

By Senator Steube

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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 defining terms; creating s. 686.104, F.S.; prohibiting
7 a franchisor from terminating or not renewing a
8 franchise under certain circumstances; providing
9 limitations on what constitutes good cause;
10 authorizing the franchisor to give immediate notice of
11 termination of a franchise for specified reasons under
12 certain circumstances; creating s. 686.105, F.S.;
13 prohibiting a franchisor from denying certain persons
14 the opportunity to participate in the ownership of a
15 franchise for a specified period after the death of
16 the franchisee or the death of a person controlling a
17 majority interest in the franchise; requiring
18 specified persons to meet certain requirements or to
19 sell, transfer, or assign the franchise after the
20 death of the franchisee or the death of the person
21 controlling a majority interest in the franchise;
22 authorizing a franchisee to sell, transfer, or assign
23 a franchise, specified assets, or an interest in the
24 franchise under certain circumstances; prohibiting a
25 franchisor from preventing a franchisee from selling
26 or transferring a franchise, assets of the franchise
27 business, or an interest in the franchise under
28 certain circumstances; requiring the franchisor to
29 make available and to apply specified requirements for

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30 the approval of new or renewing franchises, under
31 certain circumstances; creating s. 686.106, F.S.;
32 requiring a franchisor and a franchisee to deal with
33 each other in good faith; prohibiting the franchisor
34 from acting in a certain manner; providing remedies;
35 creating s. 686.107, F.S.; voiding certain contracts,
36 contract provisions, or practices; creating s.
37 686.108, F.S.; prohibiting the use of certain choice
38 of venue and choice of law provisions, under certain
39 circumstances; creating s. 686.109, F.S.; providing
40 remedies for a franchisee or an aggrieved or injured
41 person under certain circumstances; clarifying that
42 specified remedies are in addition to existing
43 remedies; creating s. 686.11, F.S.; providing
44 applicability; amending s. 817.416, F.S.; defining the
45 term "area franchise"; prohibiting waivers through
46 certain contract provisions that would affect a
47 person's rights to make a claim; providing a directive
48 to the Division of Law Revision and Information;
49 providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 686.101, Florida Statutes, is created to
54 read:

55 686.101 Short title.—Sections 686.101-686.11 may be cited
56 as the "Protect Florida Small Business Act."

57 Section 2. Section 686.102, Florida Statutes, is created to
58 read:

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59 686.102 Legislative findings and intent; construction of
60 the act.-

61 (1) The Legislature finds that the welfare of franchisees,
62 including the success and failure of their franchise businesses,
63 greatly affects the general economy of this state, the public
64 interest, and the public welfare. It is the intent of the
65 Legislature to promote fair business relations between
66 franchisees and franchisors and to protect franchisees against
67 unfair treatment by franchisors. Therefore, it is necessary to
68 regulate the conduct of franchisors and their representatives in
69 order to prevent fraud, unfair business practices, unfair
70 methods of competition, impositions, and other abuses upon
71 franchisees in this state.

72 (2) In order to promote the intent and policies announced
73 in this section, the provisions of this act shall be liberally
74 construed.

75 Section 3. Section 686.103, Florida Statutes, is created to
76 read:

77 686.103 Definitions.-As used in this act, the term:

78 (1) "Area franchise" means a contract or agreement,
79 expressed or implied, written or oral, regardless of whether the
80 contract or agreement is designated as a franchise, permit,
81 license, resolution, contract, certificate, agreement, or
82 otherwise, between a franchisor and another person through which
83 that person is granted the right, for consideration in whole or
84 in part for such right:

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

87 (b) To become an area developer and develop a franchise for

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88 the benefit of that person or that person's affiliates.

89 (2) "Area franchisee" means the owner of an area franchise.

90 (3) (a) "Franchise" or "franchise agreement" means a
91 contract or agreement, expressed or implied, written or oral,
92 regardless of whether the contract or agreement is designated as
93 a franchise, permit, license, resolution, contract, certificate,
94 agreement, or otherwise, for a definite or indefinite time,
95 between two or more persons by which:

96 1. A franchisee is granted the right to engage in the
97 business of offering, selling, or distributing goods or services
98 under a marketing plan or system prescribed in substantial part
99 by a franchisor;

100 2. The operation of the franchise business pursuant to that
101 marketing plan or system is substantially associated with the
102 franchisor's trademark, service mark, trade name, logotype,
103 advertising, or other commercial symbol designating the
104 franchisor or its affiliate; and

105 3. The franchisee is required to pay, directly or
106 indirectly, a franchise fee.

