of the laws of
17 2008, is amended to read as follows:

18 (2) when operating such franchise temporarily under a plan with an
19 independent individual who is obligated to make a significant investment
20 in the dealership that is subject to loss and has an ownership interest
21 or expects to acquire full ownership in a reasonable period under
22 reasonable terms and conditions, provided that a reasonable period shall
23 be presumed to not exceed eight years; PROVIDED, HOWEVER, THAT THE
24 EXCEPTION PROVIDED IN THIS SUBPARAGRAPH SHALL NOT APPLY TO ANY FRANCHI-
25 SOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH
26 THAT HOLDS A CERTIFICATE OR REGISTRATION PURSUANT TO SUBPARAGRAPH (III)
27 OF PARAGRAPH F OF SUBDIVISION SEVEN OF SECTION FOUR HUNDRED FIFTEEN OF
28 THIS TITLE.

29 S 9. Subdivision 2 of section 463 of the vehicle and traffic law is
30 amended by adding three new paragraphs (ii), (jj) and (kk) to read as
31 follows:

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

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

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

46 S 10. Subdivision 1 of section 465 of the vehicle and traffic law, as
47 amended by chapter 490 of the laws of 2008, is amended to read as
48 follows:

49 1. Every franchisor shall properly fulfill any warranty agreement
50 and/or franchisor's service contract and shall compensate each of its
51 franchised motor vehicle dealers for warranty parts and labor in amounts
52 which reflect [fair and] reasonable compensation for such work. All
53 warranty claims and/or claims under a franchisor's service contract made
54 by franchised motor vehicle dealers shall be paid within thirty days
55 following their approval. For parts reimbursement, other than compo-
56 nents, systems, fixtures, appliances, furnishings, accessories and

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

47 S 11. Subdivisions 3, 4, 6 and 7 of section 465 of the vehicle and
48 traffic law, as added by chapter 490 of the laws of 2008, are amended to
49 read as follows:

50 3. No franchisor shall conduct an audit or charge back any warranty
51 [or] PAYMENT, OR ANY sales [incentive payment], ADVERTISING OR MARKETING
52 INCENTIVE PAYMENT ("INCENTIVE PAYMENTS") or otherwise hold a franchised
53 motor vehicle dealer liable for charges more than one year, or five
54 years in the case of fraud, after the date the franchisor made such
55 payment to the dealer, WITHOUT PROVIDING A NOTICE TO A FRANCHISED MOTOR
56 VEHICLE DEALER OF, OR A MECHANISM THAT MAKES AVAILABLE TO A FRANCHISED

1 MOTOR VEHICLE DEALER, INFORMATION REGARDING ERRORS OR ISSUES REGARDING
2 SUCH DEALER'S WARRANTY, SALES, ADVERTISING OR MARKETING INCENTIVE CLAIMS
3 THAT ARE THE SUBJECT OF THE AUDIT OR CHARGEBACK. NOTHING IN THIS SECTION
4 SHALL BE DEEMED TO GRANT A DEALER THE RIGHT TO ACCESS ANY FILE HELD BY
5 THE MANUFACTURER EVALUATING SUCH DEALER. IN CONNECTION WITH A CLAIM FOR
6 WARRANTY REIMBURSEMENTS, THE DEALER'S FAILURE TO DOCUMENT PROPERLY ONE
7 PART OF A WARRANTY REPAIR THAT CONTAINS MORE THAN ONE PART SHALL NOT BE
8 THE SOLE BASIS TO CHARGE BACK THE ENTIRE REPAIR. A MANUFACTURER SHALL
9 NOT DENY A CLAIM SUBMITTED UNDER THIS SECTION BASED SOLELY ON A DEALER'S
10 INCIDENTAL FAILURE TO COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIRE-
11 MENT, A CLERICAL ERROR, OR OTHER ADMINISTRATIVE TECHNICALITY, PROVIDED
12 THAT THE FAILURE DOES NOT CALL INTO QUESTION THE LEGITIMACY OF THE CLAIM
13 AND THAT THE DEALER CORRECTS THE CLAIM ACCORDING TO FRANCHISOR GUIDE-
14 LINES.

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

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

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

49 S 12. Severability. If any clause, sentence, paragraph, section or
50 part of this act shall be adjudged by any court of competent jurisdic-
51 tion to be invalid and after exhaustion of all further judicial review,
52 the judgment shall not affect, impair or invalidate the remainder there-
53 of, but shall be confined in its operation to the clause, sentence,
54 paragraph, section or part of this act directly involved in the contro-
55 versy in which the judgment shall have been rendered.

56 S 13. This act shall take effect immediately.