

ASSEMBLY, No. 4380

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 16, 2024

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Assemblyman WILLIAM B. SAMPSON, IV

District 31 (Hudson)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblymen Azzariti Jr., Inganamort, Barranco, Miller, Calabrese, Assemblywoman Ramirez, Assemblyman Marenco, Assemblywoman Donlon, Assemblyman Schnall, Assemblywoman Bagolie, Assemblymen Rumpf, DePhillips, Barlas, Assemblywoman Quijano, Assemblyman Myhre, Assemblywomen N.Munoz, Dunn, Matsikoudis, Assemblymen Hutchison and Greenwald

SYNOPSIS

Establishes “Motor Vehicle Open Recall Notice and Fair Compensation Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/28/2024)

1 AN ACT concerning motor vehicle open recalls and motor vehicle
2 franchises, supplementing P.L.1971, c.356 (C.56:10-1 et seq.),
3 and amending various parts of the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 5 of P.L. , c.
9 (C.) (pending before the Legislature as this bill) shall be
10 known and may be cited as the “Motor Vehicle Open Recall Notice
11 and Fair Compensation Act.”

12
13 2. (New section) As used in sections 2 through 5 of P.L. , c.
14 (C.):

15 “Chief administrator” means the Chief Administrator of the New
16 Jersey Motor Vehicle Commission.

17 “Commission” means the New Jersey Motor Vehicle
18 Commission established pursuant to section 4 of P.L.2003, c.13
19 (C.39:2A-4).

20 “Dealer” means a person who is actively engaged in the retail
21 business of buying, selling, or exchanging new or used motor
22 vehicles.

23 “Motor vehicle franchisee” means the same as the term is
24 defined in section 1 of P.L.1977, c.84 (C.56:10-13).

25 “Motor vehicle franchisor” means the same as the term is defined
26 in section 1 of P.L.1977, c.84 (C.56:10-13).

27 “New motor vehicle” means a new motor vehicle, as that term is
28 defined in section 1 of P.L.1977, c.84 (C.56:10-13), that is subject
29 to an open recall, or has been recalled, in accordance with federal
30 law.

31 “Open recall” means a safety or emissions recall on a specific
32 vehicle that has not been corrected or addressed.

33 “Retail” does not include wholesale sales, sales between dealers,
34 or sales to owners or operators of motor vehicle junk businesses or
35 motor vehicle junk yards, as those terms are defined in R.S.39:11-2,
36 or any other person engaged in the business of dismantling,
37 destroying, or recycling motor vehicles.

38 “Time of sale” means the period of time when the buyer executes
39 a retail order form for the purchase, or lease agreement for the
40 lease, of a used motor vehicle.

41 “Used motor vehicle” means a used motor vehicle, as that term is
42 defined in R.S.39:10-2.

43
44 3. (New section) a. A motor vehicle franchisee or dealer shall
45 not conduct a retail sale of a used motor vehicle without first

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 contacting, or accessing information provided through the Internet
2 website of, the National Highway Traffic Safety Administration, or
3 a subsequently established similar official source of information, to
4 determine whether there are any open recalls on the motor vehicle
5 offered for retail sale. If an open recall is discovered, the motor
6 vehicle franchisee or dealer shall inform a prospective purchaser
7 about the recall and provide the prospective purchaser with a
8 printed copy of the recall information, as published on the Internet
9 website of the National Highway Traffic Safety Administration, or a
10 subsequently established similar official source of information.

11 b. A motor vehicle franchisee or dealer shall not sell or
12 otherwise transfer to a retail customer any used motor vehicle that
13 is subject to a stop-sale notice, do-not-drive notice, or similar notice
14 or designation issued by the National Highway Traffic Safety
15 Administration, or its successor.

16 c. There shall be an irrebuttable presumption that a motor
17 vehicle franchisee or dealer had no knowledge of the existence of
18 an open recall, stop-sale notice, do-not-drive notice, or similar
19 notice or designation for a used motor vehicle if, at the time of sale:

20 (1) the motor vehicle franchisee or dealer accessed the Internet
21 website of the National Highway Traffic Safety Administration on
22 open recalls, or a subsequently established similar official source of
23 information; and

24 (2) a search by the motor vehicle franchisee or dealer using the
25 specific vehicle identification number of the motor vehicle yielded
26 no indication of an open recall, stop-sale notice, do-not-drive
27 notice, or similar notice or designation for the used motor vehicle.

28 d. Nothing in this section shall be construed to:

29 (1) create any legal duty or liability upon a motor vehicle
30 franchisee or dealer related to the accuracy, errors, or omissions of
31 the Internet website of the National Highway Traffic Safety
32 Administration on open recalls, or a subsequently established
33 similar official source of information; or

34 (2) require a motor vehicle franchisee or dealer to provide a
35 prospective purchaser with any recall information that may be
36 added to the Internet website of the National Highway Traffic
37 Safety Administration on open recalls, or subsequently established
38 similar official source of information, after the motor vehicle
39 franchisee or dealer has provided a printed copy of the recall
40 information as it appeared at the time it was provided to the
41 prospective purchaser of the used motor vehicle at the time of sale.

42

43 4. (New section) a. Any motor vehicle franchisor or dealer
44 offering motor vehicles for sale in this State shall provide a list to
45 the Chief Administrator of the New Jersey Motor Vehicle
46 Commission of motor vehicles registered in this State that are
47 subject to an open recall for which the necessary repairs remain
48 uncompleted for a period of six or more months after the initial

1 notice of recall issued by the manufacturer pursuant federal law. In
2 addition to any other information that the chief administrator may
3 deem appropriate, the list shall identify each motor vehicle by year,
4 make, model, and vehicle identification number. Any motor vehicle
5 franchisor or dealer that is required to submit a list pursuant to this
6 subsection shall provide an updated list to the chief administrator
7 every 180 days after the submission of the initial list pursuant to
8 this subsection.

9 b. Upon receipt of an initial or updated list pursuant to
10 subsection a. of this section, the chief administrator shall, within 30
11 days, direct a motor vehicle franchisor or dealer to send out a notice
12 on official letterhead of the commission at the motor vehicle
13 franchisor or dealer's expense, to all registered owners of the listed
14 motor vehicles. The notice shall read as follows:

15 "..... (date)
16 (registered owner's name)
17 (registered owner's address)
18 **THERE IS AN OPEN RECALL ON YOUR VEHICLE:**
19 **YOUR IMMEDIATE ACTION IS REQUIRED!**
20 Dear (owner's name):
21 This notification concerns a motor vehicle registered in your
22 name in the State of New Jersey, a (year, make,
23 model), vehicle identification number (vehicle
24 identification number).

