
By: Delegates Fulton and DeCarlo

Introduced and read first time: February 24, 1997

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation - Franchises - Fair Practices**

3 FOR the purpose of prohibiting a franchisor from requiring a franchisee to purchase
4 certain goods and services from sources designated by the franchisor under certain
5 circumstances; prohibiting a franchisor from terminating a franchise prior to its
6 expiration without good cause; specifying the circumstances under which good cause
7 exists; prohibiting a franchisor from enforcing certain prohibitions against a
8 franchisee engaging in a franchised business after the expiration or termination of a
9 franchise under certain circumstances; prohibiting a franchisor from interfering
10 with the free association of franchisees; prohibiting the establishment of new outlets
11 or points of sale within a certain proximity to an existing franchise under certain
12 circumstances; establishing certain duties of franchisors and franchisees;
13 establishing civil liability for violations of this Act; altering a certain short title; and
14 generally relating to franchises.

15 BY adding to

16 Article - Business Regulation
17 Section 14-225.1 through 14-225.6
18 Annotated Code of Maryland
19 (1992 Volume and 1996 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article - Business Regulation
22 Section 14-227 and 14-233
23 Annotated Code of Maryland
24 (1992 Volume and 1996 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article - Business Regulation**

28 14-225.1.

29 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
30 FRANCHISOR MAY NOT REQUIRE A FRANCHISEE TO OBTAIN EQUIPMENT, FIXTURES,

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1 SUPPLIES, OR SERVICES USED IN THE ESTABLISHMENT OR OPERATION OF A
2 FRANCHISE FROM SOURCES DESIGNATED BY THE FRANCHISOR.

3 (B) A FRANCHISOR MAY REQUIRE A FRANCHISEE TO PURCHASE FROM THE
4 FRANCHISOR OR ITS AFFILIATES:

5 (1) GOODS OR SERVICES REQUIRED TO MEET UNIFORM SYSTEM-WIDE
6 QUALITY STANDARDS WHICH ARE NOT ARBITRARILY PROMULGATED OR
7 ENFORCED BY THE FRANCHISOR; AND

8 (2) REASONABLE QUANTITIES OF INVENTORY OF GOODS, INCLUDING
9 DISPLAY AND SAMPLE ITEMS, AND SERVICES THAT ARE INTEGRALLY RELATED TO A
10 TRADEMARK, TRADE NAME, TRADE SECRET, OR PATENT OWNED BY OR LICENSED
11 TO THE FRANCHISOR OR ITS AFFILIATES.

12 14-225.2.

13 (A) A FRANCHISOR MAY NOT TERMINATE OR OTHERWISE CANCEL A
14 FRANCHISE PRIOR TO ITS EXPIRATION WITHOUT GOOD CAUSE.

15 (B) FOR PURPOSES OF THIS SECTION, GOOD CAUSE EXISTS IF:

16 (1) (I) THE FRANCHISEE FAILS TO COMPLY WITH A MATERIAL
17 PROVISION OF THE FRANCHISE AGREEMENT AFTER NOTICE SPECIFYING THE
18 DEFAULT AND A 30-DAY PERIOD TO CURE THE DEFAULT; OR

19 (II) IN THE CASE OF A DEFAULT THAT CANNOT BE CURED WITHIN
20 30 DAYS, THE FRANCHISEE FAILS TO INITIATE WITHIN 30 DAYS AND DILIGENTLY
21 PURSUE SUBSTANTIAL CONTINUING ACTION TO CURE THE DEFAULT;

22 (2) THE FRANCHISEE, WITHOUT THE REQUIREMENT OF NOTICE AND
23 AN OPPORTUNITY TO CURE:

24 (I) VOLUNTARILY ABANDONS THE FRANCHISE, EXCEPT THAT
25 LOSS OR TERMINATION OF A LEASEHOLD FOR THE FRANCHISE PRIOR TO THE
26 EXPIRATION OF THE TERM OF A FRANCHISE BY REASON OF EMINENT DOMAIN,
27 FORECLOSURE SALE, NATURAL DISASTER, OR OTHER TERMINATION NOT THE
28 FAULT OF THE FRANCHISEE SHALL NOT BE CONSIDERED ABANDONMENT BY THE
29 FRANCHISEE;

