

115TH CONGRESS
1ST SESSION

H. R. 470

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 12, 2017

Mr. ELLISON (for himself, Mr. HUFFMAN, Mr. CONYERS, and Ms. MCCOLLUM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Franchise Act of 2017”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is the following:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Unfair franchise practices.
- Sec. 4. Standards of conduct.

Sec. 5. Procedural fairness.
 Sec. 6. Transfer of a franchise.
 Sec. 7. Renewal of the franchise; notice.
 Sec. 8. Termination; good cause; notice; opportunity to cure.
 Sec. 9. Effect of termination.
 Sec. 10. Transfer of franchise by franchisor.
 Sec. 11. Private right of action.
 Sec. 12. Scope and applicability.
 Sec. 13. Definitions.
 Sec. 14. Severability.
 Sec. 15. State attorneys general.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds the following:

3 (1) Franchise businesses represent a large and
 4 growing segment of the Nation’s retail and service
 5 businesses and are rapidly replacing more traditional
 6 forms of small business ownership in the American
 7 economy.

8 (2) Franchise businesses involve a joint enter-
 9 prise between the franchisor and franchisees in
 10 which each party has a vested interest in the success
 11 of the franchised business.

12 (3) Most prospective franchisees lack bar-
 13 gaining power and generally invest substantial
 14 amounts to obtain a franchise business when they
 15 are unfamiliar with operating a business, with the
 16 business being franchised, and with industry prac-
 17 tices in franchising.

18 (4) Franchisees invest a substantial amount of
 19 their own money, take loans (often secured by their
 20 own home and retirement accounts, and the Amer-

1 ican taxpayer via loans guaranteed by the Small
2 Business Administration), and enter into long-term
3 commercial leases and other obligations for the fran-
4 chise businesses in order to support themselves and
5 their families.

6 (5) Franchise agreements reflect a profound
7 imbalance of contractual power in favor of the
8 franchisor, and fail to give due regard to the legiti-
9 mate business interests of the franchisee, as a result
10 of the franchisor reserving one-sided and pervasive
11 contractual rights over the franchise relationship.

12 (6) Franchisees may suffer substantial financial
13 losses when the franchisor does not provide truthful
14 or complete information regarding the franchise op-
15 portunity, or where the franchisor does not act in
16 good faith or in a commercially reasonable manner
17 in the performance of the franchise agreement.

18 (7) Unlike investments in securities, an invest-
19 ment in a franchise may lead to substantial addi-
20 tional losses well beyond the initial capital invest-
21 ment. Unlike employment, due to long-term contrac-
22 tual and lease obligations, franchisees generally can-
23 not simply resign and leave the franchised business
24 without substantial liabilities.

1 (8) Traditional common law doctrines have not
2 evolved sufficiently to protect franchisees adequately
3 from fraudulent or unfair practices in the sale and
4 operation of franchise businesses, and significant
5 contractual and procedural restrictions have denied
6 franchisees adequate legal recourse to protect their
7 interests in such businesses.

8 (9) Contractual obligations of the franchisee to
9 the franchisor may create an environment that
10 makes it difficult to pay workers significantly above
11 minimum wage or provide reasonable benefits to
12 workers.

13 (10) A franchisee's freedom to achieve a con-
14 tract negotiated at arm's length is greatly limited by
15 the disparity of bargaining power, lack of consistent
16 legal standards, and other factors described above.
17 This Act is necessary to restore true freedom to con-
18 tract, and to improve the living standards of employ-
19 ees of franchises.

20 (11) The Federal Government has had a signifi-
21 cant interest in regulating franchising and has regu-
22 lated franchising for over 40 years through the Fed-
23 eral Trade Commission and its Franchise Rule.

24 (b) PURPOSE.—It is the purpose of this Act to—

1 (1) promote the compelling interest of the pub-
2 lic in fair business relations between franchisees and
3 franchisors;

4 (2) protect franchisees against unfair treatment
5 by franchisors, who inherently have superior eco-
6 nomic power and superior bargaining power in the
7 negotiation of the terms and conditions of the fran-
8 chise relationship;

9 (3) provide franchisees with rights and remedies
10 in addition to those existing by contract or common
11 law;

12 (4) govern franchise agreements, including any
13 renewals or amendments, to the full extent con-
14 sistent with the Constitution of the United States;
15 and

16 (5) create an environment that gives franchisees
17 opportunity to thrive, therefore having the oppor-
18 tunity to provide better wages and benefits to their
19 employees.

20 **SEC. 3. UNFAIR FRANCHISE PRACTICES.**

21 (a) MISREPRESENTATIONS IN REQUIRED DISCLO-
22 SURE.—In connection with any disclosure document, no-
23 tice, or report required by any Federal, State, or local law,
24 it shall be unlawful for any franchise seller, either directly
25 or indirectly through another person—

1 (1) to—

2 (A) make an untrue statement of material
3 fact;

4 (B) fail to state a material fact; or

5 (C) fail to state any fact which would
6 render any required statement or disclosure ei-
7 ther untrue or misleading; and

8 (2) fail to furnish any prospective franchisee
9 with—

10 (A) all information required to be disclosed
11 by law and at the time and in the manner re-
12 quired;

13 (B) a written statement specifying, promi-
14 nently and in not less than 14-point type,
15 whether the franchise agreement involved con-
16 tains a right to renew such agreement; and

17 (C) historical financial performance data
18 including sales, expenses, and profitability data,
19 in the disclosure document or to make any
20 claim or representation to a prospective
21 franchisee whether orally or in writing, which is
22 inconsistent with, or which contradicts, the
23 franchisor's disclosure document.