25 The New Jersey Motor Vehicle Commission is contacting you
26 because your (year, make, model) vehicle has an open
27 recall for a serious motor vehicle defect **THAT COULD CAUSE**
28 **SERIOUS INJURY TO YOU AND/OR A PASSENGER IN YOUR**
29 **VEHICLE** if not remedied.

30 The New Jersey Motor Vehicle Commission has been provided
31 information from (motor vehicle franchisor or dealer)
32 that the (make, model) that is currently registered in
33 your name, identified by the vehicle identification number
34 (vehicle identification number), has been recalled.

35 According to information provided by (motor
36 vehicle franchisor or dealer), your vehicle has not been repaired yet.
37 The potentially lifesaving repair is **FREE** of charge to you and parts
38 are available now. A **FREE** loaner car or other alternative
39 transportation may be available to assist with any inconvenience
40 this repair may cause you.

41 **WHAT SHOULD YOU DO NOW?**
42 - Visit (internet website of motor vehicle
43 manufacturer or dealer) or call the motor vehicle franchisor or
44 dealer toll-free at (toll-free motor vehicle franchisor or
45 dealer number) to find your nearest (make) dealership.
46 - Immediately contact a local (make) dealership to
47 schedule a **FREE** repair for your recalled vehicle. Ask for
48 alternative transportation, if needed.

1 - If you believe you have already taken action on this recall, visit
2 (the Internet website of the National Highway Traffic
3 Safety Administration on open recalls, or a subsequently established
4 similar official source of information) and enter your
5 (make, model) vehicle identification number to verify the repair and
6 ensure that no other recalls have been issued for your vehicle.

7 The safety of you and your family on New Jersey roadways is
8 one of the commission's top priorities. Please act NOW to protect
9 yourself and the passengers in your vehicle. If you believe that
10 (motor vehicle franchisor or dealer) or your
11 (make) dealer has failed or is unable to remedy the
12 defect in your vehicle, without charge and within a reasonable
13 period of time, you may submit a complaint by mail to:
14 Administrator, National Highway Traffic Safety Administration,
15 1200 New Jersey Avenue S.E., West Building, Washington, DC
16 20590. Alternatively, you may call the toll-free Vehicle Safety
17 Hotline at (toll-free telephone number) or visit
18 (Internet website of the National Highway Traffic
19 Safety Administration).”

20

21 5. (New section) Any corporation or association that is
22 primarily owned by or comprised of motor vehicle franchisees,
23 which corporation or association primarily represents the interests
24 of motor vehicle franchisees, shall have standing to file an
25 administrative petition, or to bring an action before any court of
26 competent jurisdiction, for itself or by, for, or on behalf of any
27 motor vehicle franchisee or group of motor vehicle franchisees for
28 any alleged violation of P.L.1971, c.356 (C.56:10-1 et seq.), as
29 amended and supplemented.

30

31 6. Section 1 of P.L.1989, c.24 (C.56:10-7.2) is amended to read
32 as follows:

33 1. The Legislature hereby finds and declares the following:

34 a. Notwithstanding the enactment of the "Franchise Practices
35 Act," P.L.1971, c.356 (C. 56:10-1 et seq.), and other legislation
36 dealing with the franchisor-franchisee relationship, including, but
37 not limited to P.L.1982, c.156 (C. 56:10-17 et seq.), inequality of
38 bargaining power continues to exist between motor vehicle
39 franchisors and motor vehicle franchisees. This inequality of
40 bargaining power exists even as to motor vehicle franchisees who
41 have had their franchises for many years and who have expended
42 large sums of money in the promotion of their franchises.

43 b. This inequality of bargaining power enables motor vehicle
44 franchisors to compel motor vehicle franchisees to execute
45 franchises and related leases and agreements which contain terms
46 and conditions that would not routinely be agreed to by the motor
47 vehicle franchisees absent the compulsion and duress which arise
48 out of the inequality of bargaining power. These terms and

1 conditions are detrimental to the interests of the motor vehicle
2 franchisees in that they require the motor vehicle franchisees to
3 relinquish their rights which have been established by the
4 "Franchise Practices Act" and supplemental legislation and other
5 statutes and laws of this State.

6 c. As a result, motor vehicle franchisees have been denied the
7 opportunity to have disputes with their motor vehicle franchisors
8 arising out of the franchisor-franchisee relationship heard in an
9 appropriate venue, convenient to both parties, by tribunals
10 established by statute for the resolution of these disputes. It is
11 therefore necessary and in the public interest to ensure that motor
12 vehicle franchisees voluntarily determine whether to agree to
13 certain terms and conditions contained in franchises and related
14 leases and agreements presented to them by motor vehicle
15 franchisors and under circumstances unaffected by the compulsion
16 which arises from the inequality of bargaining power.

17 d. The distribution, sale, and service of new motor vehicles in
18 the State of New Jersey vitally affects the general economy of this
19 State, and there is a compelling public interest in providing a
20 system of new motor vehicle franchisees to foster competition and
21 promote motor vehicle and highway safety by ensuring there are
22 qualified facilities to provide independently owned and operated
23 sales, warranty, open recall, and routine service for motor vehicles.

24 e. The new motor vehicle franchise system encourages local
25 investment in motor vehicle dealerships, creates jobs and economic
26 activity in virtually every community in this State, and advances the
27 public interest by fostering an extensive network of independent
28 new motor vehicle franchisees who compete for motor vehicle sales
29 and service business, offer ready access to open recall and warranty
30 service, when needed, and provide routine maintenance to ensure
31 motor vehicle and highway safety.

32 f. There remains, however, a vast disparity in bargaining
33 power between motor vehicle franchisors and their franchisees,
34 which, if left unchecked, would discourage local investment in the
35 motor vehicle franchise system and result in fewer new motor
36 vehicle franchisees, less competition in the motor vehicle
37 marketplace, and diminished consumer access to qualified motor
38 vehicle warranty, open recall, and routine service facilities.

39 g. Despite prior enactments, certain motor vehicle franchisors
40 have failed to comply with the law, and many motor vehicle
41 franchisees have found it either too risky to oppose their supplier or
42 too burdensome to take on a legal challenge to unfair or oppressive
43 marketplace behavior carried out by motor vehicle franchisors,
44 which franchisors control the exclusive supply of motor vehicles,
45 parts, and special equipment to motor vehicle franchisees.

