

WITHDRAWN

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SENATE FILE 2176

BY COMMITTEE ON COMMERCE

Approved (p. 415)

(SUCCESSOR TO SSB 2195)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to franchise agreements and their enforcement by
2 establishing certain duties and limitations on franchisors,
3 providing certain exemptions, and establishing a civil cause
4 of action.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2176

1 Section 1. NEW SECTION. 523H.1 DEFINITIONS.

2 When used in this chapter, unless the context otherwise
3 requires:

4 1. "Administrator" means the commissioner of insurance.

5 2. "Advertisement" means a communication published in
6 connection with an offer or sale of a franchise.

7 3. "Affiliate" means a person controlling, controlled by,
8 or under common control with another person, every officer or
9 director of such a person, and every person occupying a
10 similar status or performing similar functions.

11 4. "Business day" means a day other than a Saturday,
12 Sunday, or federal holiday.

13 5. "Disclosure document" means the uniform franchise
14 offering circular as adopted and amended by the north American
15 securities administrators association, incorporated.

16 6. "Franchise" means either of the following:

17 a. An oral or written agreement, either express or
18 implied, which provides all of the following:

19 (1) Grants the right to distribute goods or provide
20 services under a marketing plan prescribed or suggested in
21 substantial part by the franchisor.

22 (2) Requires payment of a franchise fee to a franchisor or
23 its affiliate.

24 (3) Allows the franchise business to be substantially
25 associated with a trademark, service mark, trade name,
26 logotype, advertisement, or other commercial symbol of or
27 designating the franchisor or its affiliate.

28 b. A master franchise.

29 "Franchise" does not include any business that is operated
30 under a lease or license on the premises of the lessor or
31 licensor as long as such business is incidental to the
32 business conducted by the lessor or licensor on such premises,
33 including, without limitation, leased departments, licensed
34 departments, and concessions and the leased or licensed
35 department operates only under the trademark, trade name,

1 service mark, or other commercial symbol designating the
2 lessor or licensor.

3 "Franchise" also does not include any contract under which
4 a petroleum retailer or petroleum distributor is authorized or
5 permitted to occupy leased marketing premises, which premises
6 are to be employed in connection with the sale, consignment,
7 or distribution of motor fuel under a trademark which is owned
8 or controlled by a refiner which is regulated by the federal
9 Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq.
10 The term "refiner" means any person engaged in the refining of
11 crude oil to produce motor fuel, and includes any affiliate of
12 such person. "Franchise" also does not include a contract
13 entered into by any person regulated under chapter 117, 123,
14 322, 322A, 322B, 322C, 322D, 322F, or 522, or a retailer
15 selling construction equipment, or lawn and garden equipment.

16 7. "Franchise fee" means a direct or indirect payment to
17 purchase or operate a franchise. Franchise fee does not
18 include any of the following:

19 a. Payment of a reasonable service charge to the issuer of
20 a credit card by an establishment accepting the credit card.

21 b. Payment to a trading stamp company by a person issuing
22 trading stamps in connection with a retail sale.

23 c. An agreement to purchase at a bona fide wholesale price
24 a reasonable quantity of tangible goods for resale.

25 8. "Franchisee" means a person to whom a franchise is
26 granted. Franchisee includes the following:

27 a. A subfranchisor with regard to its relationship with a
28 franchisor.

29 b. A subfranchisee with regard to its relationship with a
30 subfranchisor.

31 9. "Franchisor" means a person who grants a franchise or
32 an affiliate of such a person. Franchisor includes a
33 subfranchisor with regard to its relationship with a
34 franchisee, unless stated otherwise in this chapter.

35 10. "Fraud" and "deceit" are not limited to common law

1 fraud and deceit.

2 11. "Marketing plan" means a plan or system concerning a
3 material aspect of conducting business. Indicia of a
4 marketing plan include any of the following:

5 a. Price specification, special pricing systems, or
6 discount plans.

7 b. Sales or display equipment or merchandising devices.

8 c. Sales techniques.

9 d. Promotional or advertising materials or cooperative
10 advertising.

11 e. Training regarding the promotion, operation, or
12 management of the business.

