

1 A bill to be entitled
2 An act relating to franchises; creating s. 686.101,
3 F.S.; providing a short title; creating s. 686.102,
4 F.S.; providing legislative findings and intent;
5 providing construction; creating s. 686.103, F.S.;
6 providing definitions; creating s. 686.104, F.S.;
7 prohibiting a franchisor from terminating a franchise
8 under certain circumstances; providing limitations on
9 what constitutes good cause; providing that immediate
10 notice of termination of a franchise for specified
11 reasons under certain circumstances is reasonable;
12 creating s. 686.105, F.S.; providing that a franchise
13 is deemed to be continuing under certain
14 circumstances; prohibiting a franchisor from refusing
15 to renew a franchise unless specified criteria have
16 been met; authorizing a franchisor to require a
17 franchisee to meet specified requirements; authorizing
18 a franchisee to file an action or to request
19 arbitration under certain circumstances; requiring a
20 franchise and other related agreements to continue in
21 effect under certain circumstances; creating s.
22 686.106, F.S.; prohibiting a franchisor from denying
23 certain persons the opportunity to participate in the
24 ownership of a franchise for a specified period after
25 the death of the franchisee or the person controlling

26 | a majority interest; requiring specified persons to
27 | meet certain requirements or to sell, transfer, or
28 | assign the franchise after the death of the franchisee
29 | or the person controlling a majority interest;
30 | authorizing a franchisee to sell, transfer, or assign
31 | a franchise, specified assets, or an interest in the
32 | franchisee under certain circumstances; prohibiting a
33 | franchisor from preventing a franchisee from selling
34 | or transferring a franchise, assets of the franchise
35 | business, or an interest in the franchisee under
36 | certain circumstances; requiring the franchisor to
37 | make available and to apply specified requirements for
38 | the approval of new or renewing franchises, under
39 | certain circumstances; requiring a franchisee to
40 | notify a franchisor of certain intent; providing
41 | notice requirements; providing application
42 | requirements for the proposed purchaser, transferee,
43 | or assignee of a franchise, certain assets, or an
44 | interest in the franchisee, under certain
45 | circumstances; requiring a franchisor to notify a
46 | franchisee of the approval status of a proposed sale,
47 | assignment, or transfer within a specified timeframe;
48 | providing notice requirements; requiring that a
49 | franchisor's decision in a claim against a franchisor
50 | be a question of fact; providing that a summary

51 judgment is not prohibited under certain
52 circumstances; providing that certain provisions do
53 not prohibit a franchisor from exercising a
54 contractual right of first refusal under certain
55 circumstances; creating s. 686.107, F.S.; providing
56 that a franchisee must have the opportunity to
57 monetize certain equity from the franchise business
58 under certain circumstances; requiring the repurchase
59 by a franchisor of certain inventory, supplies,
60 equipment, goodwill, and furnishings upon termination,
61 nonrenewal, or expiration of a franchise subject to
62 certain requirements; providing exceptions;
63 authorizing a franchisor to offset money owed to a
64 franchisee for the repurchase of certain items with
65 money owed by the franchisee to the franchisor;
66 providing applicability; providing that a franchisor
67 is civilly liable for failing or refusing to
68 repurchase certain inventory, supplies, equipment,
69 goodwill, and furnishings under specified requirements
70 upon termination, nonrenewal, or expiration of a
71 franchise; creating s. 686.108, F.S.; requiring the
72 repurchase by a franchisor of certain inventory,
73 supplies, equipment, goodwill, and furnishings upon
74 the death or incapacity of a franchisee or person
75 controlling a majority interest under certain

76 | circumstances; providing an exception; providing
77 | applicability; creating s. 686.109, F.S.; requiring a
78 | franchisor to indemnify a franchisee under certain
79 | circumstances; creating s. 686.111, F.S.; requiring a
80 | franchisor or subfranchisor and a franchisee to deal
81 | with each other in good faith; providing that it is a
82 | violation of certain provisions for a franchisor to
83 | act arbitrarily, capriciously, in bad faith, or
84 | unconscionably under specified circumstances;
85 | providing that it is a violation of certain provisions
86 | for a franchisor and subfranchisor to restrict or
87 | inhibit specified rights of franchisees; prohibiting a
88 | franchisor from intentionally misrepresenting or
89 | failing to disclose specified information; providing
90 | that certain violations constitute a misdemeanor of
91 | the second degree; providing penalties; providing that
92 | a person may be awarded certain damages, attorney
93 | fees, and other costs under specified circumstances;
94 | providing that certain actions are deemed unfair and
95 | deceptive; authorizing the Department of Legal Affairs
96 | by itself or jointly with the Department of
97 | Agriculture and Consumer Services to sue a franchisor
98 | on behalf of certain persons for specified violations;
99 | creating s. 686.113, F.S.; providing notice
100 | requirements for the termination, renewal, or

101 expiration of a franchise; creating s. 686.114, F.S.;

102 providing that provisions in a franchise agreement

103 which restrict venue or choice of law are void under

104 certain circumstances; creating s. 686.115, F.S.;

105 providing that the rights of a franchisor and

106 franchisee to agree to binding arbitration are not

107 limited under certain circumstances; creating s.