46 h. As a result, it is necessary for the Legislature to further
47 revise the laws pertaining to motor vehicle franchisees to strengthen
48 and clarify certain provisions of existing law intended to protect the

1 public from marketplace behavior that has the potential to restrict
2 competition for sales and threaten highway safety by limiting
3 consumer access to essential warranty and open recall service
4 provided by neighborhood new car dealers.

5 (cf: P.L.1989, c.24, s.1)

6
7 7. Section 5 of P.L.1999, c.45 (C.56:10-7.4) is amended to read
8 as follows:

9 5. It shall be a violation of P.L.1971, c.356 (C.56:10-1 et seq.)
10 for any motor vehicle franchisor, directly or indirectly, through any
11 officer, agent or employee, to engage in any of the following
12 practices:

13 a. To impose unreasonable standards of performance or
14 unreasonable facilities, financial, operating or other requirements
15 upon a motor vehicle franchisee.

16 b. To base the disapproval of the transfer, sale or assignment of
17 a motor vehicle franchise, or any interest therein, on the ground that
18 the proposed transferee is not a natural person.

19 c. (1) To fail to compensate a motor vehicle franchisee for all
20 reasonable costs incurred by the franchisee in complying with the
21 requirements imposed on the franchisee by the franchisor or by law
22 relating to a product recall.

23 (2) With respect to a new motor vehicle or any used motor
24 vehicle that is of the same line make as the motor vehicle franchisor
25 and motor vehicle franchisee, that is held for sale by the motor
26 vehicle franchisee, that is subject to a stop-sale notice, do-not-drive
27 notice, or similar notice or designation issued by the National
28 Highway Traffic Safety Administration, its successor, or the motor
29 vehicle franchisor, and for which motor vehicle a part or remedy is
30 not reasonably available to perform a service or repair, the
31 reasonable costs of the motor vehicle franchisee, if not preempted
32 by federal law or regulation, shall be 1.75 percent of the value of
33 the motor vehicle per month, or per portion of a month, while the
34 part or remedy is unavailable.

35 (3) For purposes of this subsection, the value of a new motor
36 vehicle shall be the motor vehicle franchisor's suggested retail price
37 of the motor vehicle, and the value of a used motor vehicle shall be
38 the average trade-in value of the used motor vehicle, as indicated in
39 an independent third-party guide for the year, make, model, and
40 mileage of the motor vehicle.

41 (4) Notwithstanding any provision of this subsection to the
42 contrary, a motor vehicle franchisor may compensate one or more
43 motor vehicle franchisees under a national recall compensation
44 program, provided that the compensation paid under that program is
45 equal to or greater than the amounts set forth in this section.

46 d. To utilize an arbitrary or unreasonable formula or other
47 calculation or process intended to gauge performance as a basis for

1 making any decision or taking any action governed by P.L.1971,
2 c.356 (C.56:10-1 et seq.).

3 e. Except as provided pursuant to section 6 of P.L.2015, c.24
4 (C.56:10-27.1), to own or operate or enter into an agreement with a
5 person, other than an existing motor vehicle franchisee, to operate a
6 retail facility for the servicing of motor vehicles, which is
7 authorized to perform warranty service on motor vehicles
8 manufactured or distributed by the motor vehicle franchisor. The
9 establishment, relocation, reopening or reactivation of such a
10 facility pursuant to an agreement with a motor vehicle franchisee
11 shall be subject to the provisions of P.L.1982, c.156 (C.56:10-16 et
12 seq.), except that paragraph (3) of subsection b. of section 8 of that
13 act (C.56:10-23) shall not be applicable. Notice shall be given to
14 motor vehicle franchisees in the same line make or makes within six
15 miles of the proposed retail facility for the servicing of motor
16 vehicles which is authorized to perform warranty service on motor
17 vehicles manufactured or distributed by the motor vehicle
18 franchisor.

19 f. To require an unconditional release from a motor vehicle
20 franchisee without permitting the franchisee to except from the
21 release any claims for outstanding financial obligations of the motor
22 vehicle franchisor to the motor vehicle franchisee for which
23 payment will not be made at or before the giving of the release.

24 g. (1) To require or attempt to require a motor vehicle
25 franchisee to order or purchase a new or used motor vehicle, or any
26 accessory or equipment thereof not required by law; or (2) to
27 require or attempt to require a motor vehicle franchisee to accept
28 delivery of any motor vehicle, or any accessory or equipment
29 thereof not required by law, which is not as ordered by the motor
30 vehicle franchisee; or (3) to take or withhold or threaten to take or
31 withhold any action, impose or threaten to impose any penalty, or
32 deny or threaten to deny any benefit, as a result of the motor vehicle
33 franchisee's failure or refusal to purchase, order or accept delivery
34 of any such motor vehicle, accessory or equipment. This subsection
35 shall not prevent a motor vehicle franchisor from requiring that a
36 motor vehicle franchisee carry a representative inventory of models
37 offered for sale by the motor vehicle franchisor.

38 h. To fail or refuse to sell or offer to sell to all motor vehicle
39 franchisees in a line make every motor vehicle sold or offered for
40 sale to any motor vehicle franchisee of the same line make, or to
41 fail or refuse to sell or offer to sell such motor vehicles to all motor
42 vehicle franchisees at the same price for a comparably equipped
43 motor vehicle, on the same terms, with no differential in discount,
44 allowance, credit or bonus, and on reasonable, good faith and non-
45 discriminatory allocation and availability terms. However, the
46 failure to deliver any such motor vehicle shall not be considered a
47 violation of this section if the failure is not arbitrary and is due to a
48 lack of manufacturing capacity or to a strike or labor difficulty, a

1 shortage of materials, a freight embargo or other cause over which
2 the franchisor has no control. A motor vehicle franchisor shall not
3 require a motor vehicle franchisee to purchase unreasonable
4 quantities of advertising materials, purchase special tools not
5 required to properly service a motor vehicle or undertake sales
6 person or service person training unrelated to the motor vehicle or
7 meet unreasonable display requirements as a condition of receiving
8 a motor vehicle.

9 i. Unless compelled by law or legal process, (1) if the
10 customer has objected thereto in writing, to require a motor vehicle
11 franchisee to publish, release, convey or otherwise provide
12 information obtained with respect to any customers, contracts,
13 products, services or other transactions of the motor vehicle
14 franchisee which is not necessary for the motor vehicle franchisor
15 to meet its obligations to consumers or the motor vehicle
16 franchisee, including vehicle recalls or other requirements imposed
17 by State or federal law, or for complying with the duties or
18 obligations of the respective parties under the franchise; or (2) to
19 release such information which has been provided to it by the motor
20 vehicle franchisees to any third party.

