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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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Fair Franchise Act of 2017".

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

(2) Franchise businesses involve a joint enterprise between the franchisor and franchisees in which each party has a vested interest in the success of the franchised business.

(3) Most prospective franchisees lack bargaining power and generally invest substantial amounts to obtain a franchise business when they are unfamiliar with operating a business, with the business being franchised, and with industry practices in franchising.

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

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

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

(6) Franchisees may suffer substantial financial losses when the franchisor does not provide truthful or complete information regarding the franchise opportunity, or where the franchisor does not act in good faith or in a commercially reasonable manner in the performance of the franchise agreement.

(7) Unlike investments in securities, an investment in a franchise may lead to substantial additional losses well beyond the initial capital investment. Unlike employment, due to long-term contractual and lease obligations, franchisees generally cannot simply resign and leave the franchised business without substantial liabilities.

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

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

(10) A franchisee's freedom to achieve a contract negotiated at arm's length is greatly limited by the disparity of bargaining power, lack of consistent legal standards, and other factors described above. This Act is necessary to restore true freedom to contract, and to improve the living standards of employees of franchises.

(11) The Federal Government has had a significant interest in regulating franchising and has regulated franchising for over 40 years through the Federal Trade Commission and its Franchise Rule.

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

(1) promote the compelling interest of the public in fair business relations between franchisees and franchisors;

(2) protect franchisees against unfair treatment by franchisors, who inherently have superior economic power and superior bargaining power in the negotiation of the terms and conditions of the franchise relationship;

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

(4) govern franchise agreements, including any renewals or amendments, to the full extent consistent with the Constitution of the United States; and

(5) create an environment that gives franchisees opportunity to thrive, therefore having the opportunity to provide better wages and benefits to their employees.

SEC. 3. UNFAIR FRANCHISE PRACTICES.

(a) MISREPRESENTATIONS IN REQUIRED DISCLOSURE.—In connection with any disclosure document, notice, or report required by any Federal, State, or local law, it shall be unlawful for any franchise seller, either directly or indirectly through another person—

(1) to—

(A) make an untrue statement of material fact;

(B) fail to state a material fact; or

(C) fail to state any fact which would render any required statement or disclosure either untrue or misleading; and

(2) fail to furnish any prospective franchisee with—

(A) all information required to be disclosed by law and at the time and in the manner required;

(B) a written statement specifying, prominently and in not less than 14-point type, whether the franchise agreement involved contains a right to renew such agreement; and

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

(b) DECEPTIVE AND DISCRIMINATORY PRACTICES.—In connection with the performance, enforcement, renewal, or termination of any franchise agreement, it shall be unlawful for a franchisor or subfranchisor, either directly or indirectly through another person, to do any of the following:

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

(2) To hinder, prohibit, or penalize (or threaten to hinder, prohibit, or penalize), directly or indirectly, the free association of franchisees for any lawful purpose, including the formation of or participation in any trade association made up of franchisees or of associations of franchisees.

(3) To discriminate against a franchisee by imposing requirements not imposed on other similarly situated franchisees.

(4) To otherwise retaliate, directly or indirectly, against any franchisee for membership or participation in a franchisee association.

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

(6) To enforce a clause or provision in a franchise agreement requiring the parties to submit to arbitration unless the parties, each being represented by counsel, have voluntarily entered into an agreement after the dispute arises to submit the dispute to arbitration, and then only if the arbitration is conducted at a location reasonably convenient to the franchisee; provided, however, that the provisions of this subsection shall not prohibit the enforceability of a clause or provision in a franchise agreement which requires the parties to submit to non-binding mediation conducted at a location reasonably convenient to the franchisee.

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

(A) Refusal to take part in any promotional campaign which is not reasonable, implemented in good faith, and expected to promote the profitability of the franchisee's business.

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

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

(D) Refusal to keep the franchised premises open and operating during hours which are unprofitable to the franchisee or to preclude the franchisee from establishing its own hours of operation or nonoperation for the period between the hours of 10 p.m. and 6 a.m., unless said business is commonly recognized as an extended hour business or the initial signed franchise agreement required operating during these hours.

(E) Refusal to give the franchisor or any supplier financial records of the operation of the franchise which are not related or unnecessary to the performance of franchisee's express obligations under the franchise agreement or records unrelated to the franchise business.

(8) To restrict a franchisee from associating with other franchisees or from joining, leading, or otherwise participating in a trade or other association, or retaliate against a franchisee for engaging in these activities.