13 f. Operational, managerial, technical, or financial
14 guidelines or assistance.

15 12. "Master franchise" means an agreement by which a
16 person pays a franchisor for the right to sell or negotiate
17 the sale of franchises.

18 13. "Offer" or "offer to sell" means every attempt to
19 offer or to dispose of, or solicitation of an offer to buy, a
20 franchise or interest in a franchise for value.

21 14. "Order" means a consent, authorization, approval, or
22 prohibition, issued by the administrator in a specific matter.

23 15. "Person" means a person as defined in section 4.1,
24 subsection 13.

25 16. "Publish" means to circulate generally by mail, print
26 media, or electronic media, or otherwise to disseminate
27 generally to the public.

28 17. "Registration application" means an initial franchise
29 application on the uniform franchise registration application
30 as adopted and amended by the north American securities
31 administrators association, incorporated, and any amendment or
32 renewal of the application.

33 18. "Sale" or "sell" means every contract or agreement of
34 sale of, contract to sell or disposition of, a franchise or
35 interest in a franchise for value.

1 19. "Salesperson" means a person employed by or
2 representing a franchisor in effecting or attempting to effect
3 the offer or sale of a franchise.

4 20. "Subfranchise" means an agreement by which a person
5 pays a franchisor for the right to sell or negotiate the sale
6 of franchises.

7 21. "Subfranchisor" means a person who grants a master
8 franchise.

9 22. "Subfranchisee" means a person who is granted a master
10 franchise or a subfranchise from a subfranchisor.

11 Sec. 2. NEW SECTION. 523H.2 APPLICABILITY.

12 This chapter applies to a new or existing franchise that is
13 operated in the state of Iowa. For purposes of this chapter,
14 the franchise is operated in this state only if the premises
15 from which the franchise is operated is physically located in
16 this state. For purposes of this chapter, a franchise
17 including marketing rights in or to this state, is deemed to
18 be operated in this state only if the franchisee's principal
19 business office is physically located in this state. This
20 chapter does not apply to a franchise solely because an
21 agreement relating to the franchise provides that the
22 agreement is subject to or governed by the laws of this state.
23 The provisions of this chapter do not apply to any existing or
24 future contracts between Iowa franchisors and out-of-state
25 franchisees.

26 Sec. 3. NEW SECTION. 523H.3 JURISDICTION, VENUE, AND
27 NONJUDICIAL RESOLUTION OF DISPUTES.

28 1. A provision in a franchise agreement restricting
29 jurisdiction or venue to a forum outside this state is void
30 with respect to a claim otherwise enforceable under this
31 chapter.

32 2. A civil action or proceeding arising out of a franchise
33 may be commenced wherever jurisdiction over the parties or
34 subject matter exists, even if the agreement limits actions or
35 proceedings to a designated jurisdiction or venue. The court

1 shall consider the doctrine of inconvenient forum.

2 3. Parties to a franchise may agree to independent
3 arbitration, mediation, or other nonjudicial resolution of an
4 existing or future dispute.

5 Sec. 4. NEW SECTION. 523H.4 WAIVERS VOID.

6 A condition, stipulation, or provision requiring a
7 franchisee to waive compliance with or relieving a person of a
8 duty or liability imposed by or a right provided by this
9 chapter or a rule or order under this chapter is void. An
10 acknowledgment provision, disclaimer, integration clause, or a
11 provision having a similar effect in a franchise agreement
12 does not negate or act to remove from judicial review any
13 statement, misrepresentation, or action that would violate a
14 provision of this chapter or a rule or order under this
15 chapter. This section shall not affect the settlement of
16 disputes, claims, or civil lawsuits arising or brought
17 pursuant to this chapter.

18 Sec. 5. NEW SECTION. 523H.5 TRANSFER OF FRANCHISE.

19 1. A franchisee may transfer the franchised business and
20 franchise to a transferee who meets the franchisor's
21 reasonable, essential, and nondiscriminatory standards for new
22 franchisees or transferees established at the time of the
23 transfer. A franchisor shall not withhold consent to the
24 transfer of ownership under these circumstances without good
25 cause. A provision in a franchise agreement restricting a
26 franchisee's rights under this section is void.