21 j. To impose or attempt to impose any requirement, limitation
22 or regulation on, or interfere or attempt to interfere with, the
23 manner in which a motor vehicle franchisee utilizes the facilities at
24 which a motor vehicle franchise is operated, including, but not
25 limited to, requirements, limitations or regulations as to the line
26 makes of motor vehicles that may be sold or offered for sale at the
27 facility, or to take or withhold or threaten to take or withhold any
28 action, impose or threaten to impose any penalty, or deny or
29 threaten to deny any benefit, as a result of the manner in which the
30 motor vehicle franchisee utilizes his facilities, except that the motor
31 vehicle franchisor may require that the portion of the facilities
32 allocated to or used for the motor vehicle franchise meets the motor
33 vehicle franchisor's reasonable, written space and volume
34 requirements as uniformly applied by the motor vehicle franchisor.
35 The provisions of this subsection shall not apply if the motor
36 vehicle franchisor and the motor vehicle franchisee voluntarily
37 agree to the requirement and separate and valuable consideration
38 therefor is paid.

39 k. To require or attempt to require a motor vehicle franchisee,
40 or the owner or landlord of property on which a motor vehicle
41 franchise is operated, to give a motor vehicle franchisor or any
42 person under the control of the motor vehicle franchisor an interest
43 in or option with respect to the real property on which the motor
44 vehicle franchise is operated, to restrict the uses to which the
45 facility at which the motor vehicle franchise is operated may be put
46 during or after the term of the franchise, or to take or withhold or
47 threaten to take or withhold any action, impose or threaten to
48 impose any penalty, or deny or threaten to deny any benefit, as a

1 result of the failure or refusal of a motor vehicle franchisee,
2 property owner, or landlord to agree to or comply with any such
3 demand or restriction. Nothing in this subsection shall be deemed
4 to bar a voluntary agreement between a motor vehicle franchisor
5 and a motor vehicle franchisee, or the owner or landlord of property
6 on which a motor vehicle franchise is operated, to give the motor
7 vehicle franchisor or the person under the control of the motor
8 vehicle franchisor an interest in or option with respect to the real
9 property on which a motor vehicle franchise is operated, or to
10 restrict the uses to which the facility at which the motor vehicle
11 franchise is operated is put, provided that separate and valuable
12 consideration is paid for such interest, option or restriction.

13 1. To require or attempt to require a motor vehicle franchisee
14 to relocate his franchise or to implement any facility or operational
15 modification or to take or withhold or threaten to take or withhold
16 any action, impose or threaten to impose any penalty, or deny or
17 threaten to deny any benefit as a result of the failure or refusal of
18 such motor vehicle franchisee to agree to any such relocation or
19 modification, unless the motor vehicle franchisor can demonstrate
20 that: (1) funds are generally available to the franchisee for the
21 relocation or modification on reasonable terms; and (2) the motor
22 vehicle franchisee will be able, in the ordinary course of business as
23 conducted by such motor vehicle franchisee, to earn a reasonable
24 return on his total investment in such facility or from such
25 operational modification, and the full return of his total investment
26 in such facility or from such operational modifications within 10
27 years; or (3) the modification is required so that the motor vehicle
28 franchisee can effectively sell and service a motor vehicle offered
29 by the motor vehicle franchisor based on the specific technology of
30 the motor vehicle. This subsection shall not be construed as
31 requiring a motor vehicle franchisor to guarantee that the return as
32 provided in paragraph (2) of this subsection will be realized.

33 m. Directly, or through any financial institution having any
34 commonality of ownership with the motor vehicle franchisor, to
35 require or attempt to require, or to take or withhold or threaten to
36 take or withhold any action, impose or threaten to impose any
37 penalty, or deny or threaten to deny any benefit, as a result of the
38 failure or refusal of a motor vehicle franchisee to maintain working
39 capital, equity, floor plan financing or other indications of financial
40 condition, greater than the lesser of (1) the minimum required to
41 operate the motor vehicle franchise based on the operations of the
42 franchise over the prior 12-month period; or (2) an increase of no
43 more than **【5%】** five percent over the prior calendar year, unless
44 the motor vehicle franchisor, or the financial institution having any
45 commonality of ownership with a motor vehicle franchisor, can
46 establish that such failure or refusal prevents the franchisee from
47 operating the franchise in the ordinary course of business. This
48 subsection shall not apply if the working capital, equity, floor plan

1 financing or other indication of financial condition is the result of
2 an accommodation by the motor vehicle franchisor, or financial
3 institution with a commonality of ownership with the motor vehicle
4 franchisor, to the motor vehicle franchisee, containing specific
5 terms and deadlines for the restoration of the motor vehicle
6 franchisee's working capital, inventory, floor plan financing or
7 other indication of financial condition, which accommodation is
8 agreed to in writing by the motor vehicle franchisee.

9 n. To impose or attempt to impose any conditions on the
10 approval of the transfer of a motor vehicle franchise, except as
11 provided in section 6 of P.L.1971, c.356 (C.56:10-6).

12 o. To amend or modify the franchise of a motor vehicle
13 franchisee, or any lease or agreement ancillary or collateral to such
14 franchise, including in connection with the renewal of a franchise, if
15 such amendment or modification is not in good faith, is not for good
16 cause, or would adversely and substantially alter the rights,
17 obligations, investment or return on investment of the motor vehicle
18 franchisee.

19 p. To take or withhold or threaten to take or withhold any
20 action, impose or threaten to impose any penalty, or deny or
21 threaten to deny any benefit, because the motor vehicle franchisee
22 sold or leased a motor vehicle to a customer who exported the
23 vehicle to a foreign country or who resold the vehicle, unless the
24 motor vehicle franchisor can establish that the motor vehicle
25 franchisee knew or reasonably should have known, prior to the sale
26 or lease, that the customer intended to export or resell the motor
27 vehicle; provided, however, that it shall be presumed that the motor
28 vehicle franchisee did not know or should not have reasonably
29 known that the vehicle would be exported if the vehicle is titled or
30 registered in any state or the District of Columbia.

31 q. To require a motor vehicle franchisee, at the time of entering
32 into a franchise arrangement, any lease or agreement ancillary or
33 collateral to a motor vehicle franchise, or any amendment,
34 modification, renewal or termination thereof, to assent to a release,
35 assignment, novation, waiver or estoppel, which would relieve any
36 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
37 seq.); provided that nothing in this subsection shall be deemed to
38 prohibit a voluntary agreement between the motor vehicle
39 franchisor and the motor vehicle franchisee which contains a
40 release, assignment, novation, waiver or estoppel for which separate
41 and valuable consideration is paid by the motor vehicle franchisor
42 to the motor vehicle franchisee.