24 (b) DECEPTIVE AND DISCRIMINATORY PRACTICES.—

25 In connection with the performance, enforcement, renewal,

1 or termination of any franchise agreement, it shall be un-
2 lawful for a franchisor or subfranchisor, either directly or
3 indirectly through another person, to do any of the fol-
4 lowing:

5 (1) To engage in an act, practice, course of
6 business, or pattern of conduct which operates as a
7 fraud upon any person.

8 (2) To hinder, prohibit, or penalize (or threaten
9 to hinder, prohibit, or penalize), directly or indi-
10 rectly, the free association of franchisees for any
11 lawful purpose, including the formation of or partici-
12 pation in any trade association made up of
13 franchisees or of associations of franchisees.

14 (3) To discriminate against a franchisee by im-
15 posing requirements not imposed on other similarly
16 situated franchisees.

17 (4) To otherwise retaliate, directly or indirectly,
18 against any franchisee for membership or participa-
19 tion in a franchisee association.

20 (5) To charge excessive and unreasonable re-
21 newal fees. Fees shall not be deemed excessive and
22 unreasonable if they do not exceed 50 percent of the
23 amount of the average initial franchise fee or other
24 required payments then being charged to all
25 franchisees in the market.

1 (6) To enforce a clause or provision in a fran-
2 chise agreement requiring the parties to submit to
3 arbitration unless the parties, each being rep-
4 resented by counsel, have voluntarily entered into an
5 agreement after the dispute arises to submit the dis-
6 pute to arbitration, and then only if the arbitration
7 is conducted at a location reasonably convenient to
8 the franchisee; provided, however, that the provisions
9 of this subsection shall not prohibit the enforce-
10 ability of a clause or provision in a franchise agree-
11 ment which requires the parties to submit to non-
12 binding mediation conducted at a location reasonably
13 convenient to the franchisee.

14 (7) To terminate, cancel, or fail to renew a
15 franchise for the failure or refusal of the franchisee
16 to do any of the following:

17 (A) Refusal to take part in any pro-
18 motional campaign which is not reasonable, im-
19 plemented in good faith, and expected to pro-
20 mote the profitability of the franchisee's busi-
21 ness.

22 (B) Failure to meet sales quotas suggested
23 or required by the franchisor not expressly set
24 forth in the franchise agreement.

1 (C) Failure or refusal to sell any products
2 or services at a price suggested or required by
3 the franchisor, an affiliate of the franchisor, or
4 any supplier approved by the franchisor.

5 (D) Refusal to keep the franchised prem-
6 ises open and operating during hours which are
7 unprofitable to the franchisee or to preclude the
8 franchisee from establishing its own hours of
9 operation or nonoperation for the period be-
10 tween the hours of 10 p.m. and 6 a.m., unless
11 said business is commonly recognized as an ex-
12 tended hour business or the initial signed fran-
13 chise agreement required operating during these
14 hours.

15 (E) Refusal to give the franchisor or any
16 supplier financial records of the operation of
17 the franchise which are not related or unneces-
18 sary to the performance of franchisee's express
19 obligations under the franchise agreement or
20 records unrelated to the franchise business.

21 (8) To restrict a franchisee from associating
22 with other franchisees or from joining, leading, or
23 otherwise participating in a trade or other associa-
24 tion, or retaliate against a franchisee for engaging in
25 these activities.

1 (9) To require or prohibit any change in man-
2 agement of any franchise unless the requirement or
3 prohibition of the change shall be for good cause,
4 which cause shall be stated in writing by the
5 franchisor and be based on violations of material,
6 reasonable and reasonably required express provi-
7 sions of the franchise agreement. Good cause shall
8 include requiring that management of the franchise
9 be conducted by—

10 (A) personnel who have been trained in the
11 manner required of all franchise managers in
12 the system; and

13 (B) personnel who are legally eligible for
14 employment in the United States of America.

15 (10) To impose on a franchisee by contract,
16 rule, or regulation, whether written or oral, a stand-
17 ard of conduct or performance unless the franchisor,
18 its agents or representatives, sustain the burden of
19 proving the standard to be reasonable, necessary,
20 and uniformly enforced and applied throughout its
21 system of franchisees, franchisor-owned units and li-
22 censees. The following are examples of unreasonable
23 conduct:

24 (A) To fail to deal fairly and in good faith
25 or fail to exercise due care with a franchisee or

1 any association or other aggregation or incorpo-
2 ration of franchisees in all business matters, in-
3 cluding—

4 (i) proposed and actual transfer of the
5 franchise;

6 (ii) administration of advertising
7 funds, rewards programs, and marketing
8 funds; and

9 (iii) the interpretation, administration,
10 and performance of franchise agreements
11 and area development or territory agree-
12 ments.

13 (B) To sell, rent, or offer to sell to a
14 franchisee or require a franchisee to buy any
15 product or service for more than a fair and rea-
16 sonable price or without the reasonable expecta-
17 tion that the sale or rental transaction itself
18 will be profitable for the franchisee's business.