30 (II) IS CONVICTED OF A CRIME THAT SUBSTANTIALLY IMPAIRS
31 THE GOOD WILL ASSOCIATED WITH THE FRANCHISOR'S TRADEMARK, TRADE NAME,
32 SERVICE MARK, LOGOTYPE, ADVERTISING, OR OTHER COMMERCIAL SYMBOL;

33 (III) REPEATEDLY FAILS TO COMPLY WITH THE SAME MATERIAL
34 PROVISION OF THE FRANCHISE AGREEMENT; OR

35 (IV) OPERATES THE FRANCHISE IN A MANNER THAT CREATES AN
36 IMMINENT DANGER TO PUBLIC HEALTH OR SAFETY; OR

37 (3) THE FRANCHISOR, WHETHER OR NOT AS A RESULT OF
38 BANKRUPTCY OR REORGANIZATION, WITHDRAWS FROM A MARKETING AREA.

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1 (C) A FRANCHISE MAY BE TERMINATED FOR GOOD CAUSE UNDER
2 SUBSECTION (B)(3) OF THIS SECTION ONLY IF THE FRANCHISOR:

3 (1) PAYS THE FRANCHISEE REASONABLE COMPENSATION FOR
4 DAMAGES INCURRED FROM THE SHORTENED TERM OF THE FRANCHISE; OR

5 (2) AGREES NOT TO ENFORCE ANY CONTRACTUAL PROHIBITION
6 AGAINST THE FRANCHISEE CONTINUING TO ENGAGE IN THE FRANCHISED BUSINESS
7 AT THE LICENSED LOCATION, EXCEPT AS PERMITTED IN § 14-225.3(C) OF THIS
8 SUBTITLE.

9 14-225.3.

10 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A FRANCHISOR MAY
11 NOT ENFORCE A PROHIBITION AGAINST A FRANCHISEE ENGAGING IN ANY
12 BUSINESS AT ANY LOCATION AFTER THE EXPIRATION OR TERMINATION OF A
13 FRANCHISE.

14 (B) (1) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY IF, NOT LESS
15 THAN 10 DAYS BEFORE THE EFFECTIVE DATE OF THE EXPIRATION OR
16 TERMINATION OF A FRANCHISE, THE FRANCHISOR OFFERS IN WRITING TO
17 PURCHASE THE ASSETS OF THE FRANCHISED BUSINESS FOR ITS FAIR MARKET
18 VALUE AS A GOING CONCERN.

19 (2) THE FAIR MARKET VALUE OF THE FRANCHISED BUSINESS SHALL BE
20 DETERMINED:

21 (I) AS IF IT WERE TO BE RESOLD OR RENEWED FOR A PERIOD OF
22 YEARS EQUAL TO THE CONTRACT TERM BEING OFFERED BY THE FRANCHISOR FOR
23 NEW OR RENEWED FRANCHISES; AND

24 (II) BY AN IMPARTIAL APPRAISER WHOSE APPOINTMENT IS
25 ACCEPTABLE TO BOTH PARTIES.

26 (3) FORGIVENESS OF DEBT SHALL NOT BE CONSIDERED A PURCHASE
27 OF ASSETS BY THE FRANCHISOR FOR PURPOSES OF THIS SECTION.

28 (C) A FRANCHISOR MAY ENFORCE PROVISIONS OF A FRANCHISE
29 AGREEMENT THAT OBLIGATE A FRANCHISEE, AFTER EXPIRATION OR
30 TERMINATION OF A FRANCHISE:

31 (1) TO CEASE OR REFRAIN FROM USING A TRADEMARK, TRADE NAME,
32 TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY OWNED BY THE FRANCHISOR
33 OR ITS AFFILIATE; OR

34 (2) TO ALTER THE APPEARANCE OF THE PREMISES AND THE MANNER
35 OF OPERATION OF THE FRANCHISED BUSINESS TO AVOID ANY LIKELIHOOD OF
36 CONFUSION AS TO THE AFFILIATION OF THE BUSINESS WITH ITS FORMER
37 FRANCHISOR.