27 2. A franchisor may exercise a right of first refusal in
28 connection with a proposed transfer if provided in the
29 franchise agreement. However, this right shall not be
30 exercised by the franchisor more than thirty days after
31 receipt of the franchisee's request for the franchisor's
32 consent to the transfer. A franchisor shall not exercise such
33 right if by doing so the franchisor would hold a minority
34 ownership interest in the franchise or franchisee.

35 3. A franchisor may require as a condition of a transfer

1 any of the following:

2 a. That the transferee successfully complete a reasonable,
3 essential, and nondiscriminatory training program.

4 b. That a reasonable transfer fee be paid to reimburse the
5 franchisor for the franchisor's reasonable and actual expenses
6 directly attributable to the transfer.

7 c. That the franchisee pay or make reasonable provision to
8 pay any amount due the franchisor or the franchisor's
9 affiliate.

10 4. A franchisor shall not withhold consent to a franchisee
11 making a public offering of the franchisee's securities
12 without good cause, provided the franchisee or the owners of
13 the franchise retain control of more than fifty percent of the
14 voting power in the franchise. A franchisor shall not
15 withhold the franchisor's consent to a pooling of interests or
16 exchange of assets by the franchisor's existing franchisees.

17 5. A franchisee may transfer the franchisee's interest in
18 the franchise, for the unexpired term of the franchise
19 agreement, and a franchisor shall not require the franchisee
20 or the transferee to enter into a new or different franchise
21 agreement as a condition of the transfer.

22 6. A franchisee shall give the franchisor no less than
23 thirty days' written notice of a transfer which is subject to
24 the provisions of this section, and on request from the
25 franchisor shall provide in writing the ownership interests of
26 all persons holding or claiming an equitable or beneficial
27 interest in the franchise or the franchisee, as appropriate.
28 A franchisee shall not circumvent the intended effect of a
29 contractual provision governing the transfer of the franchise
30 or an interest in the franchise by means of a management
31 agreement, lease, profit-sharing agreement, conditional
32 assignment, or other similar device.

33 7. A franchisor shall not transfer its interest in a
34 franchise unless the franchisor makes reasonable provision for
35 the performance of the franchisor's obligations under the

1 franchise agreement by the transferee. A franchisor shall
2 provide the franchisee notice of a proposed transfer of the
3 franchisor's interest in the franchise at the time the
4 disclosure is required of the franchisor under applicable
5 securities laws, if interests in the franchisor are publicly
6 traded, or if not publicly traded, at the time such disclosure
7 would be required if the interests in the franchisor were
8 publicly traded.

9 8. A transfer by a franchisee is deemed to be approved
10 thirty days after the franchisee submits the request for
11 consent to the transfer unless the franchisor withholds
12 consent to the transfer as evidenced in writing, specifying
13 the reason or reasons for withholding the consent. The
14 written notice must be delivered to the franchisee prior to
15 the expiration of the thirty-day period. Any such notice is
16 privileged and is not actionable based upon a claim of
17 defamation.

18 9. A franchisor shall not discriminate against a proposed
19 transferee of a franchise on the basis of race, color,
20 national origin, sex, or physical handicap.

21 10. A franchisor, as a condition to a transfer of a
22 franchise, shall not obligate a franchisee to undertake
23 obligations or relinquish any rights unrelated to the
24 franchise proposed to be transferred, or to enter into a
25 release of claims broader than a similar release of claims by
26 the franchisor against the franchisee which is entered into by
27 the franchisor.

28 11. A franchisor, after a transfer of a franchise, shall
29 not seek to enforce any covenant of the transferred franchise
30 against the transferor which prohibits the transferor from
31 engaging in any lawful occupation or enterprise. However,
32 this subsection does not prohibit the franchisor from
33 enforcing a contractual covenant against the transferor not to
34 exploit the franchisor's trade secrets or intellectual
35 property rights, unless otherwise agreed to by the parties.

