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New Jersey Adopts Sweeping Amendments to Its Motor Vehicle Franchise Law

On May 4, 2011, the governor of New Jersey signed into law significant amendments to the state's Franchise Practices Act, N.J.S.A. 56:10-1, *et. seq.* (the "act"), which impact the relationship between motor vehicle manufacturers and their franchised dealers. Among other things, the revised statute materially expands the litany of "prohibited practices" by a manufacturer; modifies the law with respect to the manufacturer's obligations when it discontinues a line make; amends provisions related to reimbursement for warranty service; and makes a number of changes to the dealer protest sections of the statute. **The Statutory Framework** New Jersey, like many other states, has enacted legislation that governs the relationship between motor vehicle manufacturers and distributors and the network of franchised new motor vehicle dealers that serve as their retail outlets and warranty service providers. This relationship statute provides protections to dealers over and above those found within the generally applicable Franchise Practices Act, of which it is a part. Over the years, the sections of the act that are directed to new motor vehicle franchises have been amended several times to regulate both fundamental aspects of the manufacturer-dealer relationship and details regarding various operational practices and procedures. The amendments recently signed into law, which took effect immediately, address and amend a variety of aspects of the relevant parties' relationship and their complex commercial dealings with one another. **Expansion of Prohibited Practices** Section 7.4 of the act was amended to materially expand and clarify the list of practices by a motor vehicle manufacturer deemed to be a violation of the act. Among other things, this newly revised section:

- Prohibits discrimination between dealers based on price, allocation and product availability;
- Limits a manufacturer's ability to regulate "the manner in which a motor vehicle franchisor utilizes the facilities at which a motor vehicle franchise is operated" including regulating the line makes of vehicles which may be sold at the facility;
- Places limitations on a manufacturer's ability to compel a relocation or facilities upgrade;
- Imposes certain restrictions on a manufacturer's ability to set working capital, equity or floor plan financing requirements;
- Limits the ability of a manufacturer to impose conditions on the transfer of a franchise;
- Limits the ability of a manufacturer to amend or modify the franchise agreement except in good faith and for good cause, and where such a modification would not "substantially alter the rights, obligations, investment or return on investment of the franchisee"; and
- Restricts the ability of a manufacturer to evaluate dealer performance, allocate vehicles and award incentives by differentiating between sales to customers within an assigned primary market area and sales outside such territory.

Line Make Cancellations Additional amendments to Section 13.2 of the act clarify a manufacturer's obligations to repurchase inventory from a franchisee upon termination or cancellation of the franchise relationship. Section 13.3 now also makes it a violation for a manufacturer to terminate a franchise as a result of the "discontinuance of a line make" of vehicles, unless certain benefits and compensation are provided (including the fair market value of the franchise) or unless a replacement franchise is offered. **Warranty Reimbursements and Other Payments** The revised act also sets, for the first time, minimum warranty parts reimbursement rates for recreational motor vehicle franchisees. For these franchises, the warranty reimbursement charge for parts is now defined as the "actual wholesale cost, plus a minimum 30% handling charge and any freight costs incurred to return the removed parts to the motor vehicle franchisor." (*See* 56:10-15[d].) Warranty parts reimbursement rates for motor vehicle franchises other than recreational vehicle dealers remain unchanged. A new Section 15(i) imposes a 30-day time period for a manufacturer to make a payment to a dealer pursuant to any "incentive, bonus,

sales, performance or other program" and requires that any disapproval of a claim be stated in writing. Disapprovals are allowed only if the manufacturer can show the claim was "false or fraudulent" or was not reasonably substantiated in accordance with the manufacturer's reasonable written requirements. The new provision also states that claims may not be audited by the manufacturer after the expiration of a 12-month period following the payment of the claim. **Dealer Protest Rights and Procedures** The legislation includes broad changes to the law governing the ability of an existing dealer to protest a manufacturer's appointment of an intra-brand competitor within a "relevant market area" (RMA). The geographic scope of the RMA contained in Section 16 was expanded to include all dealers within 14 miles of the proposed new dealer site, except for relocations, which maintain the prior eight- and 14-mile definitions. In addition, the method of calculating that distance was clarified to mean the "nearest surveyed boundary line." Although only dealers within the RMA may file a protest, the revised act requires the manufacturer to give notice of the proposed new location to all dealers within a 20-mile radius. The failure by a manufacturer to provide the required notice to dealers within the RMA now gives rise to a statutory cause of action in Superior Court to nullify any approval, along with an award of attorney fees for bringing such action. (*See* 56:10-19.) In any administrative hearing on a protest, Section 21 of the statute now provides that the manufacturer has the burden of establishing that the proposed franchise "will not be injurious." Moreover, Section 23 of the act now renders "conclusive" certain statutory presumptions of injury, such as where a dealer can demonstrate at least average market penetration in its assigned area of responsibility. The amendments to the protest provisions further limit the right of a manufacturer to reopen or reactivate a closed franchise. Section 20 now not only incorporates restrictions based on time and mileage, it also precludes an assignee of, or successor to, a franchisor from exercising such rights at all. **Automatic Injunctive Relief** The amended statute includes a new section providing for an automatic injunction against a termination when there is the timely institution of an action or alternative dispute resolution proceeding based on an allegation that the termination violates the act. In such an action, the manufacturer will carry the burden of establishing that its proposed termination does not violate the act, and the manufacturer will be limited to basing its case on the reasons set forth in the written notice of termination provided for in Section 5 of the act. **Conclusion** The revisions to the motor vehicle portions of the New Jersey Franchise Practices Act are extensive and touch upon a number of aspects of the manufacturer-dealer relationship. The provisions discussed above address only some of the more significant changes to the law, and this is not intended to be a comprehensive checklist of each way in which the statute has been amended. For further information about the new law, please contact Dennis R. LaFiura, Paul J. Halasz or Aaron J. Stahl.