43 r. To provide any term or condition in any motor vehicle
44 franchise, in any lease or other agreement ancillary or collateral to a
45 motor vehicle franchise or in any renewal, amendment or
46 modification thereof, which term or condition directly or indirectly
47 violates P.L.1971, c.356 (C.56:10-1 et seq.).

1 s. To allocate vehicles to or evaluate the performance of a
2 motor vehicle franchise based on, or offer any discount, incentive,
3 bonus, program, allowance or credit that differentiates between
4 vehicle sales by a motor vehicle franchisee within a territory or
5 geographic area assigned to the motor vehicle franchisee and
6 vehicle sales outside of such territory or geographic area.

7 t. To take or withhold, or threaten to take or withhold, any
8 action; impose, or threaten to impose, any penalty; or deny or limit,
9 or threaten to deny or limit any benefit to a motor vehicle franchisee
10 who discloses to a customer any recall or any information related to
11 a condition that may affect the safety, emissions, or operability of a
12 motor vehicle, including, but not limited to, the provision of notice
13 pursuant to section 4 of P.L. , c. (C.) (pending before the
14 Legislature as this bill).

15 u. To reduce the amount of compensation otherwise owed to a
16 motor vehicle franchisee, whether through a chargeback, removal
17 from an incentive program, reduction in amount owed under an
18 incentive program, or any other means, because the motor vehicle
19 franchisee has submitted a claim for reimbursement under
20 subsection c. of this section or was otherwise compensated for a
21 motor vehicle subject to a recall.

22 (cf: P.L.2015, c.24, s.2)

23
24 8. Section 3 of P.L.1977, c.84 (C.56:10-15) is amended to read
25 as follows:

26 3. If any motor vehicle franchise shall require or permit motor
27 vehicle franchisees to perform labor services or provide parts in
28 satisfaction of a warranty **[issued]**, extended warranty,
29 maintenance, or other service-related plan offered by the motor
30 vehicle franchisor:

31 a. The motor vehicle franchisor shall reimburse each motor
32 vehicle franchisee for such labor services, including diagnostic
33 work, as are rendered and for such parts as are supplied, in an
34 amount equal to the greater of the adequate and fair compensation
35 calculated pursuant to subsection j. of this section or the prevailing
36 retail price charged by such motor vehicle franchisee for such labor
37 services and parts in circumstances where such labor services are
38 rendered or such parts supplied other than pursuant to warranty;
39 provided that such motor vehicle franchisee's prevailing retail price
40 is not unreasonable when compared with that of the holders of
41 motor vehicle franchises from the same motor vehicle franchisor for
42 identical merchandise or services in the geographic area in which
43 the motor vehicle franchisee is engaged in business.

44 b. The motor vehicle franchisor shall not by agreement, by
45 restrictions upon reimbursement, or otherwise, restrict the nature
46 and extent of labor services to be rendered or parts to be provided
47 so that such restriction prevents the motor vehicle franchisee from
48 satisfying the warranty by rendering labor services in a good and

1 workmanlike manner and providing parts which are required in
2 accordance with generally accepted standards. Any such restriction
3 shall constitute a prohibited practice hereunder.

4 c. The motor vehicle franchisor shall reimburse the motor
5 vehicle franchisee pursuant to subsection a. of this section, without
6 deduction, for labor services performed on, and parts supplied for, a
7 motor vehicle by the motor vehicle franchisee in good faith and in
8 accordance with generally accepted standards, notwithstanding any
9 requirement that the motor vehicle franchisor accept the return of
10 the motor vehicle or make payment to a consumer with respect to
11 the motor vehicle pursuant to the provisions of P.L.1988, c.123
12 (C.56:12-29 et seq.).

13 d. For the purposes of this section, the "prevailing retail price"
14 charged by: (1) a motor vehicle franchisee for parts means the price
15 paid by the motor vehicle franchisee for those parts, including all
16 shipping and other charges, multiplied by the sum of 1.0 and the
17 franchisee's average percentage parts markup over the price paid by
18 the motor vehicle franchisee for parts purchased by the motor
19 vehicle franchisee from the motor vehicle franchisor and sold at
20 retail. The motor vehicle franchisee may establish average
21 percentage parts markup under this section by submitting to the
22 motor vehicle franchisor 100 sequential customer paid service
23 repair orders or 90 days of customer paid service repair orders,
24 whichever is less, covering repairs made no more than 180 days
25 before the submission, and declaring **【what】** the average percentage
26 parts markup **【is】**. The average percentage parts markup so
27 declared shall go into effect 30 days following the declaration
28 subject to audit of the submitted repair orders by the motor vehicle
29 franchisor and adjustment of the average percentage parts markup
30 based on that audit. Only retail sales not involving warranty
31 repairs, parts covered by subsection e. of this section, or parts
32 supplied for routine vehicle maintenance, shall be considered in
33 calculating average percentage parts markup. No motor vehicle
34 franchisor shall require a motor vehicle franchisee to establish
35 average percentage parts markup by a methodology, or by requiring
36 information, that is unduly burdensome or time consuming to
37 provide, including, but not limited to, part by part or transaction by
38 transaction calculations. A motor vehicle franchisee shall not
39 request a change in the average percentage parts markup more than
40 twice in one calendar year; and (2) a recreational motor vehicle
41 franchisee for parts means actual wholesale cost, plus a minimum
42 **30【%】** percent handling charge and any freight costs incurred to
43 return the removed parts to the motor vehicle franchisor.

44 e. If a motor vehicle franchisor supplies a part or parts for use
45 in a repair rendered under a warranty other than by sale of that part
46 or parts to the motor vehicle franchisee, the motor vehicle
47 franchisee shall be entitled to compensation equivalent to the motor
48 vehicle franchisee's average percentage parts markup on the part or

1 parts, as if the part or parts had been sold to the motor vehicle
2 franchisee by the motor vehicle franchisor. The requirements of
3 this section shall not apply to entire engine assemblies and entire
4 transmission assemblies. In the case of those **【assemblies】** parts,
5 the motor vehicle franchisor shall reimburse the motor vehicle
6 franchisee in the amount of 30**【%】** percent of what the motor
7 vehicle franchisee would have paid the motor vehicle franchisor for
8 **【the assembly】** a part if the **【assembly】** part had not been supplied
9 by the franchisor other than by the sale of that **【assembly】** part to
10 the motor vehicle franchisee.