1 12. For purposes of this section, "transfer" means any
2 change in ownership or control of a franchise, franchised
3 business, or a franchisee. However, "transfer" does not
4 include any of the following:

5 a. The succession of ownership of a franchise upon the
6 death or disability of a franchisee, or of an owner, officer,
7 or director of a franchise, to the franchisee's spouse,
8 children, or a partner in the franchise.

9 b. Incorporation of a proprietorship franchisee.

10 c. A transfer within an existing ownership group of a
11 franchise of less than a controlling interest in the
12 franchise.

13 d. A transfer of less than a controlling interest in the
14 franchise to the franchisee's spouse or children.

15 e. A transfer of less than a controlling interest in the
16 franchise to an employee stock ownership plan, or employee
17 incentive compensation or deferred benefit plan.

18 f. A grant or retention of a security interest in the
19 franchise, the franchised business or its assets, or an
20 ownership interest in the franchisee, provided the security
21 agreement establishes an obligation on the part of the secured
22 party enforceable by the franchisor to give the franchisor
23 notice of the secured party's intent to foreclose on the
24 collateral simultaneously with notice to the franchisee, and a
25 reasonable opportunity to redeem the interest of the secured
26 party and recover the secured party's interest in the
27 franchise or the franchised business by paying the secured
28 obligations.

29 13. A franchisor shall not interfere or attempt to
30 interfere with any disposition of an interest in a franchise
31 or franchised business as described in subsection 12,
32 paragraphs "a" through "f".

33 Sec. 6. NEW SECTION. 523H.6 ENCROACHMENT.

34 A franchisor shall not compete with, or grant, either
35 directly or indirectly, a franchise in unreasonable proximity

1 to an established franchise offering goods or services
2 identified by the same trademark as those offered from the new
3 franchise, or whose premises are identified by the same
4 trademark as the new franchise. For purposes of this section,
5 "unreasonable proximity" as applied to a food establishment
6 franchisor or food service establishment franchisor, including
7 outlets and carry-out stores as defined by section 137A.1,
8 subsection 2, and section 137B.2, subsection 6, includes but
9 is not limited to the shortest distance as measured under the
10 following methods:

11 1. A three-mile radius, using a straight line measurement,
12 from the center of an already existing franchise.

13 2. A circular radius, using a straight line measurement,
14 from an existing franchise business which comprises a
15 population of thirty thousand or greater.

16 Within an area defined as unreasonable proximity, the
17 existing franchisee shall have the right of first refusal, at
18 a mutually agreed price, for the establishment or development
19 of any new franchise business, including outlets and carry-out
20 stores, established or developed directly or indirectly by the
21 franchisee's franchisor.

22 The court may grant a permanent or preliminary injunction
23 to prevent injury or threatened injury from the violation or
24 threatened violation of this section.

25 Sec. 7. NEW SECTION. 523H.7 TERMINATION.

26 A franchisor shall not terminate a franchise prior to its
27 expiration except for good cause. For purposes of this
28 section, "good cause" includes either of the following:

29 1. The failure of the franchisee to comply with a material
30 provision of the franchise agreement after a notice and a
31 thirty-day period to cure the default or if the default cannot
32 be cured within thirty days, the failure of the franchisee to
33 initiate within thirty days, substantial continuing action to
34 cure the default. Enforcement of the provision must be
35 similar to that imposed on other franchisees.

1 2. Situations in which the franchisee, without the
2 requirement of notice and an opportunity to cure, does any of
3 the following:

4 a. Voluntarily abandons the franchised business.

5 b. Is convicted of a crime that substantially impairs the
6 good will associated with the franchisor's trademark, service
7 mark, trade name, logotype advertising, or other commercial
8 symbol.

9 c. Repeatedly fails to comply with the same material
10 provision of the franchise agreement, when the enforcement of
11 the provision is similar to that imposed on other franchisees.

12 d. Operates the franchised business in a manner that
13 imminently endangers the public health or safety.

14 Sec. 8. NEW SECTION. 523H.8 NONRENEWAL OF A FRANCHISE.

15 A franchisor shall not refuse to renew a franchise unless
16 both of the following apply:

17 1. Good cause exists as defined in section 523H.7.