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1 14-225.4.

2 A FRANCHISOR MAY NOT:

3 (1) PROHIBIT OR INTERFERE WITH THE FREE ASSOCIATION OF
4 FRANCHISEES FOR ANY LAWFUL PURPOSE, INCLUDING THE FORMATION OF OR
5 PARTICIPATION IN ANY TRADE ASSOCIATION MADE UP OF FRANCHISEES; OR

6 (2) DISCRIMINATE OR RETALIATE AGAINST ANY FRANCHISEE FOR
7 MEMBERSHIP OR PARTICIPATION IN A FRANCHISEE ASSOCIATION.

8 14-225.5.

9 (A) (1) A FRANCHISOR MAY NOT ESTABLISH IN UNREASONABLE
10 PROXIMITY TO AN EXISTING FRANCHISE A NEW OUTLET OR POINT OF SALE OF
11 GOODS OR SERVICES THAT ARE SIMILAR TO THOSE OFFERED BY AN EXISTING
12 FRANCHISEE AND IDENTIFIED BY THE SAME TRADEMARK, TRADE NAME, OR
13 ADVERTISING USED BY THE EXISTING FRANCHISEE.

14 (2) FOR PURPOSES OF THIS SECTION, A NEW OUTLET OR POINT OF SALE
15 IS ESTABLISHED IN UNREASONABLE PROXIMITY TO AN EXISTING FRANCHISE IF THE
16 EFFECT OR PROBABLE EFFECT OF ESTABLISHING THE NEW OUTLET OR POINT OF
17 SALE IS OR WOULD BE TO CAUSE A REDUCTION IN GROSS SALES OF THE EXISTING
18 FRANCHISE OF MORE THAN 10% DURING THE 12-MONTH PERIOD IMMEDIATELY
19 FOLLOWING ESTABLISHMENT OF THE NEW OUTLET OR POINT OF SALE.

20 (B) IF A FRANCHISOR ESTABLISHES A NEW OUTLET OR POINT OF SALE IN
21 UNREASONABLE PROXIMITY TO AN EXISTING FRANCHISE, THE FRANCHISOR SHALL:

22 (1) COMPENSATE THE EXISTING FRANCHISEE FOR LOST SALES CAUSED
23 BY THE NEW OUTLET OR POINT OF SALE IN AN AMOUNT EQUAL TO THE LOSS OF
24 SALES IN EXCESS OF 10% FOR ANY PERIOD IN WHICH THE NEW OUTLET OR POINT OF
25 SALE IS OPEN FOR BUSINESS;

26 (2) CHANGE THE LOCATION OR MANNER OF OPERATION OF THE NEW
27 OUTLET OR POINT OF SALE TO DIMINISH THE DIVERSION OF SALES FROM THE
28 EXISTING FRANCHISE TO LESS THAN 10% DURING ANY PERIOD IN WHICH THE NEW
29 OUTLET OR POINT OF SALE IS OPEN FOR BUSINESS; OR

30 (3) CLOSE THE NEW OUTLET OR POINT OF SALE.

31 (C) THIS SECTION DOES NOT APPLY IF, BEFORE A NEW OUTLET OR POINT OF
32 SALE IS OPENED FOR BUSINESS, A FRANCHISOR OFFERS IN WRITING TO EACH
33 FRANCHISEE WHO OWNS OR LICENSES A FRANCHISE IN CLOSE PROXIMITY TO THE
34 SITE OF THE NEW OUTLET OR POINT OF SALE TO PAY TO EACH FRANCHISEE AN
35 AMOUNT EQUAL TO 10% OF THE GROSS SALES, NET OF SALES TAXES, RETURNS, AND
36 ALLOWANCES, OF THE NEW OUTLET OR POINT OF SALE FOR THE FIRST 24 MONTHS
37 OF OPERATION OF SUCH NEW OUTLET OR POINT OF SALE, IF THE SALES OF THE
38 EXISTING FRANCHISES ARE REDUCED BY MORE THAN 10% DURING THE 12-MONTH
39 PERIOD IMMEDIATELY FOLLOWING ESTABLISHMENT OF THE NEW OUTLET OR
40 POINT OF SALE AS A RESULT OF OPENING THE NEW OUTLET OR POINT OF SALE.