11 f. The motor vehicle franchisor shall reimburse the motor
12 vehicle franchisee for parts supplied and labor services rendered
13 under a warranty within 30 days after approval of a claim for
14 reimbursement. All claims for reimbursement shall be approved or
15 disapproved within 30 days after receipt of the claim by the motor
16 vehicle franchisor. When a claim is disapproved, the motor vehicle
17 franchisee shall be notified in writing of the grounds for the
18 disapproval. No claim that has been approved and paid shall be
19 charged back to the motor vehicle franchisee unless it can be shown
20 that the claim was false or fraudulent, that the labor services were
21 not properly performed, that the parts or labor services were
22 unnecessary to correct the defective condition, or that the motor
23 vehicle franchisee failed to reasonably substantiate the claim in
24 accordance with reasonable written requirements of the motor
25 vehicle franchisor, provided that the motor vehicle franchisee had
26 been notified of the requirements prior to the time the claim arose
27 and the requirements were in effect at the time the claim arose. A
28 motor vehicle franchisor shall not audit a claim after the expiration
29 of 12 months following the payment of the claim unless the motor
30 vehicle franchisor has reasonable grounds to believe that the claim
31 was fraudulent.

32 g. The obligations imposed on motor vehicle franchisors by
33 this section shall apply to any parent, subsidiary, affiliate or agent
34 of the motor vehicle franchisor, any person under common
35 ownership or control, any employee of the motor vehicle franchisor
36 and any person holding 1**【%】** percent or more of the shares of any
37 class of securities or other ownership interest in the motor vehicle
38 franchisor, if a warranty or service or repair plan is issued by that
39 person instead of or in addition to one issued by the motor vehicle
40 franchisor.

41 h. **【The provisions of this section shall also apply to franchisor**
42 **administered service and repair plans:**

43 (1) if the motor vehicle franchisee offers for sale only the
44 franchisor administered service or repair plan; or

45 (2) if the motor vehicle franchisee is paid its prevailing retail
46 price for all service or repair plans the motor vehicle franchisee
47 offers for sale to purchasers of new motor vehicles; or

1 (3) for the first 36,000 miles of coverage under the franchisor
2 administered service or repair plan, if the warranty offered by the
3 motor vehicle franchisor on the motor vehicle provides coverage for
4 less than 36,000 miles; or

5 (4) for motor vehicles covered by a franchisor administered
6 service or repair plan, if the motor vehicle franchisee does not offer
7 for sale the franchisor administered service or repair plan.】

8 With respect to franchisor administered service or repair plans
9 covering only routine maintenance service, this section applies only
10 to those plans sold to customers on or after the effective date of
11 P.L.1999, c.45.

12 i. A motor vehicle franchisor shall make payment to a motor
13 vehicle franchisee pursuant to incentive, bonus, sales, performance
14 or other programs within 30 days after receipt of a claim from the
15 motor vehicle franchisee. When a claim is disapproved, the motor
16 vehicle franchisee shall be notified in writing of the grounds for
17 disapproval. No claim shall be disapproved unless it can be shown
18 that the claim was false or fraudulent, or that the motor vehicle
19 franchisee failed to reasonably substantiate the claim in accordance
20 with reasonable written requirements of the motor vehicle
21 franchisor, provided that the motor vehicle franchisee had been
22 notified of the requirements prior to the time the claim arose and the
23 requirements were in effect at the time the claim arose. A motor
24 vehicle franchisor shall not audit a claim after the expiration of 12
25 months following the payment of the claim.

26 j. (1) Except as otherwise provided in subsection a. of this
27 section, the motor vehicle franchisor shall provide adequate and fair
28 compensation to each motor vehicle franchisee for labor services
29 rendered in a repair in an amount not less than the amount the retail
30 customer pays for the same labor services with regard to rate and
31 time.

32 (2) Any time guide agreed to before the effective date of P.L. ,
33 c. (C.) (pending before the Legislature as this bill) by the
34 motor vehicle franchisor and the motor vehicle franchisee for
35 repairs may be used in lieu of actual time expended. If a time guide
36 has not been agreed to before the effective date of P.L. , c.
37 (C.) (pending before the Legislature as this bill) or the time
38 guide does not define the time for an applicable repair, the motor
39 vehicle franchisor's time guide shall be used, except that the
40 definition of time for an applicable repair shall be multiplied by 1.5.

41 (3) A motor vehicle franchisor shall pay the motor vehicle
42 franchisee an hourly rate for labor services performed in connection
43 with repairs in an amount that is the greater of:

44 (a) the franchisee's hourly labor rate for retail customer repairs,
45 determined by dividing the amount of the franchisee's total labor
46 sales for retail customer repairs by the number of total labor hours
47 that generated such sales for the month preceding the request,
48 excluding the work specified in subsection k. of this section; or

1 **(b) an amount equal to the franchisee's markup over cost that**
2 **results in the same gross profit percentage for labor hours**
3 **performed in work covered by subparagraph (a) of this paragraph as**
4 **the franchisee receives for labor performed in its retail customer**
5 **repairs, as evidenced by the average of the franchisee's gross profit**
6 **percentage in the franchisee's financial statements provided to the**
7 **franchisor for the two months preceding the franchisee's written**
8 **request. In the written request, the franchisee shall provide the**
9 **arithmetic mean of the hourly wage paid to all franchisee**
10 **technicians during the preceding two months preceding the request,**
11 **which arithmetic mean shall be the franchisee cost used in the**
12 **calculation of an hourly rate for labor services pursuant to this**
13 **paragraph.**

14 **k. The average percentage parts markup and labor rate declared**
15 **pursuant to this section shall become effective 30 days following**
16 **their declaration, subject to an audit of the submitted repair orders**
17 **by the motor vehicle franchisor and a proposed adjustment of the**
18 **average percentage parts markup or labor rate if the motor vehicle**
19 **franchisee's submission fails to comply with the respective**
20 **calculation described in this section. Only retail sales not involving**
21 **warranty repairs, parts covered by subsection h. of this section, or**
22 **parts supplied for routine vehicle maintenance, shall be considered**
23 **in calculating average percentage parts markup and labor rate. No**
24 **motor vehicle franchisor shall require a motor vehicle franchisee to**
25 **establish average percentage parts markup or labor rate by using a**
26 **methodology, or by requiring information, that is unduly**
27 **burdensome or time consuming to provide, including, but not**
28 **limited to, part-by-part or transaction-by-transaction calculations.**
29 **A motor vehicle franchisee shall not request a change in the average**
30 **percentage parts markup and labor rate more than twice in one**
31 **calendar year.**