(9) To require or prohibit any change in management of any franchise unless the requirement or prohibition of the change shall be for good cause, which cause shall be stated in writing by the franchisor and be based on violations of material, reasonable and reasonably required express provisions of the franchise agreement. Good cause shall include requiring that management of the franchise be conducted by—

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

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

(10) To impose on a franchisee by contract, rule, or regulation, whether written or oral, a standard of conduct or performance unless the franchisor, its agents or representatives, sustain the burden of proving the standard to be reasonable, necessary, and uniformly enforced and applied throughout its system of franchisees, franchisor-owned units and licensees. The following are examples of unreasonable conduct:

(A) To fail to deal fairly and in good faith or fail to exercise due care with a franchisee or any association or other aggregation or incorporation of franchisees in all business matters, including—

(i) proposed and actual transfer of the franchise;

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

(iii) the interpretation, administration, and performance of franchise agreements and area development or territory agreements.

(B) To sell, rent, or offer to sell to a franchisee or require a franchisee to buy any product or service for more than a fair and reasonable price or without the reasonable expectation that the sale or rental transaction itself will be profitable for the franchisee's business.

(C) To discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless that discrimination between franchisees—

(i) would be necessary to allow a particular franchisee to fairly meet competition in the open market;

(ii) does not adversely affect the business of any existing franchisee; and

(iii) to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, the discrimination is based on franchises granted at materially different times and the discrimination is reasonably related to the difference in time or on other proper and justifiable distinctions, and is not arbitrary or intended to be for the benefit of the franchisor at the expense of any franchisee. Nothing in this subsection shall be construed as granting to a franchisor any right which may be limited by any other State or Federal statute.

(D) To notify the franchisee of a claimed breach of the franchise agreement no later than 180 days from the date the breach arises or 180 days after the franchisor knew or in the exercise of reasonable care should have known of the claimed breach.

(E) To require a franchisee to keep the franchised premises open and operating during hours which are unprofitable to the franchisee or to preclude the franchisee from establishing its own hours of operation or nonoperation between the hours of 10 p.m. and 6 a.m., unless said business is commonly recognized as an extended hour business, or the initial signed franchise agreement required operating during these hours.

(F) To require a franchisee to include noncompete language in employment contracts with its employees.

(G) To fail to, without charge, make readily available to franchisees, and provide a physical copy of true, accurate, and complete copies of all records and accountings of marketing, rewards programs, advertising funds, and fees that have been paid by franchisees, vendors, suppliers, and licensees.

(H) To impose performance standards on franchises unless the franchisor proves the performance standards are reasonable, necessary, and uniformly enforced.

(I) To require or request a franchisee to assent to a release, assignment, novation, waiver, or estoppel which would prospectively relieve any person from liability imposed by this chapter.

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

(K) To act to accomplish, either directly or indirectly through any parent company, subsidiary, affiliate, or agent, what would otherwise be prohibited under this chapter on the part of the manufacturer or distributor.

SEC. 4. STANDARDS OF CONDUCT.

(a) DUTY OF GOOD FAITH.—

(1) A franchise contract imposes on each party thereto a duty to act in good faith in its performance and enforcement.

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

(A) obligate a party to a franchise to do nothing that will have the effect of destroying or injuring the right of the other party to obtain and receive the expected fruits of the contract;

(B) obligate a party to do everything required under the contract to accomplish the purposes of the contract; and

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

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

(b) DUTY OF DUE CARE.—

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

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

(2) For purposes of this subsection—

(A) the term ''skill or knowledge'' means something more than the mere minimum level of skill or knowledge required of any person engaging in a service or business and involves a special level of expertise—

(i) which is the result of acquired learning and aptitude developed by special training and experience in the business to be licensed under the franchise agreement, or the result of extensive use and experience with the goods or services or the operating system of such business;

(ii) which is the result of experience in organizing a franchise system and in providing training, assistance and services to franchisees; and

(iii) which a prospective franchisee would expect in reasonable reliance on the written and oral commitments and representations of the franchisor; and

(B) a franchisor shall be permitted to show that it contracted for, hired, or purchased the expertise necessary to comply with the requirements of this subsection and that such expertise was incorporated in the franchise or communicated or provided to the franchisee.

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

SEC. 5. PROCEDURAL FAIRNESS.