19 (C) To discriminate between franchisees in
20 the charges offered or made for royalties,
21 goods, services, equipment, rentals, advertising
22 services, or in any other business dealing, un-
23 less that discrimination between franchisees—

1 (i) would be necessary to allow a par-
2 ticular franchisee to fairly meet competi-
3 tion in the open market;

4 (ii) does not adversely affect the busi-
5 ness of any existing franchisee; and

6 (iii) to the extent that the franchisor
7 satisfies the burden of proving that any
8 classification of or discrimination between
9 franchisees is reasonable, the discrimina-
10 tion is based on franchises granted at ma-
11 terially different times and the discrimina-
12 tion is reasonably related to the difference
13 in time or on other proper and justifiable
14 distinctions, and is not arbitrary or in-
15 tended to be for the benefit of the
16 franchisor at the expense of any
17 franchisee. Nothing in this subsection shall
18 be construed as granting to a franchisor
19 any right which may be limited by any
20 other State or Federal statute.

21 (D) To notify the franchisee of a claimed
22 breach of the franchise agreement no later than
23 180 days from the date the breach arises or
24 180 days after the franchisor knew or in the ex-

1 ercise of reasonable care should have known of
2 the claimed breach.

3 (E) To require a franchisee to keep the
4 franchised premises open and operating during
5 hours which are unprofitable to the franchisee
6 or to preclude the franchisee from establishing
7 its own hours of operation or nonoperation be-
8 tween the hours of 10 p.m. and 6 a.m., unless
9 said business is commonly recognized as an ex-
10 tended hour business, or the initial signed fran-
11 chise agreement required operating during these
12 hours.

13 (F) To require a franchisee to include non-
14 compete language in employment contracts with
15 its employees.

16 (G) To fail to, without charge, make read-
17 ily available to franchisees, and provide a phys-
18 ical copy of true, accurate, and complete copies
19 of all records and accountings of marketing, re-
20 wards programs, advertising funds, and fees
21 that have been paid by franchisees, vendors,
22 suppliers, and licensees.

23 (H) To impose performance standards on
24 franchises unless the franchisor proves the per-

1 formance standards are reasonable, necessary,
2 and uniformly enforced.

3 (I) To require or request a franchisee to
4 assent to a release, assignment, novation, waiv-
5 er, or estoppel which would prospectively relieve
6 any person from liability imposed by this chap-
7 ter.

8 (J) To require or demand that a franchisee
9 pay liquidated or other post-termination dam-
10 ages in excess of the average monthly royalty
11 fees paid by the franchisee during the prior 12
12 full calendar months (or the shorter time that
13 the franchised location has been in the system),
14 multiplied by the lesser of 6 months or the
15 number of months remaining in the term of the
16 franchise agreement.

17 (K) To act to accomplish, either directly or
18 indirectly through any parent company, sub-
19 sidiary, affiliate, or agent, what would otherwise
20 be prohibited under this chapter on the part of
21 the manufacturer or distributor.

22 **SEC. 4. STANDARDS OF CONDUCT.**

23 (a) DUTY OF GOOD FAITH.—

1 (1) A franchise contract imposes on each party
2 thereto a duty to act in good faith in its perform-
3 ance and enforcement.

4 (2) As used in this subsection, a duty of good
5 faith shall—

6 (A) obligate a party to a franchise to do
7 nothing that will have the effect of destroying
8 or injuring the right of the other party to ob-
9 tain and receive the expected fruits of the con-
10 tract;

11 (B) obligate a party to do everything re-
12 quired under the contract to accomplish the
13 purposes of the contract; and

14 (C) require honesty in fact and observance
15 of reasonable standards of fair dealing in the
16 trade.

17 (3) No provision of any franchise agreement,
18 express or implied, shall be interpreted or enforced
19 in such a way as to obfuscate or avoid a party's duty
20 to act reasonably and in good faith with the other,
21 or otherwise allow a disparate result in the franchise
22 relationship.

23 (b) DUTY OF DUE CARE.—

24 (1) A franchise agreement imposes on the
25 franchisor a duty of due care. Unless a franchisor

1 represents that it has greater skill or knowledge in
2 its undertaking with its franchisees, or conspicuously
3 disclaims that it has any skill or knowledge, the
4 franchisor is required to exercise the skill and knowl-
5 edge normally possessed by franchisors in good
6 standing in the same or similar types of business.

7 (2) For purposes of this subsection—

8 (A) the term “skill or knowledge” means
9 something more than the mere minimum level
10 of skill or knowledge required of any person en-
11 gaging in a service or business and involves a
12 special level of expertise—

13 (i) which is the result of acquired
14 learning and aptitude developed by special
15 training and experience in the business to
16 be licensed under the franchise agreement,
17 or the result of extensive use and experi-
18 ence with the goods or services or the oper-
19 ating system of such business;

20 (ii) which is the result of experience in
21 organizing a franchise system and in pro-
22 viding training, assistance and services to
23 franchisees; and

24 (iii) which a prospective franchisee
25 would expect in reasonable reliance on the

1 written and oral commitments and rep-
2 resentations of the franchisor; and

3 (B) a franchisor shall be permitted to show
4 that it contracted for, hired, or purchased the
5 expertise necessary to comply with the require-
6 ments of this subsection and that such expertise
7 was incorporated in the franchise or commu-
8 nicated or provided to the franchisee.

9 (3) The requirement of this subsection may not
10 be waived by agreement or by conduct, but the
11 franchisor may limit in writing the nature and scope
12 of its skill and knowledge, and of its undertaking
13 with a prospective franchisee, by stating that it
14 claims no skill or knowledge in a particular area,
15 provided that no inconsistent representation, wheth-
16 er written or oral, is made to the prospective
17 franchisee irrespective of any merger or integration
18 clause in the franchise agreement.

