

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 denying certain persons
8 the opportunity to participate in the ownership of a
9 franchise for a specified period after the death of
10 the franchisee or the person controlling a majority
11 interest in the franchise; requiring specified persons
12 to meet certain qualifications to participate in the
13 ownership of a franchise after the death of the
14 franchisee or the person controlling a majority
15 interest in the franchise; authorizing a franchisee to
16 sell, transfer, or assign a franchise, specified
17 assets, or an interest in the franchise, and
18 prohibiting a franchisor from preventing such sale,
19 transfer, or assignment, under certain circumstances;
20 creating s. 686.105, F.S.; providing rights and
21 prohibitions to govern the relations between a
22 franchisor or subfranchisor and its franchisee;
23 creating s. 686.106, F.S.; providing that a contract
24 or franchise agreement is void and unenforceable under
25 certain circumstances; creating s. 686.107, F.S.;

26 providing that provisions in a franchise agreement
 27 which restrict venue or choice of law are void under
 28 certain circumstances; creating s. 686.108, F.S.;
 29 providing remedies to a franchisee or an aggrieved or
 30 injured person for a violation of this act under
 31 certain circumstances; creating s. 686.109, F.S.;
 32 providing applicability; providing an effective date.
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34 Be It Enacted by the Legislature of the State of Florida:
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36 Section 1. Section 686.101, Florida Statutes, is created
 37 to read:

38 686.101 Short title.—Sections 686.101-686.109 may be cited
 39 as the "Small Business Parity Act."

40 Section 2. Section 686.102, Florida Statutes, is created
 41 to read:

42 686.102 Legislative findings and intent; construction.—

43 (1) The Legislature finds that the welfare of franchisees,
 44 including the success and failure of their franchise businesses,
 45 greatly affects the general economy of this state, the public
 46 interest, and the public welfare. The intent of the Legislature
 47 is to promote fair business relations between franchisees and
 48 franchisors and to protect franchisees against unfair treatment
 49 by franchisors. Therefore, it is necessary to regulate the
 50 conduct of franchisors and their representatives in order to

51 prevent fraud, unfair business practices, unfair methods of
52 competition, impositions, and other abuses upon franchisees in
53 this state.

54 (2) In order to promote the intention and policies
55 announced in this section, the provisions of ss. 686.101-686.109
56 shall be liberally construed.

57 Section 3. Section 686.103, Florida Statutes, is created
58 to read:

59 686.103 Definitions.—In construing ss. 686.101-686.109,
60 unless the context otherwise requires, the word, phrase, or
61 term:

62 (1) "Area franchise" means a contract or agreement,
63 expressed or implied, written or oral, regardless of whether the
64 contract or agreement is designated as a franchise, permit,
65 license, resolution, contract, certificate, agreement, or
66 otherwise, between a franchisor and another person through which
67 that person is granted the right, for consideration in whole or
68 in part for such right:

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

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

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

75 (3) "Franchise" or "franchise agreement:"

76 (a) Means a contract or agreement, expressed or implied,
 77 written or oral, regardless of whether the contract or agreement
 78 is designated as a franchise, permit, license, resolution,
 79 contract, certificate, agreement, or otherwise, for a definite
 80 or indefinite time, between two or more persons by which:

81 1. A franchisee is granted the right to engage in the
 82 business of offering, selling, or distributing goods or services
 83 under a marketing plan or system prescribed in substantial part
 84 by a franchisor.

85 2. The operation of the franchise business pursuant to
 86 that marketing plan or system is substantially associated with
 87 the franchisor's trademark, service mark, trade name, logotype,
 88 advertising, or other commercial symbol designating the
 89 franchisor or its affiliate.

90 3. The franchisee is required to pay, directly or
 91 indirectly, a franchise fee.

92 (b) Includes an area franchise.

93 (c) Does not include any of the following:

94 1. A franchise governed by the Agricultural Equipment
 95 Manufacturers and Dealers Act, ss. 686.40-686.418.

96 2. Any activity governed by ss. 686.501-686.506.

97 3. A franchise governed by the Outdoor Power Equipment
 98 Manufacturers, Distributors, Wholesalers, and Servicing Dealers
 99 Act, ss. 686.60-686.614.

100 4. A motor vehicle franchise or agreement governed by ss.

101 320.60-320.70.

102 5. A business relation between a beer distributor and a
103 manufacturer governed by s. 563.022.

104 6. A professional sports franchise as described in s.
105 288.11625(2)(c).

106 (4) "Franchise business" means a business unit that is
107 owned or operated by a franchisee and that is subject to a
108 marketing plan or system prescribed by the franchise.

