

ASSEMBLY CONSUMER AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 4380

STATE OF NEW JERSEY

DATED: MARCH 6, 2025

The Assembly Consumer Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4380.

This committee substitute establishes the “Motor Vehicle Open Recall Notice and Fair Compensation Act,” which supplements the “Franchise Practices Act,” P.L.1971, c.356 (the act), and amends various sections of law concerning franchise practices. The committee substitute also updates a findings and declarations section in the act. The committee substitute is effective on the first day of the fourth month following enactment, and applies to all motor vehicle franchise agreements in effect on or after the committee substitute’s effective date. However, the committee substitute is not to apply retroactively to any cause of action that arose prior to the committee substitute’s effective date.

Sections 1 through 5 of the committee substitute comprise the “Motor Vehicle Open Recall Notice and Fair Compensation Act,” which grants certain provisions to motor vehicle franchisees.

Under the committee substitute, the “Motor Vehicle Open Recall Notice and Fair Compensation Act”:

- 1) provides that any corporation or association which is primarily owned by or comprised of motor vehicle franchises has standing to file an administrative proceeding or protest in any court of competent jurisdiction;
- 2) entitles motor vehicle franchisees to certain compensation if the parts required to perform a recall service or repair are unavailable, or the franchisor has issued a stop-sale or do-not-drive notice; and
- 3) establishes new requirements for recall notification by the Motor Vehicle Commission (MVC).

Standing of Certain Corporations or Associations

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

Motor Vehicle Commission Requirements

Under the committee substitute, prior to issuing a motor vehicle registration or renewal notice, the MVC is required to review information available on the Internet website of the National Highway Traffic Safety Administration (NHTSA) regarding recalls. For a vehicle subject to an open recall, the commission is required to provide the owner of the motor vehicle with written notice of each open recall applicable to the motor vehicle. The notice is required to include the following:

- (1) a description of each open recall; and
- (2) a statement indicating that each open recall may be repaired by a dealer approved by the manufacturer of the motor vehicle at no cost to the owner of the motor vehicle, except as provided pursuant to 49 U.S.C. s.30120.

Under section 5 of the committee substitute, the MVC is also required to apply for any available funding, including federal grants, which may be available to cover the costs to implement the recall notification requirements of the committee substitute. Manufacturers operating in this State are also required by section 5 of the committee substitute to assist the MVC with any application for funding. The committee substitute provides that if funding sources acquired pursuant to the provisions of section 5 of the committee substitute are not enough to cover the costs of implementing the committee substitute's provisions, the MVC shall require each manufacturer that conducts business in this State to pay a fee to the commission to cover the difference. The chief administrator of the MVC is required to determine the amount of the fee each year based on documentation of the actual costs incurred to implement the provisions of section 5 of the committee substitute.

Compensation for Recall Costs

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

The committee substitute provides that for certain motor vehicles of the same line make as the motor vehicle franchisor and motor vehicle franchisee, and subject to a stop-sale notice, do-not-drive notice, or similar notice or designation for which a part or parts for recall is not reasonably available, which motor vehicles are held for sale by the motor vehicle franchisee, the costs of the motor vehicle franchisee are to equal 1.5 percent of the value of each motor vehicle per month, or per portion of a month. This requirement applies when not preempted by federal law or regulation. For the purposes of this

calculation, a motor vehicle's value is to be the motor vehicle franchisor's suggested retail price, or for a used motor vehicle, the value is to be the average trade-in value as indicated in an independent third-party guide for the year, make, model, and mileage. Under the committee substitute, a motor vehicle franchisor may compensate its motor vehicle franchisees under a national recall compensation program if the compensation thereby provided is at least the value provided for by this requirement.

The committee substitute prohibits a motor vehicle franchisor from reducing the amount of compensation otherwise owed to a motor vehicle franchisee because the motor vehicle franchisee has submitted a claim for reimbursement pursuant to the new guidance on compensation for recalls.