108 686.116, F.S.; providing remedies for a franchisee or

109 an aggrieved or injured person under certain

110 circumstances; authorizing punitive damages under

111 certain circumstances; authorizing the Department of

112 Legal Affairs or the state attorney to bring an action

113 for injunctive relief or other civil relief under

114 certain circumstances; clarifying that specified

115 remedies are in addition to existing remedies;

116 creating s. 686.117, F.S.; providing applicability;

117 amending s. 817.416, F.S.; providing applicability;

118 providing a directive to the Division of Law Revision

119 and Information; providing an effective date.

120

121 Be It Enacted by the Legislature of the State of Florida:

122

123 Section 1. Section 686.101, Florida Statutes, is created

124 to read:

125 686.101 Short title.—Sections 686.101-686.117 may be cited

126 | as the "Florida Franchise Growth Act."

127 | Section 2. Section 686.102, Florida Statutes, is created
128 | to read:

129 | 686.102 Legislative findings and intent; construction of
130 | the act.—

131 | (1) The Legislature finds that the welfare of franchisees,
132 | including the success and failure of their franchise businesses,
133 | greatly affects the general economy of this state, the public
134 | interest, and the public welfare. The intent of the Legislature
135 | is to promote fair business relations between franchisees and
136 | franchisors and to protect franchisees against unfair treatment
137 | by franchisors. Therefore, it is necessary to regulate the
138 | conduct of franchisors and their representatives in order to
139 | prevent fraud, unfair business practices, unfair methods of
140 | competition, impositions, and other abuses upon franchisees in
141 | this state.

142 | (2) In order to promote the intention and policies
143 | announced in this section, the provisions of this act shall be
144 | liberally construed.

145 | Section 3. Section 686.103, Florida Statutes, is created
146 | to read:

147 | 686.103 Definitions.—As used in this act, the term:

148 | (1) "Affiliate" means a person controlling, controlled by,
149 | or under common control with another person or, in the case of a
150 | business entity, such entity's officer, director, or other

151 person in control of the activities of such entity.

152 (2) "Area franchise" means a contract or agreement,
153 expressed or implied, written or oral, regardless of whether the
154 contract or agreement is designated as a franchise, permit,
155 license, resolution, contract, certificate, agreement, or
156 otherwise, between a franchisor and another person through which
157 that person is granted the right, for consideration in whole or
158 in part for such right:

159 (a) To sell or negotiate the sale of a franchise in the
160 name or on behalf of the franchisor; or

161 (b) To become an area developer and develop a franchise
162 for the benefit of that person or that person's affiliates.

163 (3) "Area franchisee" means the owner of an area
164 franchise.

165 (4) (a) "Franchise" or "franchise agreement" means a
166 contract or agreement, expressed or implied, written or oral,
167 regardless of whether the contract or agreement is designated as
168 a franchise, permit, license, resolution, contract, certificate,
169 agreement, or otherwise, for a definite or indefinite time,
170 between two or more persons by which:

171 1. A franchisee is granted the right to engage in the
172 business of offering, selling, or distributing goods or services
173 under a marketing plan or system prescribed in substantial part
174 by a franchisor;

175 2. The operation of the franchise business pursuant to

176 that marketing plan or system is substantially associated with
 177 the franchisor's trademark, service mark, trade name, logotype,
 178 advertising, or other commercial symbol designating the
 179 franchisor or its affiliate; and

180 3. The franchisee is required to pay, directly or
 181 indirectly, a franchise fee.

182 (b) The term "franchise" or "franchise agreement" includes
 183 an area franchise, and includes only the following:

- 184 1. A restaurant franchise.
- 185 2. A hotel or motel franchise.
- 186 3. A multi-level marketing franchise.
- 187 4. A hair salon franchise.
- 188 5. A health studio, gym, or weight-loss program franchise.
- 189 6. An optical establishment franchise.
- 190 7. An equipment leasing franchise.
- 191 8. An insurance or financial franchise.
- 192 9. A staffing and personnel franchise.
- 193 10. A convenience store franchise.
- 194 11. A gasoline service station franchise.
- 195 12. A craft beer franchise.
- 196 13. A package and postal service franchise.

197 (5) "Franchise business" means a business unit that is
 198 owned or operated by a franchisee and that is subject to a
 199 marketing plan or system prescribed by the franchise.

200 (6) "Franchise fee" means a fee or charge greater than

201 \$100 annually which a franchisee is required to pay or agrees to
202 pay, directly or indirectly, to the franchisor for the right to
203 enter into or continue a franchise, including, but not limited
204 to, a payment for goods or services. However, any one of the
205 following is not considered a franchise fee:

206 (a) A fee or charge that a franchisee pays or agrees to
207 pay the franchisor for goods at a bona fide wholesale price if
208 no obligation is imposed upon the franchisee to purchase or pay
209 for a quantity of goods in excess of that which a reasonable
210 person normally would purchase by way of a starting inventory or
211 supply or to maintain an ongoing inventory or supply.