19 **SEC. 5. PROCEDURAL FAIRNESS.**

20 (a) IN GENERAL.—It shall be unlawful for any
21 franchisor, either directly or indirectly through another
22 person, to—

23 (1) require any term or condition in a franchise
24 agreement, or in any agreement ancillary or collat-

1 eral to a franchise, which directly or indirectly vio-
2 lates any provision of this Act;

3 (2) require a franchisee to assent to any dis-
4 claimer, waiver, release, stipulation, or other provi-
5 sion which would purport—

6 (A) to relieve any person from a duty im-
7 posed by this Act, except as part of a settle-
8 ment of a preexisting bona fide dispute; or

9 (B) to protect any person against any li-
10 ability to which he would otherwise be subject
11 under this Act by reason of willful misfeasance,
12 bad faith, or gross negligence in the perform-
13 ance of duties, or by reason of reckless dis-
14 regard of obligations and duties under the fran-
15 chise agreement; or

16 (3) require a franchisee to assent to any waiver,
17 release, stipulation, or other provision, either as part
18 of any agreement or document relating to the oper-
19 ation of a franchise business, in any agreement or
20 document relating to the termination, cancellation,
21 forfeiture, repurchase, or resale of a franchise busi-
22 ness, or as a condition for permitting a franchisee
23 to leave the franchise system, which would purport
24 to prevent the franchisee from making any oral or
25 written statement relating to the franchise business,

1 to the operation of the franchise system, or to the
2 franchisee's experience with the franchise business.

3 (b) TERMS OF AGREEMENT.—Any condition, stipula-
4 tion, provision, or term of any franchise agreement, or any
5 agreement ancillary or collateral to a franchise, which
6 would purport to waive or restrict any right granted under
7 this Act shall be void and unenforceable. No stipulation
8 or provision of a franchise agreement, or of an agreement
9 ancillary or collateral to a franchise, shall—

10 (1) deprive a franchisee of the application and
11 benefits of this Act, of any other Federal law, or of
12 the law of any State in which the franchisee is a
13 resident, or in which the franchisee's place of busi-
14 ness is located;

15 (2) deprive a franchisee of the right to com-
16 mence an action against the franchisor for violation
17 of this Act, or for breach of the franchise agreement,
18 or of any agreement or stipulation ancillary or col-
19 lateral to the franchise, in a court in the State of
20 the franchisee's principal place of business; or

21 (3) prevent a franchisee from bringing or par-
22 ticipating in any of the following actions:

23 (A) A consolidated action or consolidated
24 arbitration.

25 (B) A mass action or mass arbitration.

1 (C) A class action under Rule 23 of the
2 Federal Rules of Civil Procedure.

3 (D) A class arbitration as authorized by
4 the American Arbitration Association Supple-
5 mentary Rules for Class Arbitrations.

6 (E) A similar consolidated, mass, or class
7 proceeding permissible under State or Federal
8 statutory or common law, or under the rules of
9 any other arbitration association.

10 (c) NO WAIVERS.—Compliance with this Act or with
11 an applicable State franchise law is not waived, excused,
12 or avoided, and evidence of violation of this Act or of such
13 State law shall not be excluded, by virtue of an integration
14 clause, any choice-of-law, choice-of-venue or any other pro-
15 vision of a franchise agreement, or an agreement ancillary
16 or collateral to a franchise, the parol evidence rule, or any
17 other rule of evidence purporting to exclude consideration
18 of matters outside the franchise agreement.

19 **SEC. 6. TRANSFER OF A FRANCHISE.**

20 (a) TRANSFER OF INTEREST.—A franchisee may as-
21 sign an interest in a franchised business or in a franchise
22 to a transferee provided the transferee satisfies the rea-
23 sonable qualifications then generally applied by the
24 franchisor in the offer and sale of franchises. For the pur-
25 pose of this section, a reasonable current qualification for

1 a new franchisee is a qualification based upon a legitimate
2 business reason. If the proposed transferee does not meet
3 the reasonable current qualifications of the franchisor, the
4 franchisor may refuse to permit the transfer, provided
5 that the refusal of the franchisor to consent to the transfer
6 is not arbitrary or capricious and the franchisor states the
7 grounds for its refusal in writing to the franchisee.

8 (b) NOTICE.—A franchisee shall give a franchisor not
9 less than 60 days written notice of a proposed transfer
10 of a transferable interest, and on request shall provide in
11 writing the ownership interests of all persons holding or
12 claiming an equitable or beneficial interest in the franchise
13 subsequent to the transfer or the franchisee, as appro-
14 priate.

15 (c) CONSENT IMPLIED.—A transfer by a franchisee
16 is considered to have been approved 60 days after the
17 franchisee submits the request for permission to transfer
18 the franchise involved unless, within that time the
19 franchisor refuses to consent to the transfer as evidenced
20 in writing in accordance with subsection (a).

21 (d) CONDITIONS.—A franchisor may require as a
22 condition of a transfer that—

23 (1) the transferee successfully complete a rea-
24 sonable training program;

1 (2) a reasonable transfer fee be paid to reim-
2 burse the franchisor for the franchisor's reasonable
3 and actual expenses directly attributable to the
4 transfer;

5 (3) the transferring franchisee pay or make rea-
6 sonable provision to pay any amount due the
7 franchisor or the franchisor's affiliate; or

8 (4) the financial terms of the transfer at the
9 time of the transfer, comply with the franchisor's
10 current financial requirements for franchisees.