18 2. The franchisee has been notified of the franchisor's
19 intent not to renew at least six months prior to the
20 expiration date or any extension of the franchise agreement.

21 Sec. 9. NEW SECTION. 523H.9 FRANCHISEE'S RIGHT TO
22 ASSOCIATE.

23 A franchisor shall not restrict a franchisee from
24 associating with other franchisees or from participating in a
25 trade association, and shall not retaliate against a
26 franchisee for engaging in these activities.

27 Sec. 10. NEW SECTION. 523H.10 DUTY OF GOOD FAITH.

28 A franchise imposes on the parties a duty of good faith in
29 performance and enforcement of the franchise agreement. "Good
30 faith" means honesty in fact and the observance of reasonable
31 commercial standards of fair dealing in the trade.

32 Sec. 11. NEW SECTION. 523H.11 DUTY TO BARGAIN.

33 A franchisor has a duty to bargain in good faith with an
34 organization of its franchisees that represents generally or
35 on a specific issue or set of issues more than half of its

1 franchisees in this state, or more than half of all of its
2 franchisees in the United States, if both of the following
3 apply:

4 1. The franchisor conducts business, or offers franchises,
5 or has ten or more franchises outstanding, in this state.

6 2. The franchisor has more than five hundred franchises
7 outstanding, or more than three hundred franchisees, in the
8 United States.

9 Sec. 12. NEW SECTION. 523H.12 REPURCHASE OF ASSETS.

10 A franchisor shall not prohibit a franchisee from, or
11 enforce a prohibition against a franchisee, engaging in any
12 lawful business at any location after a termination or refusal
13 to renew by a franchisor, unless the franchisor offers in
14 writing no later than ten business days before expiration of
15 the franchise to purchase the assets of the franchised
16 business for its fair market value as a going concern. The
17 offer may be conditioned upon the ascertainment of a fair
18 market value by an impartial appraiser.

19 Sec. 13. NEW SECTION. 523H.13 INDEPENDENT SOURCING.

20 1. Except as provided in subsection 2, a franchisee may
21 obtain equipment, fixtures, supplies, and services used in the
22 establishment and operation of the franchised business from
23 sources of the franchisee's choosing, provided that such goods
24 and services meet standards as to their nature and quality
25 promulgated by the franchisor.

26 2. Subsection 1 of this section does not apply to
27 reasonable quantities of inventory goods or services,
28 including display and sample items, that the franchisor
29 requires the franchisee to obtain from the franchisor or its
30 affiliate, but only if the goods or services are central to
31 the franchised business and either are actually manufactured
32 or produced by the franchisor or its affiliate, or incorporate
33 a trade secret owned by the franchisor or its affiliate.

34 Sec. 14. NEW SECTION. 523H.14 RULEMAKING.

35 The administrator may adopt rules, pursuant to chapter 17A,

1 as necessary to implement this chapter.

2 Sec. 15. NEW SECTION. 523H.15 PRIVATE CIVIL ACTION.

3 A person who violates a provision of this chapter or a rule
4 adopted or order issued under this chapter is liable for
5 damages caused by the violation, including, but not limited
6 to, costs and reasonable attorneys' and experts' fees, and
7 subject to other appropriate relief including injunctive and
8 other equitable relief.

9 Sec. 16. NEW SECTION. 523H.16 LIMITATION OF ACTIONS.

10 A civil action or proceeding for a violation of this
11 chapter shall not be maintained unless commenced before the
12 earlier of two years after the plaintiff discovers the facts
13 constituting the violation or five years after the act or
14 transaction constituting the violation.

15 Sec. 17. NEW SECTION. 523H.17 WAIVER AND CHOICE OF LAW.

16 A party to a franchise shall not waive a right or benefit
17 conferred, or avoid a duty imposed, by this chapter or by a
18 rule adopted under this chapter. A condition, stipulation, or
19 provision requiring the application of the law of another
20 state in lieu of this chapter is void.

21 Sec. 18. NEW SECTION. 523H.18 CONSTRUCTION WITH OTHER
22 LAW.

23 This chapter does not limit any liability that may exist
24 under another statute or at common law. Prior law governs all
25 actions based on facts occurring before the effective date of
26 this Act.