212 (b) A payment of a reasonable service charge to the issuer
213 of a credit card by an establishment accepting or honoring the
214 credit card.

215 (c) A payment to a trading stamp company by a person who
216 issues trading stamps in connection with the retail sale of
217 goods or services.

218 (d) A payment, not exceeding a sum of \$1,000 annually, for
219 the purchase or rental of fixtures, goods, or other tangible
220 property necessary for the operation of the franchise business,
221 if the purchase or rental price does not exceed the cost of
222 acquiring the fixtures, goods, or other tangible property in the
223 open market.

224 (7) "Franchisee" means a person to whom a franchise is
225 offered or granted.

226 (8) "Franchisor" means a person who grants a franchise to
227 a franchisee.

228 (9) "Fraud" means and includes actual fraud or
229 constructive fraud as normally defined, in addition to the
230 following:

231 (a) A misrepresentation in any manner, whether
232 intentionally false or arising from negligence, of a material
233 fact.

234 (b) A promise or representation not made honestly and in
235 good faith.

236 (c) An intentional failure to disclose a material fact.

237 (d) Any artifice employed to deceive another.

238 (10) "Goods" means any article or thing without
239 limitation, or any part of such article or thing, including any
240 article or thing used or consumed by a franchisee in rendering a
241 service established, organized, directed, or approved by a
242 franchisor.

243 (11) "Person" means a natural person, corporation, limited
244 liability company, association, partnership, trust, or other
245 business entity and, in the case of a business entity, includes
246 any other affiliate of such entity.

247 (12) "Sale" means and includes the issuance, transfer,
248 agreement for transfer, exchange, pledge, hypothecation, or
249 mortgage in any manner or form, whether by transfer in trust or
250 otherwise, of any goods or interest therein, or of any franchise

251 related thereto, for a consideration, and any option,
252 subscription or other contract, or solicitation looking to a
253 sale, or offer or attempt to sell in any form, whether in
254 written or oral form, for a consideration.

255 Section 4. Section 686.104, Florida Statutes, is created
256 to read:

257 686.104 Termination.—

258 (1) Except as otherwise provided in this act, a franchisor
259 may not terminate a franchise except for good cause. The
260 termination of a franchise without good cause constitutes an
261 unfair termination, regardless of the specified time period of
262 the franchise. Except as provided in subsection (2), good cause
263 is limited to the failure of the franchisee to substantially
264 comply with the reasonable and material requirements imposed
265 upon the franchisee by the franchise agreement after being given
266 notice at least 90 days in advance of the termination and a
267 reasonable opportunity, which may not be less than 60 days after
268 the date of the notice of noncompliance, to cure the failure. If
269 the franchisee cures the failure within the time given to cure,
270 the termination notice is void.

271 (2) A franchisor may give to a franchisee an immediate
272 notice of termination without an opportunity to cure if, during
273 the period in which the franchise is in effect, any one of the
274 following events, relevant to the franchise, occurs:

275 (a) The franchisee has been the subject of an order for

276 relief in bankruptcy, has been judicially determined to be
277 insolvent, has had all or a substantial part of its assets
278 assigned to or for the benefit of any creditor, or has admitted
279 its inability to pay its debts as they come due.

280 (b) The franchisee abandons, by failing to operate, the
281 franchise business for 10 consecutive days during which, under
282 the terms of the franchise, the franchisee is required to
283 operate the franchise business, or for any shorter period after
284 which it is not unreasonable under the facts and circumstances
285 for the franchisor to conclude that the franchisee does not
286 intend to continue to operate the franchise business, unless
287 such failure to operate is due to an act of God; a work
288 stoppage; a strike or labor difficulty; a fire, flood,
289 hurricane, or sinkhole; or other causes beyond the franchisee's
290 control.

291 (c) The franchisor and franchisee agree in writing to
292 terminate the franchise.

293 (d) The franchisee fails, for a period of 10 days after a
294 notice of noncompliance, to comply with any federal, state, or
295 local law or regulation, including, but not limited to, any
296 health, safety, building, and labor law or regulation applicable
297 to the operation of the franchise.

298 (e) A final judgment against the franchisee remains
299 unsatisfied for 30 days, and the franchise business or franchise
300 business premises are seized, taken over, or foreclosed by a

301 government official exercising his or her duties, or seized,
 302 taken over, or foreclosed by a creditor, lienholder, or lessor,
 303 unless a supersedeas or other appeal bond has been filed.

304 (f) A levy of execution has been made on the license
 305 granted by the franchise or on a property used in the franchise
 306 business and is not discharged within 5 days after such levy.

307 (g) The franchisee is convicted of a felony or any other
 308 criminal misconduct that significantly, directly, and adversely
 309 affects the operation of the franchise business.