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

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

eral to a franchise, which directly or indirectly violates any provision of this Act;

(2) require a franchisee to assent to any disclaimer, waiver, release, stipulation, or other provision which would purport—

(A) to relieve any person from a duty imposed by this Act, except as part of a settlement of a preexisting bona fide dispute; or

(B) to protect any person against any liability to which he would otherwise be subject under this Act by reason of willful misfeasance, bad faith, or gross negligence in the performance of duties, or by reason of reckless disregard of obligations and duties under the franchise agreement; or

(3) require a franchisee to assent to any waiver, release, stipulation, or other provision, either as part of any agreement or document relating to the operation of a franchise business, in any agreement or document relating to the termination, cancellation, forfeiture, repurchase, or resale of a franchise business, or as a condition for permitting a franchisee to leave the franchise system, which would purport to prevent the franchisee from making any oral or written statement relating to the franchise business,

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

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

(1) deprive a franchisee of the application and benefits of this Act, of any other Federal law, or of the law of any State in which the franchisee is a resident, or in which the franchisee's place of business is located;

(2) deprive a franchisee of the right to commence an action against the franchisor for violation of this Act, or for breach of the franchise agreement, or of any agreement or stipulation ancillary or collateral to the franchise, in a court in the State of the franchisee's principal place of business; or

(3) prevent a franchisee from bringing or participating in any of the following actions:

(A) A consolidated action or consolidated arbitration.

(B) A mass action or mass arbitration.

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

(D) A class arbitration as authorized by the American Arbitration Association Supplementary Rules for Class Arbitrations.

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

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

SEC. 6. TRANSFER OF A FRANCHISE.

(a) TRANSFER OF INTEREST.—A franchisee may assign an interest in a franchised business or in a franchise to a transferee provided the transferee satisfies the reasonable qualifications then generally applied by the franchisor in the offer and sale of franchises. For the purpose of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious and the franchisor states the grounds for its refusal in writing to the franchisee.

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

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

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

(1) the transferee successfully complete a reasonable training program;

(2) a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer;

(3) the transferring franchisee pay or make reasonable provision to pay any amount due the franchisor or the franchisor's affiliate; or

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

(e) PROHIBITED CONDITIONS.—A franchisor may not condition its consent to a transfer described in subsection (a) on—

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

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

(3) requiring the franchisee or transferee to make, or agree to make, capital improvements, reinvestments, or purchases in an amount greater than the franchisor could have reasonably required under the terms of the franchisee's existing franchise agreement.

(f) NO ADDITIONAL AGREEMENT REQUIRED AFTER TRANSFER.—A franchisee may assign the franchisee's interest in the franchise for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a franchise agreement that has different material terms or financial requirements as a condition of the transfer.

(g) PUBLIC OFFERINGS.—A franchisor may not withhold its consent to a franchisee's making a public offering of its securities without good cause if the franchisee, or the owner of the franchisee's interest in the franchise, retains control over more than 25 percent of the voting power as the franchisee.

(h) OTHER CONSOLIDATION.—A franchisor may not withhold its consent to a pooling of interests, to a sale or exchange of assets or securities, or to any other business consolidation amongst its existing franchisees, provided the constituents are each in material compliance with their respective obligations to the franchisor.

(i) OCCURRENCES NOT CONSIDERED TRANSFERS.—The following occurrences shall not be considered transfers requiring the consent of the franchisor under a franchise agreement, and a franchisor shall not impose any fees, payments, or charges in excess of a franchisor's cost to review the relevant matter:

(1) The succession of ownership or management of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or partner active in the management of the franchise unless the successor objectively fails to meet within 1 year the then current reasonable qualifications of the franchisor for franchisees.

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

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

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

than 50 percent of the franchise would be owned by persons who objectively meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer.

(5) A grant or retention of a security interest in the franchised business or its assets, or an ownership interest in the franchisee, if the security agreement establishes an obligation on the part of the secured party enforceable by the franchisor to give the franchisor, simultaneously with notice to the franchisee, notice of the secured party's intent to foreclose on the collateral, and a reasonable opportunity to redeem the interest of the secured party and recover the secured party's interest in the franchise or franchised business by satisfying the secured obligation.

(6) A franchisor may not exercise any purported right of first refusal or right to purchase with regard to any franchise, or interest or assets of a franchisee, upon the happening of any event described in paragraphs (1) through (5).