32 **l. A motor vehicle franchisor shall not recover its costs, except**
33 **as provided in this section, from a motor vehicle franchisee within**
34 **this State, including, but not limited to, an increase in the wholesale**
35 **price of a vehicle or a surcharge imposed on a motor vehicle**
36 **franchisee solely, which increase is intended to recover the cost of**
37 **reimbursing a franchisee for parts and service pursuant to this**
38 **section, provided that a motor vehicle franchisor shall not be**
39 **prohibited from increasing prices for vehicles or parts in the normal**
40 **course of business.**

41 **m. A motor vehicle franchisor shall not charge back any claim**
42 **paid for labor services and parts provided in the performance of an**
43 **open recall, warranty, or other services agreement for an incentive,**
44 **bonus, sales, performance, or other program without providing**
45 **written notice to the franchisee within 30 days from the on-site**
46 **audit, which written notice explains in detail the basis for each of**
47 **the proposed chargebacks and the methodology by which the**
48 **franchisee was selected for audit or review. After all internal**

1 dispute resolution processes provided through the franchisor have
2 been resolved, the franchisor shall provide final notice to the
3 franchisee of the final amount of the proposed chargeback. If the
4 franchisee or its representative institutes an administrative or
5 judicial action for a violation of P.L.1971, c.356 (C.56:10-1 et seq.),
6 as amended and supplemented, challenging the chargeback within
7 30 days of the receipt of the final notice, the total proposed
8 chargeback amounts shall be stayed, without bond, until the final
9 judgment has been rendered in such action. A franchisor shall not
10 deny or charge back a claim paid for labor services and parts
11 provided in the performance of an open recall, warranty, or other
12 service agreement or for an incentive, bonus, sales, performance, or
13 other program unless the franchisor satisfies its burden of proof that
14 the franchisee did not make a good faith effort to comply with the
15 reasonable written procedures of the franchisor, that the franchisee
16 did not actually perform the work, or that the claim was materially
17 false or fraudulent. A franchisor shall not deny or charge back a
18 claim due to an administrative or scrivener's error in the submission
19 of the claim.

20 n. A motor vehicle franchisor shall not unilaterally reduce or
21 otherwise manipulate the price of parts required for warranty or
22 open recall services in a manner that unfairly and unilaterally
23 allows the franchisor to reduce the level of compensation paid to
24 franchisees for warranty and open recall services the motor vehicle
25 franchisees provide to consumers within 60 or fewer days preceding
26 an announcement of an open recall, any time after an open recall, or
27 after a warranty claim has arisen.

28 (cf: P.L.2011, c.66, s.5)

29

30 9. This act shall take effect immediately and shall apply to all
31 motor vehicle franchise agreements in effect on or after the
32 effective date of P.L. , c. (C.) (pending before the
33 Legislature as this bill) but shall not apply retroactively to any
34 cause of action that shall have arisen prior to the effective date of
35 P.L. , c. (C.) (pending before the Legislature as this bill).

36

37

38

STATEMENT

39

40 This bill establishes the "Motor Vehicle Open Recall Notice and
41 Fair Compensation Act," which supplements the "Franchise
42 Practices Act," N.J.S.A.56:10-1 et seq. (the act) and amends various
43 sections of law concerning franchise practices. The bill also
44 updates a findings and declarations section in the act. The bill is to
45 take effect immediately and apply to all motor vehicle franchise
46 agreements in effect on or after the bill's effective date. However,
47 the bill is not to apply retroactively to any cause of action that arose
48 prior to the bill's effective date.

1 *National Highway Traffic Safety Administration Recall Information*

2 The bill requires a motor vehicle franchisee or dealer to access
3 information on open recalls available on the Internet website of the
4 National Highway Traffic Safety Administration (NHTSA) prior to
5 selling a used motor vehicle. If a recall is discovered, a franchisee
6 or dealer is required to inform a prospective purchaser by providing
7 a printed copy of the recall information. A franchisee or dealer is
8 prohibited from selling a used motor vehicle that is subject to a
9 stop-sale notice, do-not-drive notice, or similar notice or
10 designation issued by the NHTSA.

11 The bill creates an irrebuttable presumption that a franchisee or
12 dealer had no knowledge of the existence of an open recall, stop-
13 sale notice, do-not-drive notice, or similar notice or designation on
14 a used motor vehicle if, at the time of sale: (1) the franchisee or
15 dealer accessed the Internet website of the NHTSA; and (2) the
16 franchisee or dealer's search using the specific vehicle
17 identification number of the motor vehicle yielded no indication of
18 an open recall, stop-sale notice, do-not-drive notice, or similar
19 notice or designation. The bill does not create a legal duty or
20 liability upon a franchisee or dealer related to the accuracy, errors,
21 or omissions of the Internet website. The bill does not require a
22 franchisee or dealer to provide a prospective purchaser with recall
23 information added to the Internet website after providing the printed
24 information on recalls at the time of sale.

25 Any motor vehicle franchisor or dealer offering motor vehicles
26 for sale in this State is required to provide the Chief Administrator
27 of the New Jersey Motor Vehicle Commission (commission) with a
28 list of motor vehicles registered in this State that are subject to an
29 open recall for which the necessary repairs remain uncompleted for
30 a period of six months or longer after the initial notice of recall
31 issued by the manufacturer. At a minimum, this list is to identify
32 each motor vehicle by year, make, model, and vehicle identification
33 number. A motor vehicle franchisor or dealer is required to provide
34 an updated list to the commission every 180 days after submission
35 of the initial list.

36 Within 30 days of receiving the lists, the commission is required
37 to direct the motor vehicle franchisor or dealer to send a notice on
38 official commission letterhead, at the motor vehicle franchisor or
39 dealer's expense, to all registered owners of the listed motor
40 vehicles. The bill provides the form to be used for this notice,
41 which is to inform recipients of an open recall and the options
42 available to resolve the issue, including contact information for the
43 NHTSA.

44

45 *Compensation for Recall Costs*

46 Under current law, a motor vehicle franchisor is required to
47 compensate a motor vehicle franchisee for all reasonable costs
48 incurred by the franchisee in complying with the requirements

1 imposed by the franchisor relating to a product recall. In addition
2 to these compensation requirements, the bill also provides guidance
3 on certain costs that must be remitted to a motor vehicle franchisee
4 in the event of a recall.