310 (h) The franchisor makes a reasonable determination that
 311 continued operation of the franchise business by the franchisee
 312 will result in imminent and substantial danger to public health
 313 or safety.

314 Section 5. Section 686.105, Florida Statutes, is created
 315 to read:

316 686.105 Nonrenewal.—

317 (1) A franchise agreement is deemed to be continuing
 318 unless the franchisor has complied with subsection (2).

319 (2) A franchisor may not refuse to renew a franchise
 320 unless all of the following criteria have been met:

321 (a) The franchisor provides written notice to the
 322 franchisee of the franchisor's intent not to renew at least 180
 323 days before the expiration date or before an extension of the
 324 franchise agreement.

325 (b) Any of the following circumstances exist:

326 1. Termination of the franchise agreement is authorized
327 under s. 686.104.

328 2. The franchisor and franchisee agree in writing not to
329 renew the franchise.

330 3. The franchisor completely withdraws from directly or
331 indirectly distributing its products or services in the
332 geographic market served by the franchisee.

333 (c) The franchisor agrees not to enforce against the
334 franchisee, upon nonrenewal of the franchise, any covenant not
335 to compete with the franchisor or with other franchisees of the
336 franchisor.

337 (d) The nonrenewal of the franchise is not for the purpose
338 of converting the franchise business to operation by an employee
339 or agent of the franchisor for the franchisor's own account.

340 (e) If the franchisor determines to sell, transfer, or
341 assign its interest in the marketing premises occupied by a
342 franchisee whose franchise agreement is not renewed, either:

343 1. The franchisor, during the 180-day period after giving
344 notice to the franchisee of its determination to sell, transfer,
345 or assign its interest, provides the franchisee a right of first
346 refusal of at least 30 days' duration of a bona fide offer made
347 by another to purchase the franchisor's interest in the
348 premises; or

349 2. The franchisor or the purchaser, transferee, or
350 assignee of the franchisor's interest in good faith offers the

351 franchisee a franchise on substantially the same terms and
352 conditions being offered by such purchaser, transferee, or
353 assignee to other franchisees at the time the franchisor
354 determines to sell, transfer, or assign its interests.

355 (3) As a condition of renewal, a franchise agreement may
356 require that the franchisee meet the reasonable qualifications
357 for new franchisees existing at the time of renewal and that the
358 franchisee execute a new franchise agreement incorporating terms
359 and fees existing for new franchises at the time of renewal.

360 (4) A franchisee who receives a notice of intent not to
361 renew a franchise agreement may file an action or request
362 arbitration within the 180-day notice period to seek a
363 determination of whether the nonrenewal is proper under ss.
364 686.104-686.106. The franchise agreement and all other related
365 agreements between the franchisor and the franchisee must
366 continue in effect until a preliminary determination of the
367 issues raised in the action or arbitration is made by the court
368 or arbitrator.

369 Section 6. Section 686.106, Florida Statutes, is created
370 to read:

371 686.106 Sales, transfers, and assignments.—

372 (1) A franchisor may not deny the surviving spouse, heir,
373 or estate of a deceased franchisee or of the person controlling
374 a majority interest in the franchisee the opportunity to
375 participate in the ownership of the franchise or franchise

376 business under a valid franchise agreement for at least 180 days
377 after the death of the franchisee or person controlling a
378 majority interest in the franchisee. During that time, the
379 surviving spouse, heir, or estate of the deceased must either
380 meet all of the existing reasonable qualifications for a
381 purchaser of a franchise or must sell, transfer, or assign the
382 franchise to a person who meets the franchisor's existing
383 reasonable qualifications for new franchisees. The rights
384 granted to the surviving spouse, heir, or estate under this
385 section are granted subject to the surviving spouse, heir, or
386 estate of the deceased maintaining all standards and obligations
387 of the franchise.

388 (2) (a) A franchisee may sell, transfer, or assign a
389 franchise, all or substantially all of the assets of the
390 franchise business, or an interest in the franchisee, with the
391 prior written consent of the franchisor. The franchisor's
392 consent may not be withheld unless the purchaser, transferee, or
393 assignee does not meet the qualifications for new or renewing
394 franchisees described in paragraph (b) or the franchisee and the
395 purchaser, transferee, or assignee fail to comply with other
396 reasonable transfer conditions specified in the franchise
397 agreement.

398 (b) A franchisor may not prevent a franchisee from
399 selling, transferring, or assigning a franchise, all or
400 substantially all of the assets of the franchise business, or an

401 interest in the franchisee to another person if the other person
402 meets the franchisor's reasonable qualifications for the
403 approval of new or renewing franchises in effect at the time the
404 franchisor receives notice of the proposed sale, transfer, or
405 assignment. The franchisor shall make this list of
406 qualifications available to the franchisee, as provided in
407 subsection (3), and the franchisor shall consistently apply such
408 qualifications to similarly situated franchisees operating
409 within the franchise brand.

