

**SENATE, No. 3309**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED MAY 20, 2024

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Somerset and Union)**

**Senator ANTHONY M. BUCCO**

**District 25 (Morris and Passaic)**

**Co-Sponsored by:**

**Senators Amato, Singer, Singleton, Holzapfel, Polistina, Turner, Diegnan,  
Pennacchio and Ruiz**

**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. (C. )  
9 (pending before the Legislature as this bill) shall be known and may  
10 be cited as the “Motor Vehicle Open Recall Notice and Fair  
11 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  
37 P.L. , c. (C. ) (pending before the Legislature as this bill)  
38 or the time guide does not define the time for an applicable repair,  
39 the motor vehicle franchisor's time guide shall be used, except that  
40 the definition of time for an applicable repair shall be multiplied by  
41 1.5.

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

45 (a) the franchisee's hourly labor rate for retail customer repairs,  
46 determined by dividing the amount of the franchisee's total labor  
47 sales for retail customer repairs by the number of total labor hours

1 that generated such sales for the month preceding the request,  
2 excluding the work specified in subsection k. of this section; or

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

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

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

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



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

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

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

31

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

38

39

40

#### STATEMENT

41

42 This bill establishes the "Motor Vehicle Open Recall Notice and  
43 Fair Compensation Act," which supplements the "Franchise  
44 Practices Act," N.J.S.A.56:10-1 et seq. (the act) and amends various  
45 sections of law concerning franchise practices. The bill also  
46 updates a findings and declarations section in the act. The bill is to  
47 take effect immediately and apply to all motor vehicle franchise  
48 agreements in effect on or after the bill's effective date. However,

1 the bill is not to apply retroactively to any cause of action that arose  
2 prior to the bill's effective date.

3

4 *National Highway Traffic Safety Administration Recall Information*

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

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

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

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

1     *Compensation for Recall Costs*

2     Under current law, a motor vehicle franchisor is required to  
3     compensate a motor vehicle franchisee for all reasonable costs  
4     incurred by the franchisee in complying with the requirements  
5     imposed by the franchisor relating to a product recall. In addition  
6     to these compensation requirements, the bill also provides guidance  
7     on certain costs that must be remitted to a motor vehicle franchisee  
8     in the event of a recall.

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

26    The bill prohibits a motor vehicle franchisor from reducing the  
27    amount of compensation otherwise owed to a motor vehicle  
28    franchisee because the motor vehicle franchisee has submitted a  
29    claim for reimbursement pursuant to the new guidance on  
30    compensation for recalls.

31

32    *Reimbursement for Certain Expenses*

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

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

1 The bill amends certain provisions of law concerning the process  
2 for calculating average percentage parts markup. Specifically, the  
3 bill provides that franchisor-administered service or repair plans  
4 covering only routine maintenance service on plans sold to  
5 customers after March 12, 1999 are relevant to this calculation.  
6 Additionally, the prohibition on a motor vehicle franchisor to  
7 require a franchisee to establish average percentage parts markup  
8 and labor rate by an unduly burdensome or time consuming  
9 methodology is amended to prohibit a demand for part-by-part or  
10 transaction-by-transaction calculations.

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

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

40  
41 *Restrictions on Reimbursement*

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

47 A motor vehicle franchisor is prohibited under the bill from  
48 charging back any claim paid for labor services and parts provided

1 in the performance of an open recall, warranty, or other services  
2 agreement for an incentive, bonus, sales, performance, or other  
3 program without providing written notice to the franchisee within  
4 30 days from the on-site audit, which written notice explains in  
5 detail the basis for each of the proposed chargebacks and the  
6 methodology by which the franchisee was selected for audit or  
7 review. After all internal dispute resolution processes provided  
8 through the franchisor have been resolved, the franchisor is required  
9 to provide final notice to the franchisee of the final amount of the  
10 proposed chargeback. If the franchisee or its representative  
11 institutes an administrative or judicial action for a violation of the  
12 act, challenging the chargeback within 30 days of the receipt of the  
13 final notice, the total proposed chargeback amounts are to be  
14 stayed, without bond, until the final judgment has been rendered.

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

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

33

#### 34 *Standing of Certain Corporations or Associations*

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