107 (b) The term includes an area franchise.

108 (c) The term does not include any of the following:

109 1. A franchise governed by the Agricultural Equipment
110 Manufacturers and Dealers Act.

111 2. Any activity under ss. 686.501-686.506.

112 3. A franchise governed by the Outdoor Power Equipment
113 Manufacturers, Distributors, Wholesalers, and Servicing Dealers
114 Act.

115 4. A motor vehicle franchise or agreement governed by ss.
116 320.60-320.70.

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117 5. A business relationship between a beer distributor and a
118 manufacturer governed by s. 563.022.

119 6. A professional sports franchise as described in s.
120 288.11625(2)(c).

121 (4) "Franchise fee" means a fee or charge greater than \$100
122 annually which a franchisee is required to pay or agrees to pay,
123 directly or indirectly, to or for the benefit of the franchisor
124 for the right to enter into or continue a franchise, including,
125 but not limited to, a payment for goods or services. However, a
126 fee or charge that a franchisee pays or agrees to pay the
127 franchisor for goods at a bona fide wholesale price if no
128 obligation is imposed upon the franchisee to purchase or pay for
129 a quantity of goods in excess of that which a reasonable person
130 normally would purchase by way of a starting inventory or supply
131 or to maintain an ongoing inventory or supply is not considered
132 a franchise fee.

133 (5) "Franchisee" means a person to whom a franchise is
134 offered or granted.

135 (6) "Franchisor" means a person who grants a franchise to a
136 franchisee.

137 (7) "Person" means a natural person, corporation, limited
138 liability company, association, partnership, trust, or other
139 business entity and, in the case of a business entity, includes
140 any other affiliate of such entity.

141 Section 4. Section 686.104, Florida Statutes, is created to
142 read:

143 686.104 Termination or nonrenewal.—

144 (1) Except as otherwise provided in this act, a franchisor
145 may not terminate or refuse to renew a franchise except for good

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146 cause. The termination or nonrenewal of a franchise without good
147 cause constitutes an actionable unfair termination. Except as
148 provided in subsection (2), good cause is limited to the failure
149 of the franchisee to substantially comply with the reasonable
150 and material requirements imposed upon the franchisee by the
151 franchise agreement after being given notice at least 90 days in
152 advance of the termination and a reasonable opportunity, which
153 may not be less than 60 days after the date of the notice of
154 noncompliance, to cure the failure. If the franchisee cures the
155 failure within the time given to cure, the termination notice is
156 void.

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

161 (a) The franchisee has been judicially determined to be
162 insolvent, has had all or a substantial part of its assets
163 assigned to or for the benefit of any creditor, or has admitted
164 its inability to pay its debts as they come due.

165 (b) The franchisee abandons, by failing to operate, the
166 franchise business for 10 consecutive days during which, under
167 the terms of the franchise, the franchisee is required to
168 operate the franchise business unless such failure to operate is
169 due to an act of God; a work stoppage; a strike or labor
170 difficulty; a fire, flood, hurricane, or sinkhole; or other
171 cause beyond the franchisee's control.

172 (c) The franchisee fails, for a period of 10 days after a
173 notice of noncompliance, to comply with any federal, state, or
174 local law or regulation, including, but not limited to, any

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175 health, safety, building, or labor law or regulation applicable
176 to the operation of the franchise.

177 (d) The franchisee is convicted of a felony if that felony
178 significantly, directly, and adversely affects the operation of
179 the franchise business.

180 (e) The franchisor makes a reasonable determination that
181 continued operation of the franchise business by the franchisee
182 will result in imminent and substantial danger to public health
183 or safety.

184 Section 5. Section 686.105, Florida Statutes, is created to
185 read:

186 686.105 Sales, transfers, and assignments.—

187 (1) A franchisor may not deny the surviving spouse, heir,
188 or estate of a deceased franchisee or of a deceased person who
189 controlled a majority interest in the franchise the opportunity
190 to participate in the ownership of the franchise or franchise
191 business under a valid franchise agreement for at least 180 days
192 after the death of the franchisee or the death of a person
193 controlling a majority interest in the franchise. During that
194 time, the surviving spouse, heir, or estate of the deceased must
195 either meet all of the existing reasonable qualifications for a
196 purchaser of a franchise or must sell, transfer, or assign the
197 franchise to a person who meets the franchisor's existing
198 reasonable qualifications for new franchisees. The rights
199 granted to the surviving spouse, heir, or estate under this
200 section are granted subject to the surviving spouse, heir, or
201 estate of the deceased maintaining all standards and obligations
202 of the franchise.