410 (3) (a) To invoke the protections under this section, a
411 franchisee must, before the sale, transfer, or assignment of a
412 franchise, all or substantially all of the assets of the
413 franchise business, or an interest in the franchisee, notify the
414 franchisor of the franchisee's intent to sell, transfer, or
415 assign. The notice must be in writing; must be delivered to the
416 franchisor by certified or registered mail, return receipt
417 requested, or by business courier; and must include all of the
418 following:

419 1. The name and address of the proposed purchaser,
420 transferee, or assignee.

421 2. A copy of all agreements related to the sale, transfer,
422 or assignment of the franchise, the assets of the franchise
423 business, or the interest in the franchisee.

424 3. The proposed purchaser's, transferee's, or assignee's
425 application for approval to become the successor franchisee.

426 (b) The proposed purchaser's, transferee's, or assignee's
427 application must include all forms, financial disclosures, and
428 related information generally used by the franchisor in
429 reviewing prospective new franchisees, if those forms are
430 readily made available to the existing franchisee. If the forms
431 are not readily available, the franchisee shall request, and the
432 franchisor shall deliver, the forms to the franchisee by
433 certified or registered mail, return receipt requested, or by
434 business courier, within 15 calendar days after the franchisee's
435 request. As soon as practicable after receipt of the proposed
436 purchaser's, transferee's, or assignee's application, the
437 franchisor shall notify the franchisee and the proposed
438 purchaser, transferee, or assignee in writing of any additional
439 information or documentation necessary to complete the sale,
440 transfer, or assignment application. If the franchisor's list of
441 qualifications for the approval of new or renewing franchisees
442 in effect at the time the franchisor receives notice of the
443 proposed sale, transfer, or assignment are not readily available
444 to the franchisee when the franchisee notifies the franchisor of
445 the franchisee's intent to sell, transfer, or assign the
446 franchise, all or substantially all of the assets of the
447 franchise business, or an interest in the franchisee, the
448 franchisor must communicate the list of qualifications to the
449 franchisee within 15 calendar days after receipt of the proposed
450 purchaser's, transferee's, or assignee's application.

451 (c)1. The franchisor shall, within 60 days after receipt
452 of all of the necessary information and documentation required
453 under paragraph (a), or as specified by written agreement
454 between the franchisor and the franchisee, notify the franchisee
455 of the approval or disapproval of the proposed sale, transfer,
456 or assignment. The notice must be in writing and be delivered to
457 the franchisee by certified or registered mail, return receipt
458 requested, or by business courier. If the proposed sale,
459 transfer, or assignment is disapproved, the franchisor must
460 include in the notice of disapproval a statement specifying the
461 reasons for the disapproval. A proposed sale, transfer, or
462 assignment is deemed approved unless disapproved by the
463 franchisor in the manner provided in this subparagraph.

464 2. In a claim against the franchisor for disapproval of a
465 sale, transfer, or assignment, the reasonableness of the
466 franchisor's decision is a question of fact requiring
467 consideration of all existing circumstances. This paragraph does
468 not prohibit summary judgment when the reasonableness of the
469 disapproval of a sale, transfer, or assignment can be decided as
470 a matter of law.

471 (4) This section does not prohibit a franchisor from
472 exercising the contractual right of first refusal to purchase a
473 franchise, all or substantially all of the assets of a franchise
474 business, or an interest in a franchisee after receipt of a bona
475 fide offer from a proposed seller to purchase the franchise,

476 assets, or interest. A franchisor exercising the contractual
477 right of first refusal shall offer the seller payment at least
478 equal to the value offered in the bona fide offer.

479 Section 7. Section 686.107, Florida Statutes, is created
480 to read:

481 686.107 Repurchase of inventory upon termination,
482 nonrenewal, or expiration of a franchise agreement.-

483 (1) (a) A franchisee must have the opportunity to monetize
484 any equity that the franchisee may have developed in the
485 franchise business before the termination of the franchise
486 agreement without transferring the equity in the franchisor's
487 intellectual property to the franchisee. Therefore, upon
488 termination, nonrenewal, or expiration of a franchise agreement,
489 a franchisor shall repurchase at fair market value inventory,
490 supplies, goods, fixtures, equipment, and furnishings of the
491 franchise business. The franchisor shall also purchase the
492 goodwill of the franchise business.

493 (b) This section does not require the franchisor to
494 purchase any personalized items, inventory, supplies, goods,
495 fixtures, equipment, or furnishings that are not reasonably
496 required to conduct the operation of the franchise business in
497 accordance with the franchise agreement or any ancillary or
498 collateral agreement or whose title and possession are not, or
499 cannot be, lawfully granted by the franchisee to the franchisor
500 upon the franchisor's payment to the franchisee for the

501 inventory, supplies, goods, fixtures, equipment, or furnishings
502 at the time the franchisee ceases to operate the franchise
503 business.

504 (c) Upon the termination, nonrenewal, or expiration of a
505 franchise, a franchisor may offset money owed to the franchisee
506 under this section with any amount owed by the franchisee to the
507 franchisor.

