S T A T E O F N E W Y O R K

5725--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivision 5 of section 415 of the vehicle and traffic law is amended by adding a new paragraph b-2 to read as follows:

B-2. A STATEMENT INDICATING ANY INTEREST IN THE APPLICANT'S FRANCHISE ENTITY BY A PERSON OR ENTITY DESCRIBED IN PARAGRAPH F OF SUBDIVISION SEVEN OF THIS SECTION.

S 2. Paragraph f of subdivision 7 of section 415 of the vehicle and traffic law, as added by chapter 490 of the laws of 2008, is amended to read as follows:

f. EXCEPT AS PROVIDED IN PARAGRAPH (BB) OF SUBDIVISION TWO OF SECTION FOUR HUNDRED SIXTY-THREE OF THIS TITLE:

(I) The commissioner shall not issue any certificate of registration authorized by this section to any franchisor, MANUFACTURER, DISTRIBUTOR BRANCH OR FACTORY BRANCH, as such [term is] TERMS ARE defined in section four hundred sixty-two of this title, OR TO ANY SUBSIDIARY, AFFILIATE OR CONTROLLED ENTITY THEREOF, except that the commissioner may renew such certificate previously issued or otherwise approved to operate to a franchisor prior to [May second, two thousand two] JULY FIRST, TWO THOUSAND SIX. NOTHING IN THIS SECTION SHALL PRECLUDE THE ESTABLISHMENT OF SUCH FACILITIES NECESSARY TO CONTINUE THE ONGOING OPERATION OF ANY HOLDER OF A CERTIFICATE OF REGISTRATION AUTHORIZED BY THIS SECTION OR OTHERWISE APPROVED TO OPERATE TO A FRANCHISOR PROVIDED SUCH ORIGINAL CERTIFICATE OR APPROVAL WAS GRANTED PRIOR TO JULY FIRST, TWO THOUSAND SIX.

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

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(II) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH, THE COMMISSIONER SHALL NOT ISSUE ANY CERTIFICATE OF REGISTRATION, OR RENEW ANY CERTIFICATE, UNLESS THE ORIGINAL CERTIFICATE WAS ISSUED BEFORE JULY FIRST, TWO THOUSAND SIX, TO ANY MOTOR VEHICLE DEALER IN WHICH A FRANCHISOR, MANUFACTURER, DISTRIBUTOR, DISTRIBUTOR BRANCH OR FACTORY BRANCH, AS SUCH TERMS ARE DEFINED IN SECTION FOUR HUNDRED SIXTY-TWO OF THIS TITLE, 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. Provided, however, that good faith notice to any franchised motor vehicle dealer of said dealer's violation of any terms or provisions of such franchise shall not constitute a violation of this article.

S 5. Paragraph (c) 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:

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

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

(3) EXCEPT AS NECESSARY TO COMPLY WITH A HEALTH OR SAFETY LAW, OR TO COMPLY WITH A TECHNOLOGY REQUIREMENT, WHICH IS NECESSARY TO SELL OR SERVICE A MOTOR VEHICLE THAT THE FRANCHISED MOTOR VEHICLE DEALER IS AUTHORIZED OR LICENSED BY THE FRANCHISOR TO SELL OR SERVICE, TO REQUIRE A FRANCHISED MOTOR VEHICLE DEALER TO CONSTRUCT A NEW DEALER FACILITY OR SUBSTANTIALLY ALTER OR REMODEL AN EXISTING DEALER FACILITY BEFORE THE DATE THAT IS TEN YEARS AFTER THE DATE THE CONSTRUCTION OF THE NEW DEALER FACILITY OR SUCH ALTERATION OR REMODELING AT THAT LOCATION WAS COMPLETED AND SHALL CONTINUE WITH ANY SUCCESSOR OWNER PROVIDED SUCH OWNER HAS BEEN DESIGNATED AND APPROVED BY THE FRANCHISOR IN THE FRANCHISE AGREEMENT,

AND SUCH CONSTRUCTION, ALTERATION OR REMODELING SUBSTANTIALLY COMPLIED WITH THE FRANCHISOR'S BRAND IMAGE STANDARDS OR PLANS THAT THE FRANCHISOR PROVIDED AT THE TIME THE CONSTRUCTION, ALTERATION, OR REMODELING WAS COMPLETED.