27 Sec. 19. NEW SECTION. 523H.19 CONSTRUCTION.

28 This chapter shall be liberally construed to effectuate its
29 purposes.

30 EXPLANATION

31 This bill establishes a new chapter 523H relating to the
32 regulation of franchise agreements. The bill provides that a
33 civil action or proceeding arising out of the franchise
34 agreement may be brought wherever jurisdiction over the
35 parties or subject matter exists. The bill provides that a

1 waiver of the duties and rights established under chapter 523H
2 is void. The bill provides that a franchisor cannot refuse to
3 permit the transfer of the franchise without good cause, and
4 prohibits the franchisor from competing directly with a
5 franchisee or granting another franchise in unreasonable
6 proximity to the established franchise which offers goods or
7 services identified by the same trademark. Certain
8 restrictions related to the termination and nonrenewal of a
9 franchise are established. The bill also establishes a duty
10 to perform in good faith and to bargain with respect to the
11 agreement. The bill also establishes a civil cause of action
12 against a person who violates any provision of this chapter.

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SENATE FILE 2176

S-5551

1 Amend Senate File 2176 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. NEW SECTION. 523H.1 DEFINITIONS.

5 When used in this chapter, unless the context
6 otherwise requires:

7 1. "Affiliate" means a person controlling,
8 controlled by, or under common control with another
9 person, every officer or director of such a person,
10 and every person occupying a similar status or
11 performing similar functions.

12 2. "Business day" means a day other than a
13 Saturday, Sunday, or federal holiday.

14 3. a. "Franchise" means either of the following:

15 (1) An oral or written agreement, either express
16 or implied, which provides all of the following:

17 (a) Grants the right to distribute goods or
18 provide services under a marketing plan prescribed or
19 suggested in substantial part by the franchisor.

20 (b) Requires payment of a franchise fee to a
21 franchisor or its affiliate.

22 (c) Allows the franchise business to be
23 substantially associated with a trademark, service
24 mark, trade name, logotype, advertisement, or other
25 commercial symbol of or designating the franchisor or
26 its affiliate.

27 (2) A master franchise.

28 b. "Franchise" does not include any business that
29 is operated under a lease or license on the premises
30 of the lessor or licensor as long as such business is
31 incidental to the business conducted by the lessor or
32 licensor on such premises, including, without
33 limitation, leased departments, licensed departments,
34 and concessions and the leased or licensed department
35 operates only under the trademark, trade name, service
36 mark, or other commercial symbol designating the
37 lessor or licensor.

38 c. "Franchise" also does not include any contract
39 under which a petroleum retailer or petroleum
40 distributor is authorized or permitted to occupy
41 leased marketing premises, which premises are to be
42 employed in connection with the sale, consignment, or
43 distribution of motor fuel under a trademark which is
44 owned or controlled by a refiner which is regulated by
45 the federal Petroleum Marketing Practices Act, 15
46 U.S.C. § 2801 et seq. The term "refiner" means any
47 person engaged in the refining of crude oil to produce
48 motor fuel, and includes any affiliate of such person.
49 "Franchise" also does not include a contract entered
50 into by any person regulated under chapter 117, 123,

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1 322, 322A, 322B, 322C, 322D, 322F, or 522, or a
2 contract establishing a franchise relationship with
3 respect to the sale of construction equipment, lawn or
4 garden equipment, or real estate.

5 4. "Franchise fee" means a direct or indirect
6 payment to purchase or operate a franchise. Franchise
7 fee does not include any of the following:

8 a. Payment of a reasonable service charge to the
9 issuer of a credit card by an establishment accepting
10 the credit card.

11 b. Payment to a trading stamp company by a person
12 issuing trading stamps in connection with a retail
13 sale.

14 c. An agreement to purchase at a bona fide
15 wholesale price a reasonable quantity of tangible
16 goods for resale.

17 d. The purchase or agreement to purchase, at a
18 fair market value, any fixtures, equipment, leasehold
19 improvements, real property, supplies, or other
20 materials reasonably necessary to enter into or
21 continue a business.