(j) CERTAIN COVENANTS UNENFORCEABLE.—After the transfer of a transferor's complete interest in a franchise, a franchisor may not enforce against the transferor any covenant of the franchise agreement purporting to prohibit the transferor from engaging in any lawful occupation or enterprise. This subsection shall not limit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights (including protection of trade dress) except by agreement with the franchisor.

SEC. 7. RENEWAL OF THE FRANCHISE; NOTICE.

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

(b) FEES.—Renewals shall not be subject to unreasonable fees. Fees shall not be deemed unreasonable if they do not exceed 50 percent of the amount of the average initial franchise fee or other required payments then being charged to all franchisees.

(c) GOOD CAUSE FOR NONRENEWAL.—Good cause as described in subsection (a) shall be based upon legitimate business reason which shall include, the franchisee's refusal or failure to substantially comply with any material, reasonable and reasonably necessary express obligation of the franchise agreement within the 1-year period prior to renewal, including repeated and intentional nonpayment of royalties, advertising or marketing fees clearly required by the franchise agreement.

(d) NOTICE OF NONRENEWAL.—Before nonrenewal of the franchise, the franchisor shall give the franchisee written notice at least 90 days in advance of the nonrenewal. The notice shall state all of the reasons constituting good cause for the nonrenewal and shall provide that the franchisee has 60 days in which to rectify any claimed discrepancy and reinstate its right to renew the franchise.

(e) PRESERVATION OF FEES.—If the franchisor requires the franchisee to sign a new franchise agreement as a condition of renewal, such franchise agreement shall contain the same royalties, advertising fees, and other fees as the expiring agreement, no new fees and any protected territory in the expiring agreement shall be the same in the renewal franchise.

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

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

(2) using the customer list and telephone numbers associated with the franchise business.

(g) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted to prohibit enforcement of any provision of a franchise contract obligating a franchisee after expiration or termination of a franchise—

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

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

(3) to modify the manner or mode of business operations so as to avoid any substantial confusion with the manner or mode of operations which are unique to the franchisor and commonly in practice by other franchisees using the same name or trademarks within the proximate trade or market area of the business.

SEC. 8. TERMINATION; GOOD CAUSE; NOTICE; OPPORTUNITY TO CURE.

(a) IN GENERAL.—A franchisor shall not, directly or through an officer, agent, or employee, terminate or cancel a franchise, or substantially change the competitive circumstances of the franchisee, except for good cause shown.

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

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

(d) EXCEPTION TO NOTICE REQUIREMENT.—The requirement for 90 days advance written notice for termination shall not apply if the reason for termination is because—

(1) the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship, in which event, such notice may be given 15 days in advance of the termination or cancellation; or

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

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

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

(C) materially impairs the goodwill value of the franchise or the franchised trademark. In that event, such notice may be given at any time following the date on which the conviction is no longer appealable and shall be effective upon delivery and written receipt of the notice. In no event shall any franchisor collect any financial penalty or fee, however delineated, as a consequence of such conviction.

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

(f) NOTICE OF IMMINENT DANGER.—If the reason for termination or cancellation is violation of any law or regulation relating to an imminent danger to public health or safety the franchisee shall be entitled to immediate written notice and shall have 24 hours following receipt of such notice to cure such violation.

(g) GOOD CAUSE.—A franchisee may terminate a franchise agreement for good cause shown, without any further liability to the franchisor. Good cause shall include changes to the franchise system or the competitive circumstances of the franchise business, which would cause substantial negative impact or substantial financial hardship to the franchisee in the operation of its franchise.

SEC. 9. EFFECT OF TERMINATION.

(a) IN GENERAL.—Upon termination of a franchise for whatever cause or reason, except voluntary relinquishment or abandonment of the franchise by the franchisee or the expiration of the franchise agreement where the franchisee does not elect to renew, the franchisor shall fairly compensate the franchisee or franchisee's estate for the fair market value at the time of termination of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased by the franchisee from the franchisor or its approved sources and the fair market value of the going concern value and good will of the business, if any, exclusive of personalized items which have no value to the franchisor and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business; provided, however, that—

(1) compensation need not be made to franchisee of going concern value and good will if the franchisor agrees in writing not to enforce a covenant which restrains the franchisee from competing with the franchisor in the same or substantially similar business in the same or substantially similar manner at the same location using the same property except the franchisor's registered trademark or trade name; and

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

(b) RULE OF CONSTRUCTION.—The provisions of this section shall not be construed to permit the termination or nonrenewal of any franchise agreement except in accordance with the express terms of the franchise agreement and this Act.