109 (5) "Franchise fee" means a fee or charge greater than
110 \$100 annually which a franchisee is required to pay or agrees to
111 pay, directly or indirectly, to or for the benefit of the
112 franchisor for the right to enter into or continue a franchise,
113 including, but not limited to, a payment for goods or services.
114 However, a fee or charge that a franchisee pays or agrees to pay
115 the franchisor for goods at a bona fide wholesale price is not a
116 franchise fee if no obligation is imposed upon the franchisee to
117 purchase or pay for a quantity of goods in excess of that which
118 a reasonable person normally would purchase by way of a starting
119 inventory or supply or to maintain an ongoing inventory or
120 supply.

121 (6) "Franchisee" means a person to whom a franchise is
122 offered or granted.

123 (7) "Franchisor" means a person who grants a franchise to
124 a franchisee.

125 (8) "Person" means a natural person, corporation, limited

126 liability company, association, partnership, trust, or other
127 business entity and, in the case of a business entity, includes
128 any other affiliate of such entity.

129 Section 4. Section 686.104, Florida Statutes, is created
130 to read:

131 686.104 Sales, transfers, and assignments.—

132 (1) A franchisor may not deny the surviving spouse, heir,
133 or estate of a deceased franchisee or the person controlling a
134 majority interest in the franchise the opportunity to
135 participate in the ownership of the franchise or franchise
136 business under a valid franchise agreement for at least 180 days
137 after the death of the franchisee or person controlling a
138 majority interest in the franchise. During that time, the
139 surviving spouse, heir, or estate of the deceased must meet all
140 of the reasonable qualifications for a purchaser of a franchise
141 or must sell, transfer, or assign the franchise to a person who
142 meets the franchisor's existing reasonable qualifications for
143 new franchisees. The rights granted to the surviving spouse,
144 heir, or estate under this section are granted subject to the
145 surviving spouse, heir, or estate of the deceased maintaining
146 all standards and obligations of the franchise.

147 (2) (a) A franchisee may sell, transfer, or assign a
148 franchise, all or substantially all of the assets of the
149 franchise business, or an interest in the franchise with the
150 prior written consent of the franchisor. The franchisor's

151 consent may not be withheld unless the purchaser, transferee, or
152 assignee does not meet the qualifications for new or renewing
153 franchisees described in paragraph (b) or the franchisee and the
154 purchaser, transferee, or assignee fail to comply with other
155 reasonable transfer conditions specified in the franchise
156 agreement.

157 (b) A franchisor may not prevent a franchisee from
158 selling, transferring, or assigning a franchise, all or
159 substantially all of the assets of the franchise business, or an
160 interest in the franchise to another person if the other person
161 meets the franchisor's reasonable qualifications for the
162 approval of new or renewing franchises. The franchisor shall
163 make the list of qualifications available to the franchisee, as
164 provided in subsection (3), and the franchisor shall
165 consistently apply such qualifications to similarly situated
166 franchisees operating within the franchise brand.

167 (3) (a) To invoke the protections under this section, a
168 franchisee must, before the sale, transfer, or assignment of a
169 franchise, all or substantially all of the assets of the
170 franchise business, or an interest in the franchise, notify the
171 franchisor of the franchisee's intent to sell, transfer, or
172 assign. The notice must be in writing; must be delivered to the
173 franchisor by certified or registered mail, return receipt
174 requested, or by business courier; and must include all of the
175 following:

176 1. The name and address of the proposed purchaser,
177 transferee, or assignee.

178 2. A copy of all agreements related to the sale, transfer,
179 or assignment of the franchise, the assets of the franchise
180 business, or the interest in the franchise.

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

183 (b) The proposed purchaser's, transferee's, or assignee's
184 application must include all forms, financial disclosures, and
185 related information generally used by the franchisor in
186 reviewing prospective new franchisees, if those forms are
187 readily made available to the existing franchisee. If the forms
188 are not readily available, the franchisee shall request, and the
189 franchisor shall deliver, the forms to the franchisee by
190 certified or registered mail, return receipt requested, or by
191 business courier, within 15 calendar days after the franchisee's
192 request. As soon as practicable after receipt of the proposed
193 purchaser's, transferee's, or assignee's application, the
194 franchisor shall notify the franchisee and the proposed
195 purchaser, transferee, or assignee in writing of any additional
196 information or documentation necessary to complete the sale,
197 transfer, or assignment application. If the franchisor's list of
198 qualifications for the approval of new or renewing franchisees
199 in effect at the time the franchisor receives notice of the
200 proposed sale, transfer, or assignment is not readily available

201 to the franchisee when the franchisee notifies the franchisor of
202 the franchisee's intent to sell, transfer, or assign the
203 franchise, all or substantially all of the assets of the
204 franchise business, or an interest in the franchise, the
205 franchisor must communicate the list of qualifications to the
206 franchisee within 15 calendar days after receipt of the proposed
207 purchaser's, transferee's, or assignee's application.