508 (d) This section does not apply if the franchisee declines
509 a bona fide offer of renewal from the franchisor which is
510 consistent with s. 686.105 and the franchise agreement between
511 the franchisor and franchisee.

512 (e) This section does not apply if the franchisor does not
513 prevent the franchisee from retaining control and continuing to
514 operate the franchise business.

515 (f) This section does not apply if the franchisor and
516 franchisee agree in writing to terminate or not renew the
517 franchise, or to allow the franchise to expire.

518 (g) This section does not apply to inventory, supplies,
519 goods, fixtures, equipment, or furnishings sold by the
520 franchisee between the date of the notice of termination,
521 nonrenewal, or expiration and the date the franchisee ceases to
522 operate the franchise business pursuant to a termination,
523 nonrenewal, or expiration.

524 (2) If a franchisor fails or refuses to repurchase any
525 inventory, supplies, goods, fixtures, equipment, goodwill, or

526 furnishings required to be repurchased under subsection (1)
527 within 60 days after the termination, nonrenewal, or expiration
528 of a franchise, the franchisor is civilly liable for the entire
529 value of the inventory, supplies, goods, fixtures, equipment,
530 goodwill, and furnishings required to be repurchased under
531 subsection (1), plus the franchisee's reasonable attorney fees,
532 court costs, and interest on the inventory, supplies, goods,
533 fixtures, equipment, goodwill, and furnishings computed at the
534 legal interest rate provided in s. 687.01 from the 61st day
535 after termination.

536 Section 8. Section 686.108, Florida Statutes, is created
537 to read:

538 686.108 Repurchase of inventory upon death or incapacity
539 of a franchisee.—

540 (1) In the event of the death or incapacity of a
541 franchisee or person controlling a majority interest in the
542 franchisee, the franchisor must, at the option of the heir at
543 law, if the franchisee died intestate, the devisee under the
544 terms of the deceased franchisee's last will and testament, if
545 the franchisee died testate, or the person holding a power of
546 attorney or a guardian in the event of incapacity, repurchase
547 the inventory, supplies, goods, fixtures, equipment, goodwill,
548 and furnishings under s. 686.107. The repurchase provisions of
549 s. 686.107 are made expressly applicable to the repurchase under
550 this section. The heir, devisee, transferee, person holding a

551 power of attorney, or guardian has 1 year after the date of the
552 death or incapacity, as applicable, of the franchisee or person
553 controlling a majority interest to exercise his or her option to
554 sell the inventory, supplies, goods, fixtures, equipment,
555 goodwill, and furnishings of the franchise business. However,
556 this section does not require the repurchase of inventory,
557 supplies, goods, fixtures, equipment, goodwill, and furnishings
558 in the event of death if the heir, devisee, or transferee and
559 the franchisor enter into a new franchise agreement to operate
560 the franchise business.

561 (2) This section is subject to the portion of the
562 franchise agreement pertaining to death or incapacity of a
563 franchisee or person controlling a majority interest to the
564 extent that the franchise agreement is not inconsistent with
565 this section.

566 Section 9. Section 686.109, Florida Statutes, is created
567 to read:

568 686.109 Indemnification of franchisee.—A franchisor shall
569 fully indemnify and hold harmless its franchisee against any
570 loss, including, but not limited to, court costs and reasonable
571 attorney fees or damages arising out of a complaint, claim, or
572 lawsuit involving, but not limited to, strict liability,
573 negligence, misrepresentation, express or implied breach of
574 warranty, or rescission of a sale if the complaint, claim, or
575 lawsuit relates to a part or an accessory; to the manufacture,

576 assembly, or design of goods or services covered under this act;
577 or to other functions of the franchisor which are beyond the
578 control of the franchisee.

579 Section 10. Section 686.111, Florida Statutes, is created
580 to read:

581 686.111 Rights and prohibitions.—The following rights and
582 prohibitions govern the relations between a franchisor or
583 subfranchisor and its franchisee:

584 (1) The parties shall deal with each other in good faith.

585 (2) A franchisor or subfranchisor may not engage in any
586 action that is arbitrary, capricious, in bad faith, or
587 unconscionable and, in terms of law or equity, causes damage to
588 a franchisee or to the public.

589 (3) A person may not, during the selling or establishing
590 of a franchise, intentionally misrepresent or fail to disclose:

591 (a) The prospects or chances for success of the proposed
592 or existing franchise;

593 (b) The known required total investment for such
594 franchise; or

595 (c) Any effort to sell or establish more franchises than
596 is reasonable to expect the market or market area for the
597 particular franchise to sustain.