22 e. Payments by a purchaser pursuant to a bona fide
23 loan from a seller to the purchaser.

24 f. Payment of rent which reflects payment for the
25 economic value of leased real or personal property.

26 g. The purchase or agreement to purchase
27 promotional or demonstration supplies, materials, or
28 equipment furnished at fair market value and not
29 intended for resale.

30 5. "Franchisee" means a person to whom a franchise
31 is granted. Franchisee includes the following:

32 a. A subfranchisor with regard to its relationship
33 with a franchisor.

34 b. A subfranchisee with regard to its relationship
35 with a subfranchisor.

36 6. "Franchisor" means a person who grants a
37 franchise or master franchise, or an affiliate of such
38 a person. Franchisor includes a subfranchisor with
39 regard to its relationship with a franchisee, unless
40 stated otherwise in this chapter.

41 7. "Fraud" and "deceit" are not limited to common
42 law fraud and deceit.

43 8. "Marketing plan" means a plan or system
44 concerning a material aspect of conducting business.
45 Indicia of a marketing plan include any of the
46 following:

47 a. Price specification, special pricing systems,
48 or discount plans.

49 b. Sales or display equipment or merchandising
50 devices.

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- 1 c. Sales techniques.
2 d. Promotional or advertising materials or
3 cooperative advertising.
4 e. Training regarding the promotion, operation, or
5 management of the business.
6 f. Operational, managerial, technical, or
7 financial guidelines or assistance.
8 9. "Master franchise" means an agreement by which
9 a person pays a franchisor for the right to sell or
10 negotiate the sale of franchises.
11 10. "Offer" or "offer to sell" means every attempt
12 to offer or to dispose of, or solicitation of an offer
13 to buy, a franchise or interest in a franchise for
14 value.
15 11. "Person" means a person as defined in section
16 4.1, subsection 13.
17 12. "Sale" or "sell" means every contract or
18 agreement of sale of, contract to sell or disposition
19 of, a franchise or interest in a franchise for value.
20 13. "Subfranchise" means an agreement by which a
21 person pays a franchisor for the right to sell or
22 negotiate the sale of franchises.
23 14. "Subfranchisee" means a person who is granted
24 a franchise from a subfranchisor.
25 15. "Subfranchisor" means a person who is granted
26 a master franchise.
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28 This chapter applies to a new or existing franchise
29 that is operated in the state of Iowa. For purposes
30 of this chapter, the franchise is operated in this
31 state only if the premises from which the franchise is
32 operated is physically located in this state. For
33 purposes of this chapter, a franchise including
34 marketing rights in or to this state, is deemed to be
35 operated in this state only if the franchisee's
36 principal business office is physically located in
37 this state. This chapter does not apply to a
38 franchise solely because an agreement relating to the
39 franchise provides that the agreement is subject to or
40 governed by the laws of this state. The provisions of
41 this chapter do not apply to any existing or future
42 contracts between Iowa franchisors and out-of-state
43 franchisees.
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45 NONJUDICIAL RESOLUTION OF DISPUTES.
46 1. A provision in a franchise agreement
47 restricting jurisdiction to a forum outside this state
48 is void with respect to a claim otherwise enforceable
49 under this chapter.
50 2. A civil action or proceeding arising out of a

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1 franchise may be commenced wherever jurisdiction over
2 the parties or subject matter exists, even if the
3 agreement limits actions or proceedings to a
4 designated jurisdiction.

5 3. Parties to a franchise may agree to independent
6 arbitration, mediation, or other nonjudicial
7 resolution of an existing or future dispute.

8 4. Venue for a civil action commenced under this
9 chapter shall be determined in accordance with chapter
10 616.

11 Sec. 4. NEW SECTION. 523H.4 WAIVERS VOID.

12 A condition, stipulation, or provision requiring a
13 franchisee to waive compliance with or relieving a
14 person of a duty or liability imposed by or a right
15 provided by this chapter or a rule or order under this
16 chapter is void. This section shall not affect the
17 settlement of disputes, claims, or civil lawsuits
18 arising or brought pursuant to this chapter.