11 (e) PROHIBITED CONDITIONS.—A franchisor may
12 not condition its consent to a transfer described in sub-
13 section (a) on—

14 (1) franchisee's forgoing existing rights other
15 than those contained in the franchise agreement;

16 (2) a franchisee's entering into a release of
17 claims broader in scope than a counterpart release
18 of claims offered by the franchisor to the franchisee;
19 or

20 (3) requiring the franchisee or transferee to
21 make, or agree to make, capital improvements, rein-
22 vestments, or purchases in an amount greater than
23 the franchisor could have reasonably required under
24 the terms of the franchisee's existing franchise
25 agreement.

1 (f) NO ADDITIONAL AGREEMENT REQUIRED AFTER
2 TRANSFER.—A franchisee may assign the franchisee’s in-
3 terest in the franchise for the unexpired term of the fran-
4 chise agreement, and a franchisor shall not require the
5 franchisee or the transferee to enter into a franchise
6 agreement that has different material terms or financial
7 requirements as a condition of the transfer.

8 (g) PUBLIC OFFERINGS.—A franchisor may not with-
9 hold its consent to a franchisee’s making a public offering
10 of its securities without good cause if the franchisee, or
11 the owner of the franchisee’s interest in the franchise, re-
12 tains control over more than 25 percent of the voting
13 power as the franchisee.

14 (h) OTHER CONSOLIDATION.—A franchisor may not
15 withhold its consent to a pooling of interests, to a sale
16 or exchange of assets or securities, or to any other busi-
17 ness consolidation amongst its existing franchisees, pro-
18 vided the constituents are each in material compliance
19 with their respective obligations to the franchisor.

20 (i) OCCURRENCES NOT CONSIDERED TRANSFERS.—
21 The following occurrences shall not be considered trans-
22 fers requiring the consent of the franchisor under a fran-
23 chise agreement, and a franchisor shall not impose any
24 fees, payments, or charges in excess of a franchisor’s cost
25 to review the relevant matter:

1 (1) The succession of ownership or management
2 of a franchise upon the death or disability of a
3 franchisee, or of an owner of a franchise, to the sur-
4 viving spouse, heir, or partner active in the manage-
5 ment of the franchise unless the successor objec-
6 tively fails to meet within 1 year the then current
7 reasonable qualifications of the franchisor for
8 franchisees.

9 (2) Incorporation of a proprietorship franchisee,
10 provided that the franchisor may require a personal
11 guarantee by the franchisee of obligations related to
12 the franchise.

13 (3) A transfer within an existing ownership
14 group of a franchise provided that more than 50
15 percent of the franchise is held by persons who meet
16 the franchisor's reasonable current qualifications for
17 franchisees. If less than 50 percent of the franchise
18 would be owned by persons who objectively meet the
19 franchisor's reasonable current qualifications, the
20 franchisor may refuse to authorize the transfer.

21 (4) A transfer of less than a controlling interest
22 in the franchise to the franchisee's spouse or child
23 or children, provided that more than 50 percent of
24 the entire franchise is held by those who meet the
25 franchisor's reasonable current qualifications. If less

1 than 50 percent of the franchise would be owned by
2 persons who objectively meet the franchisor's reason-
3 able current qualifications, the franchisor may refuse
4 to authorize the transfer.

5 (5) A grant or retention of a security interest
6 in the franchised business or its assets, or an owner-
7 ship interest in the franchisee, if the security agree-
8 ment establishes an obligation on the part of the se-
9 cured party enforceable by the franchisor to give the
10 franchisor, simultaneously with notice to the
11 franchisee, notice of the secured party's intent to
12 foreclose on the collateral, and a reasonable oppor-
13 tunity to redeem the interest of the secured party
14 and recover the secured party's interest in the fran-
15 chise or franchised business by satisfying the se-
16 cured obligation.

17 (6) A franchisor may not exercise any pur-
18 ported right of first refusal or right to purchase with
19 regard to any franchise, or interest or assets of a
20 franchisee, upon the happening of any event de-
21 scribed in paragraphs (1) through (5).

22 (j) CERTAIN COVENANTS UNENFORCEABLE.—After
23 the transfer of a transferor's complete interest in a fran-
24 chise, a franchisor may not enforce against the transferor
25 any covenant of the franchise agreement purporting to

1 prohibit the transferor from engaging in any lawful occu-
2 pation or enterprise. This subsection shall not limit the
3 franchisor from enforcing a contractual covenant against
4 the transferor not to exploit the franchisor's trade secrets
5 or intellectual property rights (including protection of
6 trade dress) except by agreement with the franchisor.

7 **SEC. 7. RENEWAL OF THE FRANCHISE; NOTICE.**

8 (a) IN GENERAL.—A franchisor shall not, directly or
9 through an officer, agent, or employee, fail to renew a
10 franchise, except for good cause shown.

11 (b) FEES.—Renewals shall not be subject to unrea-
12 sonable fees. Fees shall not be deemed unreasonable if
13 they do not exceed 50 percent of the amount of the aver-
14 age initial franchise fee or other required payments then
15 being charged to all franchisees.