SEC. 10. TRANSFER OF FRANCHISE BY FRANCHISOR.

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

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

franchisor's interest in the franchise or of substantially all of the franchises held by the franchisor;

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

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

SEC. 11. PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—A franchisee who is injured by a violation or threatened violation of this Act, or of section 436.1 of title 16, Code of Federal Regulations (relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures), as in effect on the date of the enactment of this Act, may bring a private right of action in any court of appropriate jurisdiction for rescission and restitution, as well as for all damages and maybe awarded injunctive relief against a violation or threatened violation of this Act or such section. The franchisee shall also be entitled to recover its costs of litigation and reasonable attorney's fees and expert witness fees, against any entity or person found to be liable for such violation.

(b) LIABILITY.—Every person who directly or indirectly controls a person liable under subsection (a), every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions and every employee of a person so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be liable hereunder had no knowledge of or reasonable grounds to know of the existence of the facts by reason of which the liability is alleged to exist.

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

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

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

(d) VENUE.—A franchisee may commence a civil action to enforce any provision of this Act within the jurisdiction wherein the applicable franchisee is a resident or where the applicable business is located.

(e) CUMULATIVE RIGHT.—The private rights provided for in this section are in addition to and not in lieu of other rights or remedies created by Federal or State law.

SEC. 12. SCOPE AND APPLICABILITY.

(a) PROSPECTIVE APPLICATION.—Except as provided in subsection (b), the requirements of this Act shall apply to franchise agreements entered into, amended, exchanged, transferred, assigned, or renewed after the date of enactment of this Act.

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

SEC. 13. DEFINITIONS.

For purposes of this Act, the following definitions apply:

(1) The term ''affiliate'' has the meaning given the term ''affiliated person'' in section 436.1(b) of title 16 of the Code of Federal Regulations as in effect on July 1, 2007.

(2) The term ''disclosure document'' means either the disclosure statement required by the Federal Trade Commission in Trade Regulation Rule

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

(3) The term ‘‘franchise’’ has the meaning given such term in section 436.1(h) of title 16 of the Code of Federal Regulations as in effect on July 1, 2007, but does not include any contract otherwise regulated by the Federal Petroleum Marketing Practices Act (15 U.S.C. 2801 et seq.) except as to franchise relationships that do not involve the sale of petroleum products.

(4) The term ‘‘franchise seller’’ has the meaning given such term in section 436.1(j) of title 16 of the Code of Federal Regulations as in effect on July 1, 2007.

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

(6) The term ‘‘franchisor’’ has the meaning given such term in section 436.1(k) of title 16 of the Code of Federal Regulations as in effect on July 1, 2007.

(7) The terms ‘‘material’’ and ‘‘material fact’’ include—

(A) any fact, circumstance, or set of conditions which a reasonable franchisee or a reasonable prospective franchisee would consider important in making a significant decision relating to entering into, remaining in, or abandoning a franchise relationship; and

(B) any fact, circumstance, or set of conditions which has, or may have, any significant financial impact on a franchisor, franchisee, or a prospective franchisee.

(8) The term ''offer'' or ''offering'' means any effort to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

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

(10) The term ''person'' means either an individual or any other legal or commercial entity.

(11) The term ''State'' means a State, the District of Columbia, and any territory or possession of the United States.

(12) The term ''subfranchise'' means a contract or an agreement by which a person pays a

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

(13) The term ''subfranchisor'' means a person who is granted a subfranchise.

(14) The term ''trade secret'' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that—

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(15) The terms ''nonrenewal'' and ''nonrenew'' mean that the franchisor fails or refuses to extend the franchisor-franchisee relationship at the end of the existing term of the franchise agreement, irrespective of whether the franchise agreement contains any contractual right to obtain a renewal term. Allowing a franchise agreement with no renewal term to expire shall be considered to be a ''nonrenewal'' for purposes of this Act.

SEC. 14. SEVERABILITY.

If any provision or clause of this section or any application of this section to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

SEC. 15. STATE ATTORNEYS GENERAL.

(a) CIVIL ACTION.—Whenever an attorney general (or similar enforcement officer of a State, however denominated, hereinafter ''attorney general'') of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any provision of this Act, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate State court or district court of the United States to enjoin such violations, to obtain damages, restitution or other compensation on behalf of residents of such State or to obtain such further and other relief as the court may deem appropriate.

(b) PRESERVATION OF POWER.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(c) VENUE.—Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. Process in such action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

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

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