598 (4) It is prohibited and deemed an unfair and deceptive
599 act or practice, or an unfair method of competition, and a
600 violation of this section for a franchisor or subfranchisor, or

601 an officer, agent, employee, or other representative thereof to
602 directly or indirectly:

603 (a) Coerce, compel, or attempt to coerce or compel a
604 franchisee to enter into an agreement, written or oral,
605 supplementary to an existing franchise with the franchisor, or
606 the officer, agent, or other representative thereof; or commit
607 any other act prejudicial to the franchisee by threatening to
608 cancel the franchise or any contractual agreement existing
609 between the franchisor and the franchisee. However, notice in
610 good faith to the franchisee of the franchisee's violation or
611 breach of a term or provision of the franchise or contractual
612 agreement does not constitute a violation of this section if
613 such notice is in writing, is mailed by registered or certified
614 mail to the franchisee at its current business address, and
615 contains the specific facts as to the franchisee's violation or
616 breach of the franchise or contractual agreement;

617 (b) Terminate or fail to renew a franchise agreement in
618 violation of this act;

619 (c) Allow a franchise agreement to expire without
620 complying with this act;

621 (d) Fail to repurchase inventory, supplies, goods,
622 fixtures, equipment, goodwill, and furnishings in violation of
623 s. 686.107 or s. 686.108;

624 (e) Prevent a sale, transfer, or assignment of a franchise
625 in violation of s. 686.106;

626 (f) Violate the Florida Deceptive and Unfair Trade
627 Practices Act in connection with its business as a franchisor,
628 or an officer, agent, or other representative thereof;

629 (g) Resort to or use false or misleading advertisement in
630 connection with its business as a franchisor, or an officer,
631 agent, or other representative thereof;

632 (h) Willfully discriminate, directly or indirectly, in
633 price, programs, or terms of sale offered to a franchisee or
634 give to a franchisee an economic, business, or competitive
635 advantage not offered to another franchisee of the same or
636 similar franchise;

637 (i) Impose, directly or indirectly, an unreasonable
638 restriction on a franchisee relative to transfer, renewal,
639 termination, location, or site control;

640 (j) Without prior written disclosure to a franchisee,
641 obtain money, goods, services, anything of value, or any other
642 benefit from another person with whom the franchisee does
643 business or employs on account of or in relation to the
644 transactions between the franchisee, the franchisor, and the
645 other person;

646 (k) Require a franchisee to assent to a release,
647 assignment, novation, waiver, or estoppel that would relieve any
648 person from liability imposed under this act, including, but not
649 limited to, through the use of a disclaimer or checklist
650 designed to avoid a protection under this act;

651 (l) Require a franchisee to assent to the use of a choice
652 of law provision by selecting a different state's law to govern
653 the relationship of the parties;

654 (m) Restrict or inhibit, directly or indirectly, the right
655 of a franchisee to join a trade association or the free
656 association for any lawful purpose among franchisees;

657 (n) Compete with a franchisee within the franchisee's
658 exclusive territory or grant a franchise to another person for a
659 franchise business to be located within the exclusive territory;

660 (o) Impose upon a franchisee, by contract or rule, written
661 or oral, any unreasonable standard of conduct; or

662 (p) Require a franchisee to waive its rights to a jury
663 trial or waive any procedure or remedy otherwise available in
664 this state, however a binding arbitration clause is enforceable
665 if it complies with s. 686.115.

666 (5) A person who executes or carries out a scheme, plan,
667 or organization that violates any provision of this section, if
668 knowledge or intent is proved, commits a misdemeanor of the
669 second degree, punishable as provided in ss. 775.082 and
670 775.083.

671 (6) A person who shows in a civil court of law a violation
672 of this section shall receive a judgment for all money invested
673 in the franchise and all of the franchise business's losses and
674 other damages incurred while running the franchise business.
675 Upon such a showing, the court shall award reasonable attorney

676 fees to any person holding an interest in a franchise or who has
 677 been injured by a violation of this act, and who is bringing the
 678 action against the person who violates this section and
 679 reasonable costs incurred in bringing such action.

680 (7) The Department of Legal Affairs, by itself or jointly
 681 with the Department of Agriculture and Consumer Services, may
 682 sue on behalf of the people of this state for injunctive relief
 683 against any franchisor plan or activity that is in violation of
 684 this act.

685 Section 11. Section 686.113, Florida Statutes, is created
 686 to read:

687 686.113 Notice requirements.—A notice of termination,
 688 nonrenewal, or expiration required under ss. 686.104-686.106
 689 must:

- 690 (1) Be in writing;
- 691 (2) Be posted by registered or certified mail, return
 692 receipt requested, or be personally delivered to the franchisee;
 693 and
- 694 (3) Contain a statement of intent to terminate, not renew,
 695 or allow the franchise to expire; the reasons for the
 696 termination, nonrenewal, or expiration; and the effective date
 697 of the termination, nonrenewal, or expiration.

698 Section 12. Section 686.114, Florida Statutes, is created
 699 to read:

700 686.114 Venue; choice of law.—A provision in a franchise

701 agreement restricting the venue to a forum outside of this state
702 or selecting the law of any other state or jurisdiction other
703 than Florida is void with respect to any claim arising under or
704 relating to a franchise agreement involving a franchisee that
705 was, at the time of signing, a resident of this state or a
706 business entity established in this state or involving a
707 franchise business either operating or planning to be operated
708 in this state.