16 (c) GOOD CAUSE FOR NONRENEWAL.—Good cause
17 as described in subsection (a) shall be based upon legiti-
18 mate business reason which shall include, the franchisee's
19 refusal or failure to substantially comply with any mate-
20 rial, reasonable and reasonably necessary express obliga-
21 tion of the franchise agreement within the 1-year period
22 prior to renewal, including repeated and intentional non-
23 payment of royalties, advertising or marketing fees clearly
24 required by the franchise agreement.

1 (d) NOTICE OF NONRENEWAL.—Before nonrenewal
2 of the franchise, the franchisor shall give the franchisee
3 written notice at least 90 days in advance of the non-
4 renewal. The notice shall state all of the reasons consti-
5 tuting good cause for the nonrenewal and shall provide
6 that the franchisee has 60 days in which to rectify any
7 claimed discrepancy and reinstate its right to renew the
8 franchise.

9 (e) PRESERVATION OF FEES.—If the franchisor re-
10 quires the franchisee to sign a new franchise agreement
11 as a condition of renewal, such franchise agreement shall
12 contain the same royalties, advertising fees, and other fees
13 as the expiring agreement, no new fees and any protected
14 territory in the expiring agreement shall be the same in
15 the renewal franchise.

16 (f) PROHIBITED ACTIONS.—A franchisor shall not
17 prohibit, or enforce a prohibition against, any franchisee
18 from—

19 (1) engaging in any business at any location
20 after expiration of a franchise agreement; or

21 (2) using the customer list and telephone num-
22 bers associated with the franchise business.

23 (g) RULE OF CONSTRUCTION.—Nothing in this sub-
24 section shall be interpreted to prohibit enforcement of any

1 provision of a franchise contract obligating a franchisee
2 after expiration or termination of a franchise—

3 (1) to cease or refrain from using a trademark,
4 other trade secret, or other intellectual property
5 owned by the franchisor or its affiliate;

6 (2) to alter the appearance of the business
7 premises so that it is not substantially similar to the
8 standard design, decor criteria, trade dress or motif
9 in use by other franchisees using the same name or
10 trademarks within the proximate trade or market
11 area of the business; or

12 (3) to modify the manner or mode of business
13 operations so as to avoid any substantial confusion
14 with the manner or mode of operations which are
15 unique to the franchisor and commonly in practice
16 by other franchisees using the same name or trade-
17 marks within the proximate trade or market area of
18 the business.

19 **SEC. 8. TERMINATION; GOOD CAUSE; NOTICE; OPPOR-**
20 **TUNITY TO CURE.**

21 (a) IN GENERAL.—A franchisor shall not, directly or
22 through an officer, agent, or employee, terminate or cancel
23 a franchise, or substantially change the competitive cir-
24 cumstances of the franchisee, except for good cause
25 shown.

1 (b) DEFAULT PROVISIONS.—A default under one
2 franchise agreement shall not in and of itself constitute
3 a default under another franchise agreement to which the
4 franchisee or an affiliate of the franchisee is a party. Any
5 cross-default provisions are null and void.

6 (c) NOTICE.—Prior to termination or cancellation of
7 the franchise, the franchisor shall give the franchisee writ-
8 ten notice at least 90 days in advance of the termination.
9 The notice shall state all of the reasons constituting good
10 cause for termination or cancellation and shall provide
11 that the franchisee has 60 days in which to rectify any
12 claimed defaults.

13 (d) EXCEPTION TO NOTICE REQUIREMENT.—The re-
14 quirement for 90 days advance written notice for termi-
15 nation shall not apply if the reason for termination is be-
16 cause—

17 (1) the alleged grounds are voluntary abandon-
18 ment by the franchisee of the franchise relationship,
19 in which event, such notice may be given 15 days in
20 advance of the termination or cancellation; or

21 (2) the conviction of the franchisee in a court
22 of competent jurisdiction of an offense, where the
23 conviction is no longer appealable and the offense
24 is—

1 (A) punishable by a term of imprisonment
2 in excess of 1 year;

3 (B) directly related to the business conduct
4 pursuant to the franchise; or

5 (C) materially impairs the goodwill value of
6 the franchise or the franchised trademark. In
7 that event, such notice may be given at any
8 time following the date on which the conviction
9 is no longer appealable and shall be effective
10 upon delivery and written receipt of the notice.

11 In no event shall any franchisor collect any fi-
12 nancial penalty or fee, however delineated, as a
13 consequence of such conviction.

14 (e) ADDITIONAL NOTICE.—If the reason for termi-
15 nation or cancellation is nonpayment of sums due under
16 the franchise agreement, the franchisee shall be entitled
17 to written notice of such default, and shall have 15 days
18 in which to cure such default from the date of such notice.
19 For such nonpayment defaults a franchisee has the right
20 to cure 3 times in any 12-month period during the period
21 of the franchise agreement.

22 (f) NOTICE OF IMMINENT DANGER.—If the reason
23 for termination or cancellation is violation of any law or
24 regulation relating to an imminent danger to public health
25 or safety the franchisee shall be entitled to immediate

1 written notice and shall have 24 hours following receipt
2 of such notice to cure such violation.

3 (g) GOOD CAUSE.—A franchisee may terminate a
4 franchise agreement for good cause shown, without any
5 further liability to the franchisor. Good cause shall include
6 changes to the franchise system or the competitive cir-
7 cumstances of the franchise business, which would cause
8 substantial negative impact or substantial financial hard-
9 ship to the franchisee in the operation of its franchise.