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

(A) REFERS TO AN ALTERATION THAT HAS A MAJOR IMPACT ON THE ARCHITECTURAL FEATURES, CHARACTERISTICS, OR INTEGRITY OF A STRUCTURE OR LOT; AND

(B) DOES NOT INCLUDE ROUTINE MAINTENANCE, SUCH AS INTERIOR PAINTING, REASONABLY NECESSARY TO KEEP A DEALERSHIP FACILITY IN ATTRACTIVE CONDITION.

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

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

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

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

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

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

(6) 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 6. 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, SPECIAL TOOLS, 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, THE FRANCHISOR SHALL BE OBLIGATED TO REPURCHASE ANY FRANCHISOR REQUIRED SIGNAGE, PURCHASED WITHIN THE FIVE YEARS PRECEDING TERMINATION AND WHICH IS IN GOOD AND USEABLE CONDITION LESS DEPRECIATION AS SET FORTH IN THE INTERNAL REVENUE CODE OF ONE-FIFTEENTH OF THE INITIAL COST PER YEAR STARTING THE YEAR FOLLOWING THE DEALER'S ACQUISITION OF THE ITEM. 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. 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 to the franchised motor vehicle dealer within sixty days after receipt of such property.

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

(4) IN ADDITION TO ANY OTHER REQUIREMENTS OF THIS SUBDIVISION, IN THE EVENT A FRANCHISOR TERMINATES A FRANCHISE DUE TO TERMINATION OF A LINE MAKE, THE FRANCHISOR SHALL COMPENSATE THE DEALER FOR ANY FRANCHISOR REQUIRED FACILITY CONSTRUCTION, ALTERATIONS OR REMODELING, OR CONSTRUCTION, ALTERATIONS OR REMODELING REQUIRED FOR PARTICIPATION IN ANY INCENTIVE PROGRAMS WHICH WERE COMPLETED BY THE DEALER WITHIN THREE YEARS OF THE DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE MAKE. FOR THE PURPOSES OF THIS SECTION, COMPLETION SHALL BE DEEMED TO OCCUR AT THE LATER OF THE FRANCHISOR'S FINAL APPROVAL OF THE CONSTRUCTION, ALTERATIONS, OR REMODELING OR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. THE COMPENSATION REQUIRED UNDER THIS SECTION SHALL BE IN AN AMOUNT EQUAL TO THE DEALER'S COST FOR THE FACILITY UPGRADES LESS ANY ASSISTANCE PROVIDED TO THE DEALER WITHIN THREE YEARS OF THE

DATE THE FRANCHISOR ANNOUNCED THE TERMINATION OF THE LINE MAKE BY THE MANUFACTURER OR DISTRIBUTOR, AND LESS THE AMOUNT FOR DEPRECIATION AS SET FORTH IN INTERNAL REVENUE CODE OF ONE THIRTY-NINTH OF THE TOTAL INITIAL COST OF SUCH CONSTRUCTION, ALTERATIONS, OR REMODELING PER YEAR STARTING THE YEAR FOLLOWING THE DEALER'S COMPLETION OF THE FACILITY CONSTRUCTION, 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.