709 Section 13. Section 686.115, Florida Statutes, is created
710 to read:

711 686.115 Arbitration.—This act does not limit the right of
712 a franchisor and franchisee to agree, before or after a dispute
713 arises, to binding arbitration to settle a claim under this act
714 if:

715 (1) The standards applied and the remedies available in
716 the arbitration are not less than the requirements specified in
717 this act; and

718 (2) Each arbitrator employed is chosen from a list of
719 impartial arbitrators provided by the American Arbitration
720 Association or is any other impartial person.

721 Section 14. Section 686.116, Florida Statutes, is created
722 to read:

723 686.116 Remedies.—

724 (1) If a franchisor terminates, fails to renew, or allows
725 a franchise to expire in violation of this act, the franchisee

726 is entitled to receive from the franchisor the fair market value
727 of the franchise business and franchise assets in addition to
728 any other damage caused by the violation.

729 (2) In addition to any relief specified in this act, any
730 person aggrieved or injured in his or her business or property
731 by a violation of this act may bring an action in the
732 appropriate state or federal court of this state and shall
733 recover the damages sustained and the costs of such action,
734 including reasonable attorney fees.

735 (3) Without regard and in addition to any other remedy or
736 relief to which a person is entitled, any person aggrieved by a
737 violation of this act may bring an action to obtain a
738 declaratory judgment stating that an action or a practice
739 violates these sections and may obtain injunctive relief
740 enjoining a franchisor that has violated, is violating, or is
741 otherwise likely to violate these sections from committing the
742 violation.

743 (4) In an action for money damages, if a judge or jury
744 finds that the franchisor has acted maliciously, the judge or
745 jury may award punitive damages as authorized by state law.

746 (5) The Department of Legal Affairs or the state attorney
747 may bring an action for injunctive relief or other appropriate
748 civil relief for a violation of this act if the violation occurs
749 in the judicial circuit of the department or the state attorney,
750 respectively.

751 (6) The remedies provided in this section are in addition
752 to any other remedies provided by law or in equity, including,
753 but not limited to, the Florida Deceptive and Unfair Trade
754 Practices Act.

755 Section 15. Section 686.117, Florida Statutes, is created
756 to read:

757 686.117 Applicability.—

758 (1) Any person or franchisor who engages directly or
759 indirectly in an agreement or contract within this state in
760 connection with a franchise; or any franchise whose franchisee
761 is a resident of this state or is domiciled in this state or
762 whose franchise business is, has been, or is intended to be
763 operated in this state, is subject to this act and to the
764 jurisdiction of the courts of this state, in accordance with the
765 laws of this state, for violations of this act.

766 (2) This act applies to:

767 (a) Any written or oral agreement between a franchisor and
768 a franchisee, including, but not limited to, a franchise
769 offering; a franchise agreement; a sale of goods, services, and
770 advertising; a lease or mortgage of real or personal property; a
771 promise to pay; a security interest; a pledge; an insurance
772 contract; an advertising contract; a construction or
773 installation contract; a servicing contract; and any other
774 agreement in which the franchisor has a direct or indirect
775 interest;

776 (b) Any franchise entered into, renewed, amended, or
777 revised after the effective date of this act;

778 (c) Any existing franchise of an indefinite duration which
779 may be terminated by the franchisee or franchisor without cause;
780 and

781 (d) Any existing franchise entered into before the
782 effective date of this act, only to the extent that this act
783 does not significantly impair the existing contract rights
784 between the parties.

785 (3) This act is supplemental to, and does not preempt,
786 local ordinances dealing with prohibited or unlawful conduct in
787 the manufacturing, distribution, wholesaling, advertising, or
788 sale of goods if such ordinances are not inconsistent with this
789 act.

790 (4) This act supersedes s. 817.416 with respect to any
791 franchisee that signs a franchise agreement on or after the
792 effective date of this act. Section 817.416 continues to govern
793 the claims of all franchisees that signed franchise agreements
794 or were victims of fraud perpetrated before the effective date
795 of this act, as well as distributors and any other entities,
796 past, present, or future, which would be covered by s. 817.416,
797 but not by this act.

798 Section 16. Subsection (5) is added to section 817.416,
799 Florida Statutes, to read:

800 817.416 Franchises and distributorships;

801 misrepresentations.—

802 (5) APPLICABILITY.—This section does not apply to a
803 franchise entered into, renewed, amended, or revised on or after
804 the effective date of this act. A franchise entered into,
805 renewed, amended, or revised on or after the effective date of
806 this act is subject to ss. 686.101-686.117.

807 Section 17. The Division of Law Revision and Information
808 is directed to replace the phrase "the effective date of this
809 act" wherever it occurs in this act with the date the act
810 becomes a law.

811 Section 18. This act shall take effect upon becoming a
812 law.

813