203 (2) (a) A franchisee may sell, transfer, or assign a

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204 franchise, all or substantially all of the assets of the
205 franchise business, or an interest in the franchise with the
206 prior written consent of the franchisor. The franchisor's
207 consent may not be withheld unless the purchaser, transferee, or
208 assignee does not meet the qualifications for new or renewing
209 franchisees described in paragraph (b) or the franchisee and the
210 purchaser, transferee, or assignee fail to comply with other
211 reasonable transfer conditions specified in the franchise
212 agreement.

213 (b) A franchisor may not prevent a franchisee from selling,
214 transferring, or assigning a franchise, all or substantially all
215 of the assets of the franchise business, or an interest in the
216 franchise to another person if the other person meets the
217 franchisor's reasonable qualifications for the approval of new
218 or renewing franchisees in effect at the time the franchisor
219 receives notice of the proposed sale, transfer, or assignment.
220 The franchisor shall make this list of qualifications available
221 to the franchisee, and the franchisor shall consistently apply
222 such qualifications to similarly situated franchisees operating
223 within the franchise brand.

224 Section 6. Section 686.106, Florida Statutes, is created to
225 read:

226 686.106 Rights and prohibitions.—The following rights and
227 prohibitions govern the relations between a franchisor and its
228 franchisee:

229 (1) The parties shall deal with each other in good faith
230 and in a commercially reasonable manner.

231 (2) A franchisor may not:

232 (a) Terminate or fail to renew a franchise agreement in

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233 violation of this act;

234 (b) Prevent a sale, transfer, or assignment of a franchise
235 in violation of s. 686.105;

236 (c) Violate the Florida Deceptive and Unfair Trade
237 Practices Act or s. 817.416 in connection with its business as a
238 franchisor, or an officer, agent, or other representative
239 thereof;

240 (d) Require a franchisee to assent to a release,
241 assignment, novation, waiver, or estoppel that would relieve any
242 person from liability imposed under this act, including, but not
243 limited to, through the use of a disclaimer or checklist
244 designed to avoid a protection under this act; or

245 (e) Require a franchisee to assent to the use of a choice
246 of law provision by selecting a different state's law to govern
247 the relationship of the parties.

248 (3) A person who shows in a civil court of law a violation
249 of this section is entitled to the remedies under s. 686.109.

250 Section 7. Section 686.107, Florida Statutes, is created to
251 read:

252 686.107 Unenforceable franchise agreement or other contract
253 or part thereof.—A franchise agreement or other contract, or a
254 part thereof or practice thereunder, which is in violation of
255 any provision of this act is deemed against public policy and is
256 void and unenforceable. An aggrieved party may choose to seek to
257 void the portion of the agreement that is unenforceable and
258 continue to enforce the remainder of the agreement.

259 Section 8. Section 686.108, Florida Statutes, is created to
260 read:

261 686.108 Venue; choice of law.—A provision in a franchise

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262 agreement restricting the venue to a forum outside of this state
263 or selecting the law of any other state or jurisdiction other
264 than this state is void with respect to any claim arising under
265 or relating to a franchise agreement involving a franchisee that
266 was, at the time of signing, a resident of this state or a
267 business entity established in this state or involving a
268 franchise business either operating or planning to be operated
269 in this state. An agreement between a Florida-based franchisor
270 and a franchisee with none of these stated connections to this
271 state is not subject to this act, regardless of whether the
272 franchise agreement contains a choice of law provision selecting
273 this state.

274 Section 9. Section 686.109, Florida Statutes, is created to
275 read:

276 686.109 Remedies.-

277 (1) In addition to any relief specified in this act, any
278 person aggrieved or injured in his or her business or property
279 by any violation of this act may bring an action in the
280 appropriate state or federal court of this state and shall
281 recover the damages sustained and the costs of such action,
282 including reasonable attorney fees.

283 (2) Without regard and in addition to any other remedy or
284 relief to which a person is entitled, any person aggrieved by a
285 violation of this act may bring an action to obtain a
286 declaratory judgment stating that an action or a practice
287 violates this act and may obtain injunctive relief enjoining a
288 franchisor that has violated, is violating, or is otherwise
289 likely to violate these sections from committing the violation.

290 (3) The remedies provided in this section are in addition

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291 to any other remedies provided by law or in equity, including,
292 but not limited to, the Florida Deceptive and Unfair Trade
293 Practices Act and s. 817.416.