5 The bill provides that for certain new motor vehicles, or used
6 motor vehicles of the same line make as the motor vehicle
7 franchisor and motor vehicle franchisee, and subject to a stop-sale
8 notice, do-not-drive notice, or similar notice or designation for
9 which a part or remedy is not reasonably available, which motor
10 vehicles are held for sale by the motor vehicle franchisee, the costs
11 of the motor vehicle franchisee are to equal 1.75 percent of the
12 value of each motor vehicle per month, or per portion of a month.
13 This requirement applies when not preempted by federal law or
14 regulation. For the purposes of this calculation, a motor vehicle's
15 value is to be the motor vehicle franchisor's suggested retail price,
16 or for a used motor vehicle, the value is to be the average trade-in
17 value as indicated in an independent third-party guide for the year,
18 make, model, and mileage. Under the bill, a motor vehicle
19 franchisor may compensate its motor vehicle franchisees under a
20 national recall compensation program if the compensation thereby
21 provided is at least the value provided for by this requirement.

22 The bill prohibits a motor vehicle franchisor from reducing the
23 amount of compensation otherwise owed to a motor vehicle
24 franchisee because the motor vehicle franchisee has submitted a
25 claim for reimbursement pursuant to the new guidance on
26 compensation for recalls.

27

28 *Reimbursement for Certain Expenses*

29 Under current law, certain requirements are triggered if a motor
30 vehicle franchise requires or permits motor vehicle franchisees to
31 perform services or provide parts in satisfaction of a warranty
32 issued by the motor vehicle franchisor. This bill amends this
33 requirement to extend to the satisfaction of a warranty, extended
34 warranty, maintenance, or other service-related plan offered by the
35 motor vehicle franchisor.

36 Under the bill, labor services to be reimbursed include diagnostic
37 work. In the case of entire engine and entire transmission
38 assemblies, the bill provides that the motor vehicle franchisor is
39 required to reimburse the motor vehicle franchisee in the amount of
40 30 percent of what the motor vehicle franchisee would have paid
41 the motor vehicle franchisor for a part if the part had not been
42 supplied by the franchisor other than by the sale of that part to the
43 motor vehicle franchisee. The bill removes franchisor administered
44 service and repair plans from consideration of reimbursement.

45 The bill amends certain provisions of law concerning the process
46 for calculating average percentage parts markup. Specifically, the
47 bill provides that franchisor-administered service or repair plans
48 covering only routine maintenance service on plans sold to

1 customers after March 12, 1999 are relevant to this calculation.
2 Additionally, the prohibition on a motor vehicle franchisor to
3 require a franchisee to establish average percentage parts markup
4 and labor rate by an unduly burdensome or time consuming
5 methodology is amended to prohibit a demand for part-by-part or
6 transaction-by-transaction calculations.

7 The bill provides that adequate and fair compensation for labor
8 services rendered in a repair requires the motor vehicle franchisor to
9 pay each motor vehicle franchisee no less than the amount the retail
10 customer pays for the same labor services with regard to rate and
11 time. In calculating this amount, the bill permits the use of a time
12 guide, entered into by the franchisor and franchisee, in lieu of the
13 actual time expended on the repair. In the event that a time guide
14 has not been agreed to for repairs or the time guide does not specify
15 a time for the applicable repair, the motor vehicle franchisor's time
16 guide is to be used, except that the motor vehicle franchisor's
17 definition of time for an applicable repair is multiplied by 1.5.

18 Additionally, the bill provides that a motor vehicle franchisor is
19 to pay a motor vehicle franchisee an hourly rate for labor services
20 performed in connection with repairs. The hourly rate is to be the
21 greater of: (1) an amount calculated by dividing the amount of the
22 franchisee's total labor sales for retail customer repairs by the
23 number of total labor hours that generated such sales for the month
24 preceding a request for reimbursement; or (2) an amount equal to
25 the franchisee's markup over cost that results in the same gross
26 profit percentage for labor hours performed for retail customer
27 repairs. For the second of these options, the franchisee's gross
28 profit percentage comes from the franchisee's financial statements
29 provided to the franchisor for the two months preceding the
30 franchisee's written request, and the franchisee is required to
31 provide in the written request the arithmetic mean of the hourly
32 wage paid to all its technicians during the preceding two months
33 preceding the request. The arithmetic mean is the franchisee cost
34 used in the calculation of an hourly rate for labor services
35 performed in connection with repairs.

36
37 *Restrictions on Reimbursement*

38 A motor vehicle franchisor is prohibited under the bill from
39 recovering its costs from a motor vehicle franchisee, except in
40 certain circumstances. However, a motor vehicle franchisor's right
41 to increase prices for vehicles or parts in the normal course of
42 business is preserved.

43 A motor vehicle franchisor is prohibited under the bill from
44 charging back any claim paid for labor services and parts provided
45 in the performance of an open recall, warranty, or other services
46 agreement for an incentive, bonus, sales, performance, or other
47 program without providing written notice to the franchisee within
48 30 days from the on-site audit, which written notice explains in

1 detail the basis for each of the proposed chargebacks and the
2 methodology by which the franchisee was selected for audit or
3 review. After all internal dispute resolution processes provided
4 through the franchisor have been resolved, the franchisor is required
5 to provide final notice to the franchisee of the final amount of the
6 proposed chargeback. If the franchisee or its representative
7 institutes an administrative or judicial action for a violation of the
8 act, challenging the chargeback within 30 days of the receipt of the
9 final notice, the total proposed chargeback amounts are to be
10 stayed, without bond, until the final judgment has been rendered.

11 A franchisor is not permitted to deny or charge back a claim paid
12 for labor services and parts provided in the performance of an open
13 recall, warranty, or other service agreement or for an incentive,
14 bonus, sales, performance, or other program unless the franchisor
15 satisfies its burden of proof that the franchisee did not make a good
16 faith effort to comply with the reasonable written procedures of the
17 franchisor, that the franchisee did not actually perform the work, or
18 that the claim was materially false or fraudulent. A franchisor is
19 not permitted to deny or charge back a claim due to an
20 administrative or scrivener's error in the submission of the claim.

21 Under the bill, a motor vehicle franchisor is not to unilaterally
22 reduce or manipulate the price of parts required for warranty or
23 open recall services in a manner that unfairly and unilaterally
24 allows the franchisor to reduce the level of compensation paid to
25 motor vehicle franchisees for warranty and open recall services
26 within 60 or fewer days preceding an announcement of an open
27 recall, any time after an open recall, or after a warranty claim has
28 arisen.

29

30 *Standing of Certain Corporations or Associations*

31 The bill provides that any corporation or association which is
32 primarily owned by or comprised of motor vehicle franchises has
33 standing to file an administrative petition, or to bring an action
34 before any court of competent jurisdiction, for itself or by, for, or
35 on behalf of any motor vehicle franchisee or group of motor vehicle
36 franchisees for any alleged violation of the act.