Reimbursement for Certain Expenses

Under current law, certain requirements are triggered if a motor vehicle franchise requires or permits motor vehicle franchisees to perform services or provide parts in satisfaction of a warranty issued by the motor vehicle franchisor. This committee substitute amends this requirement to extend to the satisfaction of a warranty, extended warranty, maintenance, or other service-related plan offered by the motor vehicle franchisor and recall and other work reimbursed by motor vehicle franchisor.

Under the committee substitute, labor services to be reimbursed include diagnostic work. In the case of entire engine and entire transmission assemblies and electric propulsion batteries, the committee substitute provides that the motor vehicle franchisor is required to reimburse the motor vehicle franchisee in the amount of 30 percent of what the motor vehicle franchisee would have paid the motor vehicle franchisor for a part if the part had not been supplied by the franchisor other than by the sale of that part to the motor vehicle franchisee.

The committee substitute amends certain provisions of law concerning the process for calculating average percentage parts markup, the retail labor time allowance, and the retail labor rate.

The committee substitute provides that adequate and fair compensation for labor services rendered in a repair requires the motor vehicle franchisor to pay each motor vehicle franchisee no less than the amount the retail customer pays for the same labor services with regard to labor time. The committee substitute provides that a motor vehicle franchisee may choose from three options for reimbursement from a motor vehicle franchisor:

(1) a franchisor's labor time guide as adequate and fair compensation for labor services rendered for repairs in an amount equal to the amount a retail customer pays for the same labor services with regard to labor time, multiplied by 1.5;

(2) the use of a third party time guide in lieu of the franchisor's labor time guide to arrive at an adequate and fair compensation for labor services rendered for repairs in an amount equal to the amount a retail customer pays for the same labor services with regard to labor time; or

(3) an established average retail labor time allowance in lieu of the franchisor's labor time guide for franchisor-paid repairs or service by submitting to the motor vehicle franchisor 100 sequential customer paid service repair orders or 90 days of customer paid service repair orders, whichever is less, covering repairs made no more than 180 days before the submission, and dividing the number of hours permitted by the franchisor for any such repairs under the franchisor's labor time guide for franchisor-paid repairs or service. The resulting quotient shall be applied to the franchisor's labor time guide to establish the franchisee's average retail labor time allowance. The average retail labor time allowance so declared shall go into effect 30 days following the declaration subject to audit by the motor vehicle franchisor only of the sample submitted by the motor vehicle franchisee and any adjustment of the average labor time allowance made by the motor vehicle franchisor based only on an audit of that sample.

Restrictions on Reimbursement

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

A motor vehicle franchisor is prohibited under the committee substitute from charging back any claim paid for labor services and parts provided in the performance of a recall, warranty, extended warranty, or other maintenance or other services agreement for an incentive, bonus, sales, performance, or other program without providing written notice to the franchisee within 30 days from the audit, which written notice explains in detail the basis for each of the proposed chargebacks and the methodology by which the franchisee was selected for audit or review.

After all internal dispute resolution processes provided through the franchisor have been resolved, the franchisor is required to provide final notice to the franchisee of the final amount of the proposed chargeback. If the franchisee or its representative institutes an administrative or judicial action for a violation of the act, challenging the chargeback within 30 days of the receipt of the final notice, the total proposed chargeback amounts are to be stayed, without bond, until the final judgment has been rendered.

A franchisor is not permitted to deny or charge back a claim paid for labor services and parts provided in the performance of an open

recall, warranty, or other service agreement or for an incentive, bonus, sales, performance, or other program unless the franchisor satisfies its burden of proof that the franchisee did not make a good faith effort to comply with the reasonable written procedures of the franchisor, that the franchisee did not actually perform the work, or that the claim was materially false or fraudulent. A franchisor is not permitted to deny or charge back a claim due to an administrative or scrivener's error in the submission of the claim.

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