294 Section 10. Section 686.11, Florida Statutes, is created to
295 read:

296 686.11 Applicability.—

297 (1) Any person or franchisor who engages directly or
298 indirectly in an agreement or contract within this state in
299 connection with a franchise; or any franchise whose franchisee
300 is a resident of this state or is domiciled in this state or
301 whose franchise business is, has been, or is intended to be
302 operated in this state, is subject to this act and to the
303 jurisdiction of the courts of this state, in accordance with the
304 laws of this state, for violations of this act.

305 (2) This act applies to:

306 (a) Any franchise entered into, renewed, amended, or
307 revised after the effective date of this act;

308 (b) Any existing franchise of an indefinite duration which
309 may be terminated by the franchisee or franchisor without cause;
310 and

311 (c) Any existing franchise entered into before the
312 effective date of this act, only to the extent that this act
313 does not significantly impair the existing contract rights
314 between the parties.

315 Section 11. Section 817.416, Florida Statutes, is amended
316 to read:

317 817.416 Franchises and distributorships;
318 misrepresentations.—

319 (1) DEFINITIONS.—For the purpose of this section, the term:

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320 (a) "Area franchise" has the same meaning as in s. 686.103.

321 (d) ~~(a)~~ The term "Person" means an individual, partnership,
322 corporation, association, or other entity doing business in this
323 state Florida.

324 ~~(b) The term "Franchise or distributorship" means a~~
325 contract or agreement, either expressed or implied, whether oral
326 or written, between two or more persons:

327 1. Wherein a commercial relationship of definite duration
328 or continuing indefinite duration is involved;

329 2. Wherein one party, ~~hereinafter called~~ the "franchisee,"
330 is granted the right to offer, sell, and distribute goods or
331 services manufactured, processed, distributed or, in the case of
332 services, organized and directed by another party;

333 3. Wherein the franchisee as an independent business
334 constitutes a component of franchisor's distribution system; and

335 4. Wherein the operation of the franchisee's business
336 franchise is substantially reliant on franchisors for the basic
337 supply of goods.

338 ~~(c) The term "Goods" means any article or thing without~~
339 limitation, or any part of such article or thing, including any
340 article or thing used or consumed by a franchisee in rendering a
341 service established, organized, directed, or approved by a
342 franchisor.

343 (2) DECLARATIONS.—

344 (a) It is unlawful, when selling or establishing a
345 franchise or area franchise distributorship, for any person to:

346 1. Intentionally ~~to~~ misrepresent the prospects or chances
347 for success of a proposed or existing franchise or area
348 franchise distributorship;

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349 2. Intentionally ~~to~~ misrepresent, by failure to disclose or
350 otherwise, the known required total investment for such
351 franchise or area franchise distributorship; or

352 3. Intentionally ~~to~~ misrepresent or fail to disclose
353 efforts to sell or establish more franchises or area franchises
354 ~~distributorships~~ than is reasonable to expect the market or
355 market area for the particular franchise or area franchise
356 ~~distributorship~~ to sustain.

357 (b) The execution or carrying out of a scheme, plan, or
358 corporate organization which violates any of the provisions of
359 this section, if knowledge or intent be proved, is ~~shall be~~ a
360 misdemeanor of the second degree, punishable as provided in ss.
361 775.082 and 775.083.

362 (3) WAIVER.—The applicability of this section may not be
363 waived by any choice of venue clause, choice of law clause,
364 checklist, or any other contract provision, scheme, or device
365 that would otherwise affect a person's rights to make a claim
366 under this section.

367 (4) ~~(3)~~ CIVIL PROVISIONS.—Any person~~r~~ who shows in a civil
368 court of law a violation of this section may receive a judgment
369 for all moneys invested in the ~~such~~ franchise or area franchise
370 ~~distributorship~~. Upon such a showing, the court may award any
371 person bringing said action reasonable attorney fees ~~attorney's~~
372 ~~fees~~ and shall award such person reasonable costs incurred in
373 bringing the action, and execution shall thereupon issue.

374 (5) ~~(4)~~ INJUNCTIONS.—The Department of Legal Affairs, or the
375 Department of Legal Affairs and the Department of Agriculture
376 and Consumer Services jointly, may sue in behalf of the people
377 of this state for injunctive relief against franchise or area

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378 franchise ~~distributorship~~ plans or activities in violation of
379 paragraph (2) (a).

380 Section 12. The Division of Law Revision and Information is
381 directed to replace the phrase "the effective date of this act"
382 wherever it occurs in this act with the date the act becomes a
383 law.

384 Section 13. This act shall take effect upon becoming a law.