10 **SEC. 9. EFFECT OF TERMINATION.**

11 (a) IN GENERAL.—Upon termination of a franchise
12 for whatever cause or reason, except voluntary relinquis-
13 ment or abandonment of the franchise by the franchisee
14 or the expiration of the franchise agreement where the
15 franchisee does not elect to renew, the franchisor shall
16 fairly compensate the franchisee or franchisee's estate for
17 the fair market value at the time of termination of the
18 franchise, of the franchisee's inventory, supplies, equip-
19 ment, and furnishings purchased by the franchisee from
20 the franchisor or its approved sources and the fair market
21 value of the going concern value and good will of the busi-
22 ness, if any, exclusive of personalized items which have
23 no value to the franchisor and inventory, supplies, equip-
24 ment, and furnishings not reasonably required in the con-
25 duct of the franchise business; provided, however, that—

1 (1) compensation need not be made to
2 franchisee of going concern value and good will if
3 the franchisor agrees in writing not to enforce a cov-
4 enant which restrains the franchisee from competing
5 with the franchisor in the same or substantially
6 similar business in the same or substantially similar
7 manner at the same location using the same prop-
8 erty except the franchisor's registered trademark or
9 trade name; and

10 (2) a franchisor may offset against amounts
11 owed to a franchisee under this subsection any
12 amount mutual agreed upon and owed by the
13 franchisee to franchisor which is not the subject of
14 a good faith dispute by the franchisee.

15 (b) RULE OF CONSTRUCTION.—The provisions of this
16 section shall not be construed to permit the termination
17 or nonrenewal of any franchise agreement except in ac-
18 cordance with the express terms of the franchise agree-
19 ment and this Act.

20 **SEC. 10. TRANSFER OF FRANCHISE BY FRANCHISOR.**

21 A franchisor shall not transfer, by sale or otherwise,
22 its interest in a franchise system unless—

23 (1) the franchisor provides, not less than 30
24 days before the effective date of transfer, notice to
25 every franchisee of the intent to transfer the

1 franchisor's interest in the franchise or of substan-
2 tially all of the franchises held by the franchisor;

3 (2) such notice is accompanied by a complete
4 description of the business and financial terms of
5 the proposed transfer or transfers; and

6 (3) upon the transfer, the entity assuming the
7 franchisor's obligations has the business experience
8 and financial means to adequately perform all of the
9 franchisor's obligations in the ordinary course of
10 business.

11 **SEC. 11. PRIVATE RIGHT OF ACTION.**

12 (a) IN GENERAL.—A franchisee who is injured by a
13 violation or threatened violation of this Act, or of section
14 436.1 of title 16, Code of Federal Regulations (relating
15 to disclosure requirements and prohibitions concerning
16 franchising and business opportunity ventures), as in ef-
17 fect on the date of the enactment of this Act, may bring
18 a private right of action in any court of appropriate juris-
19 diction for rescission and restitution, as well as for all
20 damages and maybe awarded injunctive relief against a
21 violation or threatened violation of this Act or such sec-
22 tion. The franchisee shall also be entitled to recover its
23 costs of litigation and reasonable attorney's fees and ex-
24 pert witness fees, against any entity or person found to
25 be liable for such violation.

1 (b) LIABILITY.—Every person who directly or indi-
2 rectly controls a person liable under subsection (a), every
3 partner in a firm so liable, every principal executive officer
4 or director of a corporation so liable, every person occu-
5 pying a similar status or performing similar functions and
6 every employee of a person so liable who materially aids
7 in the act or transaction constituting the violation is also
8 liable jointly and severally with and to the same extent
9 as such person, unless the person who would otherwise be
10 liable hereunder had no knowledge of or reasonable
11 grounds to know of the existence of the facts by reason
12 of which the liability is alleged to exist.

13 (c) STATUTE OF LIMITATIONS.—No action may be
14 commenced pursuant to this section or this Act more than
15 the later of—

16 (1) 5 years after the date on which the violation
17 occurs; or

18 (2) 3 years after the date on which the violation
19 is discovered or should have been discovered through
20 exercise of reasonable diligence.

21 (d) VENUE.—A franchisee may commence a civil ac-
22 tion to enforce any provision of this Act within the juris-
23 diction wherein the applicable franchisee is a resident or
24 where the applicable business is located.

1 (e) CUMULATIVE RIGHT.—The private rights pro-
2 vided for in this section are in addition to and not in lieu
3 of other rights or remedies created by Federal or State
4 law.

5 **SEC. 12. SCOPE AND APPLICABILITY.**

6 (a) PROSPECTIVE APPLICATION.—Except as pro-
7 vided in subsection (b), the requirements of this Act shall
8 apply to franchise agreements entered into, amended, ex-
9 changed, transferred, assigned, or renewed after the date
10 of enactment of this Act.

11 (b) DELAYED EFFECT.—The requirements of section
12 3 of this Act shall take effect 90 days after the date of
13 enactment of this Act and shall apply only to actions,
14 practices, disclosures, and statements occurring on or
15 after such date.

16 **SEC. 13. DEFINITIONS.**

17 For purposes of this Act, the following definitions
18 apply:

19 (1) The term “affiliate” has the meaning given
20 the term “affiliated person” in section 436.1(b) of
21 title 16 of the Code of Federal Regulations as in ef-
22 fect on July 1, 2007.