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

1. Every franchisor shall properly fulfill any warranty agreement and/or franchisor's service contract and shall compensate each of its franchised motor vehicle dealers for warranty parts and labor in amounts which reflect [fair and] reasonable compensation for such work. All warranty claims and/or claims under a franchisor's service contract made by franchised motor vehicle dealers shall be paid within thirty days following their approval. For parts reimbursement, other than components, systems, fixtures, appliances, furnishings, accessories and features of a house coach that are designed, used and maintained primarily for nonvehicular residential purposes, and for labor reimbursement, [fair and] reasonable compensation shall not be less than the price and rate charged by the franchised motor vehicle dealer for like services to non-warranty and/or non-service contract customers. For purposes of this section, the price and rate charged by the franchised motor vehicle dealer for parts may be established by submitting to the franchisor one hundred sequential nonwarranty customer-paid service repair orders or the number of sequential nonwarranty customer-paid service repair orders written within a ninety day period, whichever is less, covering repairs made no more than one hundred eighty days before the submission, and declaring the price and rate, including average markup for the franchised motor vehicle dealer as its reimbursement rate. The reimbursement rate so declared shall go into effect thirty days following the declaration and shall be presumed to be [fair and] reasonable, however a franchisor may rebut such presumption by showing that such rate so established is [unfair and] unreasonable in light of the practices of all other franchised motor vehicle dealers in the vicinity offering the same line make. The franchised motor vehicle dealer shall not request a change in the reimbursement rate more often than [twice] ONCE in each calendar year. In establishing the labor reimbursement rate, the franchisor shall not require a franchised motor vehicle dealer to establish said rate by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, a transaction by transaction calculation. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING PARTS OR TYPES OF REPAIRS SHALL BE EXCLUDED FROM THE PARTS AND/OR LABOR CALCULATIONS AND THE FRANCHISOR'S REIMBURSEMENT REQUIREMENTS UNDER THIS SECTION: (A) PARTS SOLD AT WHOLESALE; (B) TIRES; (C) ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY SUCH AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS; (D) VEHICLE RECONDITIONING; AND (E) BATTERIES REPLACED AS PART OF A ROUTINE MAINTENANCE OPERATION. IF THE FRANCHISOR REJECTS THE DECLARATION OR ATTEMPTS TO REBUT THE DECLARATION BECAUSE OF AN ERROR IN THE DEALER'S SUBMISSION, THE FRANCHISOR SHALL IDENTIFY WITH SPECIFICITY THE REASON FOR REJECTION AND IDENTIFY THE ERROR OR ERRORS WITHIN THE SUBMISSION. IN THE EVENT THE FRANCHISOR REJECTS OR REBUTS THE DEALER'S INITIAL DECLARATION, THE DEALER SHALL HAVE THE OPPORTUNITY, WITHIN SIXTY DAYS TO RESUBMIT THE FULL AND CORRECTED DECLARATION ADDRESSING THE ALLEGED ERROR(S) IDENTIFIED BY THE FRANCHISOR. THE FRANCHISOR SHALL RESPOND WITHIN SIXTY DAYS. THE ONE HUNDRED EIGHTY DAY REQUIREMENT FOR THE REPAIR ORDERS SHALL

BE STAYED FROM THE DATE OF INITIAL SUBMISSION. IN ANY ACTION OR PROCEEDING HELD PURSUANT TO THIS SUBDIVISION, THE FRANCHISOR SHALL HAVE THE BURDEN OF PROVING THAT THE RATE DECLARED BY THE DEALER WAS UNREASONABLE AS DESCRIBED IN THIS SUBDIVISION AND THAT THE PROPOSED ADJUSTMENT OF THE AVERAGE PERCENTAGE MARKUP OR REJECTION OF THE SUBMISSION IS REASONABLE PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

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

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

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

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

7. After all internal dispute resolution processes provided through the franchisor have been resolved, the franchisor shall give notice to the dealer of the final amount of a proposed warranty [or], sales [incentive], ADVERTISING OR MARKETING INCENTIVE charge back. If the dealer institutes an action pursuant to this article within thirty days

of receipt of such notice, the proposed charge back shall be stayed, without bond, during the pendency of such action and until the final judgment has been rendered in an adjudicatory proceeding or action as provided in section four hundred sixty-nine of this article. THE FRANCHISOR SHALL NOT IMPOSE THE CHARGEBACK, DEBIT THE DEALER'S ACCOUNT, OR OTHERWISE SEEK TO OBTAIN ALL OR ANY PART OF THE CHARGEBACK FUNDS FROM THE DEALER DURING THE THIRTY-DAY PERIOD IN WHICH THE DEALER HAS THE OPPORTUNITY TO FILE AN ACTION AS SET FORTH ABOVE.

S 11. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 12. This act shall take effect immediately.