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1 (D) THE FRANCHISOR HAS THE BURDEN OF PROOF TO SHOW WHETHER AND
2 THE EXTENT TO WHICH A DECLINE IN SALES OF AN EXISTING FRANCHISE
3 OCCURRED FOR A REASON OTHER THAN THE ESTABLISHMENT OF THE NEW
4 OUTLET OR POINT OF SALE.

5 14-225.6.

6 (A) (1) A FRANCHISE AGREEMENT IMPOSES ON EACH PARTY TO THE
7 AGREEMENT A DUTY TO ACT IN GOOD FAITH IN THE PERFORMANCE AND
8 ENFORCEMENT OF THE AGREEMENT.

9 (2) THE DUTY OF GOOD FAITH OBLIGATES EACH PARTY TO THE
10 FRANCHISE AGREEMENT TO TAKE ALL ACTIONS NECESSARY TO ENSURE THE RIGHT
11 OF THE OTHER PARTY TO RECEIVE THE BENEFITS OF THE AGREEMENT.

12 (B) (1) A FRANCHISE RELATIONSHIP IMPOSES ON THE FRANCHISOR A DUTY
13 OF DUE CARE.

14 (2) UNLESS A FRANCHISOR REPRESENTS THAT IT HAS GREATER SKILL
15 OR KNOWLEDGE IN ITS UNDERTAKING WITH ITS FRANCHISEES, OR CONSPICUOUSLY
16 DISCLAIMS THAT IT HAS SKILL OR KNOWLEDGE, THE FRANCHISOR IS REQUIRED TO
17 EXERCISE THE SKILL AND KNOWLEDGE NORMALLY POSSESSED BY FRANCHISORS IN
18 GOOD STANDING IN THE SAME OR A SIMILAR TYPE OF BUSINESS.

19 (3) FOR PURPOSES OF THIS SUBSECTION, THE SKILL OR KNOWLEDGE A
20 FRANCHISOR MUST EXERCISE IS GREATER THAN THE MINIMUM LEVEL OF SKILL OR
21 KNOWLEDGE REQUIRED OF A PERSON ENGAGING IN A SERVICE OR BUSINESS, AND
22 REQUIRES A SPECIAL LEVEL OF EXPERTISE WHICH IS THE RESULT OF:

23 (I) ACQUIRED LEARNING AND APTITUDE DEVELOPED BY SPECIAL
24 TRAINING AND EXPERIENCE IN THE BUSINESS TO BE CONDUCTED UNDER THE
25 FRANCHISE, OR EXTENSIVE USE AND EXPERIENCE WITH THE PRODUCTS, SERVICES,
26 OR OPERATING SYSTEM OF THE FRANCHISE; AND

27 (II) EXPERIENCE IN ORGANIZING A FRANCHISE SYSTEM AND IN
28 PROVIDING TRAINING, ASSISTANCE, AND SERVICES TO FRANCHISEES.

29 (4) A FRANCHISOR SHALL BE PERMITTED TO SHOW THAT IT
30 PURCHASED THE EXPERTISE NECESSARY TO COMPLY WITH THE REQUIREMENTS OF
31 THIS SUBSECTION AND THAT SUCH EXPERTISE WAS INCORPORATED IN THE
32 FRANCHISE OR COMMUNICATED OR PROVIDED TO THE FRANCHISEE.