23 (2) The term “disclosure document” means ei-
24 ther the disclosure statement required by the Fed-
25 eral Trade Commission in Trade Regulation Rule

1 436 (16 C.F.R. 436) as amended from time to time,
2 or any offering format allowed or required by State
3 or local law.

4 (3) The term “franchise” has the meaning
5 given such term in section 436.1(h) of title 16 of the
6 Code of Federal Regulations as in effect on July 1,
7 2007, but does not include any contract otherwise
8 regulated by the Federal Petroleum Marketing Prac-
9 tices Act (15 U.S.C. 2801 et seq.) except as to fran-
10 chise relationships that do not involve the sale of pe-
11 troleum products.

12 (4) The term “franchise seller” has the mean-
13 ing given such term in section 436.1(j) of title 16
14 of the Code of Federal Regulations as in effect on
15 July 1, 2007.

16 (5) The term “franchisee” has the meaning
17 given such term in section 436.1(i) of title 16 of the
18 Code of Federal Regulations as in effect on July 1,
19 2007.

20 (6) The term “franchisor” has the meaning
21 given such term in section 436.1(k) of title 16 of the
22 Code of Federal Regulations as in effect on July 1,
23 2007.

24 (7) The terms “material” and “material fact”
25 include—

1 (A) any fact, circumstance, or set of condi-
2 tions which a reasonable franchisee or a reason-
3 able prospective franchisee would consider im-
4 portant in making a significant decision relat-
5 ing to entering into, remaining in, or aban-
6 doning a franchise relationship; and

7 (B) any fact, circumstance, or set of condi-
8 tions which has, or may have, any significant fi-
9 nancial impact on a franchisor, franchisee, or a
10 prospective franchisee.

11 (8) The term “offer” or “offering” means any
12 effort to offer or to dispose of, or solicitation of an
13 offer to buy, a franchise or interest in a franchise
14 for value.

15 (9) The term “outlet” means a point of sale,
16 temporary or permanent, fixed or mobile, from
17 which goods or services are offered for sale.

18 (10) The term “person” means either an indi-
19 vidual or any other legal or commercial entity.

20 (11) The term “State” means a State, the Dis-
21 trict of Columbia, and any territory or possession of
22 the United States.

23 (12) The term “subfranchise” means a contract
24 or an agreement by which a person pays a

1 franchisor for the right to sell, negotiate the sale, or
2 provide service franchises.

3 (13) The term “subfranchisor” means a person
4 who is granted a subfranchise.

5 (14) The term “trade secret” means informa-
6 tion, including a formula, pattern, compilation, pro-
7 gram, device, method, technique, or process, that—

8 (A) derives independent economic value,
9 actual or potential, from not being generally
10 known to, and not being readily ascertainable
11 by proper means by, other persons who can ob-
12 tain economic value from its disclosure or use;
13 and

14 (B) is the subject of efforts that are rea-
15 sonable under the circumstances to maintain its
16 secrecy.

17 (15) The terms “nonrenewal” and “nonrenew”
18 mean that the franchisor fails or refuses to extend
19 the franchisor-franchisee relationship at the end of
20 the existing term of the franchise agreement, irre-
21 spective of whether the franchise agreement contains
22 any contractual right to obtain a renewal term. Al-
23 lowing a franchise agreement with no renewal term
24 to expire shall be considered to be a “nonrenewal”
25 for purposes of this Act.

1 **SEC. 14. SEVERABILITY.**

2 If any provision or clause of this section or any appli-
3 cation of this section to any person or circumstances is
4 held invalid, such invalidity shall not affect other provi-
5 sions or applications of the section which can be given ef-
6 fect without the invalid provision or application, and to
7 this end the provisions of this section are declared to be
8 severable.

9 **SEC. 15. STATE ATTORNEYS GENERAL.**

10 (a) CIVIL ACTION.—Whenever an attorney general
11 (or similar enforcement officer of a State, however de-
12 nominated, hereinafter “attorney general”) of any State
13 has reason to believe that the interests of the residents
14 of that State have been or are being threatened or ad-
15 versely affected because any person has engaged or is en-
16 gaging in a pattern or practice which violates any provi-
17 sion of this Act, the State, as *parens patriae*, may bring
18 a civil action on behalf of its residents in an appropriate
19 State court or district court of the United States to enjoin
20 such violations, to obtain damages, restitution or other
21 compensation on behalf of residents of such State or to
22 obtain such further and other relief as the court may deem
23 appropriate.

24 (b) PRESERVATION OF POWER.—For purposes of
25 bringing any civil action under subsection (a), nothing in
26 this Act shall prevent an attorney general from exercising

1 the powers conferred on the attorney general by the laws
2 of such State to conduct investigations or to administer
3 oaths or affirmations or to compel the attendance of wit-
4 nesses or the production of documentary and other evi-
5 dence.

6 (c) VENUE.—Any civil action brought under sub-
7 section (a) in a district court of the United States may
8 be brought in the district in which the defendant is found,
9 is an inhabitant, or transacts business, or wherever venue
10 is proper under section 1391 of title 28, United States
11 Code. Process in such action may be served in any district
12 in which the defendant is an inhabitant or in which the
13 defendant may be found.

14 (d) NO PREEMPTION.—Nothing contained in this
15 section shall prohibit an authorized State official from pro-
16 ceeding in State court on the basis of an alleged violation
17 of any civil or criminal statute of such State.

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