208 Section 5. Section 686.105, Florida Statutes, is created
209 to read:

210 686.105 Rights and prohibitions.—The following rights and
211 prohibitions govern the interactions between a franchisor or
212 subfranchisor and its franchisee:

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

215 (2) A franchisor may not:

216 (a) Terminate or fail to renew a franchise agreement in
217 violation of ss. 686.101-686.109.

218 (b) Prevent a sale, transfer, or assignment of a franchise
219 in violation of s. 686.104.

220 (c) Violate the Florida Deceptive and Unfair Trade
221 Practices Act under part II of chapter 501 or s. 817.416 in
222 connection with its business as a franchisor, an officer, an
223 agent, or another representative thereof.

224 (d) Require a franchisee to assent to a release,
225 assignment, novation, waiver, or estoppel that would relieve any

226 person from liability imposed under ss. 686.101-686.109,
227 including, but not limited to, through the use of a disclaimer
228 or checklist designed to avoid a protection under ss. 686.101-
229 686.109.

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

233 (3) A person who shows in a civil court of law a violation
234 of this section is entitled to the remedies set forth in s. 686.
235 108.

236 Section 6. Section 686.106, Florida Statutes, is created
237 to read:

238 686.106 Unenforceable franchise agreement or other
239 contract.—A franchise agreement or other contract, a part
240 thereof or practice thereunder, which is in violation of any
241 provision of ss. 686.101-686.109 is deemed against public policy
242 and is void and unenforceable. An aggrieved party may choose to
243 only seek to void the portion of the agreement or contract that
244 is unenforceable and continue to enforce the remainder of the
245 agreement or contract.

246 Section 7. Section 686.107, Florida Statutes, is created
247 to read:

248 686.107 Venue; choice of law.—A provision in a franchise
249 agreement restricting the venue to a forum outside of this state
250 or selecting the law of any other state or jurisdiction other

251 than this state is void with respect to any claim arising under
252 or relating to a franchise agreement involving a franchisee that
253 was, at the time of signing, a resident of this state or a
254 business entity established in this state, or involving a
255 franchise business either operating or planning to be operated
256 in this state. An agreement between a state-based franchisor and
257 a franchisee that was, at the time of signing, a resident of
258 this state or a business entity established in this state is not
259 subject to ss. 686.101-686.109, even if the franchise agreement
260 contains a state choice of law clause.

261 Section 8. Section 686.108, Florida Statutes, is created
262 to read:

263 686.108 Remedies.—

264 (1) In addition to any relief specified in ss. 686.101-
265 686.109, a person aggrieved or injured in his or her business or
266 property by any violation of ss. 686.101-686.109 may bring an
267 action in the appropriate state or federal court of this state
268 and shall recover the damages sustained and the costs of such
269 action, including reasonable attorney fees.

270 (2) Without regard and in addition to any other remedy or
271 relief to which a person is entitled, any person aggrieved by a
272 violation of ss. 686.101-686.109 may bring an action to obtain a
273 declaratory judgment stating that an action or a practice
274 violates ss. 686.101-686.109 and may obtain injunctive relief
275 enjoining a franchisor that has violated, is violating, or is

276 otherwise likely to violate ss. 686.101-686.109 from committing
 277 the violation.

278 (3) The remedies provided in this section are in addition
 279 to any other remedies provided by law or in equity, including,
 280 but not limited to, the Florida Deceptive and Unfair Trade
 281 Practices Act under part II of chapter 501 and s. 817.416.

282 Section 9. Section 686.109, Florida Statutes, is created
 283 to read:

284 686.109 Applicability.—

285 (1) Any person or franchisor who engages directly or
 286 indirectly in an agreement or contract within this state in
 287 connection with a franchise or any franchise whose franchisee is
 288 a resident of this state, domiciled in this state, or whose
 289 franchise business is, has been, or is intended to be operated
 290 in this state, is subject to ss. 686.101-686.109 and the
 291 jurisdiction of the courts of this state for violations of ss.
 292 686.101-686.109.

293 (2) Sections 686.101-686.109 apply to:

294 (a) Any franchise entered into, renewed, amended, or
 295 revised after the effective date of ss. 686.101-686.109.

296 (b) Any existing franchise of an indefinite duration which
 297 may be terminated by the franchisee or franchisor without cause.

298 (c) Any existing franchise entered into before the
 299 effective date of ss. 686.101-686.109, only to the extent that
 300 ss. 686.101-686.109 does not significantly impair the existing

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301 contract rights between the parties.

302 (3) Section 817.416 continues to govern the claims of all
303 franchisees, distributors, and any other entities, past,
304 present, or future, which are covered by s. 817.416. Effective
305 July 1, 2018, s. 817.416 shall cover area franchisees and shall
306 prohibit a waiver of that section by choice of venue clauses,
307 choice of law clauses, checklists, or any other contract
308 provision, scheme, or device which would waive or otherwise
309 impact the rights of a franchisee or distributor to make a claim
310 under s. 817.416.

311 Section 10. This act shall take effect July 1, 2018.