33 (5) THE REQUIREMENT OF THIS SUBSECTION MAY NOT BE WAIVED BY
34 AGREEMENT OR CONDUCT, BUT THE FRANCHISOR MAY LIMIT IN WRITING THE
35 NATURE AND SCOPE OF ITS SKILL AND KNOWLEDGE, AND OF ITS UNDERTAKING
36 WITH A PROSPECTIVE FRANCHISEE, PROVIDED THAT NO INCONSISTENT
37 REPRESENTATION, WHETHER WRITTEN OR ORAL, IS MADE TO THE PROSPECTIVE
38 FRANCHISEE.

39 (C) (1) WITHOUT REGARD TO WHETHER A FIDUCIARY DUTY IS IMPOSED
40 GENERALLY ON A FRANCHISOR BY VIRTUE OF A FRANCHISE RELATIONSHIP, THE
41 FRANCHISOR OWES A FIDUCIARY DUTY TO ITS FRANCHISEES AND IS OBLIGATED TO

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1 EXERCISE THE HIGHEST STANDARD OF CARE FOR FRANCHISEE INTERESTS IF THE
2 FRANCHISOR:

3 (I) UNDERTAKES TO PERFORM BOOKKEEPING, COLLECTING,
4 PAYROLL, OR ACCOUNTING SERVICES ON BEHALF OF THE FRANCHISEE; OR

5 (II) REQUIRES FRANCHISEES TO MAKE CONTRIBUTIONS TO ANY
6 POOLED ADVERTISING OR PROMOTIONAL FUND TO BE ADMINISTERED OR
7 SUPERVISED BY THE FRANCHISOR.

8 (2) WHILE NOT LIMITING THE ABILITY OF A COURT TO IDENTIFY
9 OTHER CIRCUMSTANCES IN WHICH A FIDUCIARY DUTY MAY EXIST, THIS
10 SUBSECTION DOES NOT CREATE OR EXTEND A FIDUCIARY DUTY BY IMPLICATION
11 TO OTHER ASPECTS OF A FRANCHISE RELATIONSHIP.

12 14-227.

13 (a) (1) A person who sells or grants a franchise is civilly liable to the person who
14 buys or is granted a franchise if the person who sells or grants a franchise:

15 (I) offers to sell or sells a franchise:

16 [(i)] 1. without the offer of the franchise being registered under this
17 subtitle; or

18 [(ii)] 2. by means of an untrue statement of a material fact or any
19 omission to state a material fact necessary in order to make the statements made, in light
20 of the circumstances under which they are made, not misleading, if the person who buys
21 or is granted a franchise does not know of the untruth or omission; OR

22 (II) VIOLATES ANY PROVISION OF §§ 14-225.1 THROUGH 14-225.6 OF
23 THIS SUBTITLE.

24 (2) In determining liability under PARAGRAPH (1)(I)2 OF this subsection,
25 the person who sells or grants a franchise has the burden of proving that the person who
26 sells or grants a franchise did not know and, in the exercise of reasonable care, could not
27 have known of the untruth or omission.

28 (b) The person who buys or is granted a franchise may sue under this section to
29 recover damages sustained by the grant of the franchise.

30 (c) A court may order the person who sells or grants a franchise to:

31 (1) rescind the franchise; and

32 (2) make restitution to the person who buys or is granted a franchise.

33 (d) (1) Joint and several liability under this section extends to:

34 (i) each person who directly or indirectly controls a person liable
35 under this section;

36 (ii) each partner in a partnership liable under this section;

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1 (iii) each principal officer or director of a corporation liable under this
2 section;

3 (iv) each other person that has a similar status or performs similar
4 functions as a person liable under this section; and

5 (v) each employee of a person liable under this section, if the
6 employee materially aids in the act or transaction that is a violation under this subtitle.

7 (2) However, liability under this subsection does not extend to a person who
8 did not have knowledge of or reasonable grounds to believe in the existence of the facts
9 by which the liability is alleged to exist.

10 (e) An action under this section must be brought within 3 years after the grant of
11 the franchise.

12 14-233.

13 This subtitle is the Maryland Franchise [Registration and Disclosure] Law.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1997.