19 Sec. 5. NEW SECTION. 523H.5 TRANSFER OF
20 FRANCHISE.

21 1. A franchisee may transfer the franchised
22 business and franchise to a transferee, provided that
23 the transferee satisfies the reasonable current
24 qualifications of the franchisor for new franchisees.
25 For the purposes of this section, a reasonable current
26 qualification for a new franchisee is a qualification
27 based upon a legitimate business reason. If the
28 proposed transferee does not meet the reasonable
29 current qualifications of the franchisor, the
30 franchisor may refuse to permit the transfer, provided
31 that the refusal of the franchisor to consent to the
32 transfer is not arbitrary or capricious when compared
33 to the actions of the franchisor in other similar
34 circumstances.

35 2. Except as otherwise provided in this section, a
36 franchisor may exercise a right of first refusal
37 contained in a franchise agreement after receipt of a
38 proposal from the franchisee to transfer the
39 franchise.

40 3. A franchisor may require as a condition of a
41 transfer any of the following:

42 a. That the transferee successfully complete a
43 reasonable training program.

44 b. That a reasonable transfer fee be paid to
45 reimburse the franchisor for the franchisor's
46 reasonable and actual expenses directly attributable
47 to the transfer.

48 c. That the franchisee pay or make provision
49 reasonably acceptable to the franchisor to pay any
50 amount due the franchisor or the franchisor's

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1 affiliate.

2 4. A franchisor shall not withhold consent to a
3 franchisee making a public offering of the
4 franchisee's securities without good cause, provided
5 the franchisee or the owners of the franchise retain
6 control of more than fifty percent of the voting power
7 in the franchise. A franchisor shall not withhold the
8 franchisor's consent to a pooling of interests or
9 exchange of assets by the franchisor's existing
10 franchisees.

11 5. A franchisee may transfer the franchisee's
12 interest in the franchise, for the unexpired term of
13 the franchise agreement, and a franchisor shall not
14 require the franchisee or the transferee to enter into
15 a new or different franchise agreement as a condition
16 of the transfer.

17 6. A franchisee shall give the franchisor no less
18 than thirty days' written notice of a transfer which
19 is subject to the provisions of this section, and on
20 request from the franchisor shall provide in writing
21 the ownership interests of all persons holding or
22 claiming an equitable or beneficial interest in the
23 franchise subsequent to the transfer or the
24 franchisee, as appropriate. A franchisee shall not
25 circumvent the intended effect of a contractual
26 provision governing the transfer of the franchise or
27 an interest in the franchise by means of a management
28 agreement, lease, profit-sharing agreement,
29 conditional assignment, or other similar device.

30 7. A franchisor shall not transfer its interest in
31 a franchise unless the franchisor makes reasonable
32 provision for the performance of the franchisor's
33 obligations under the franchise agreement by the
34 transferee. A franchisor shall provide the franchisee
35 notice of a proposed transfer of the franchisor's
36 interest in the franchise at the time the disclosure
37 is required of the franchisor under applicable
38 securities laws, if interests in the franchisor are
39 publicly traded, or if not publicly traded, at the
40 time such disclosure would be required if the
41 interests in the franchisor were publicly traded.

42 8. A transfer by a franchisee is deemed to be
43 approved thirty days after the franchisee submits the
44 request for consent to the transfer unless the
45 franchisor withholds consent to the transfer as
46 evidenced in writing, specifying the reason or reasons
47 for withholding the consent. The written notice must
48 be delivered to the franchisee prior to the expiration
49 of the thirty-day period. Any such notice is
50 privileged and is not actionable based upon a claim of

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1 defamation.

2 9. A franchisor shall not discriminate against a
3 proposed transferee of a franchise on the basis of
4 race, color, national origin, sex, or physical
5 handicap.

6 10. A franchisor, as a condition to a transfer of
7 a franchise, shall not obligate a franchisee to
8 undertake obligations or relinquish any rights
9 unrelated to the franchise proposed to be transferred,
10 or to enter into a release of claims broader than a
11 similar release of claims by the franchisor against
12 the franchisee which is entered into by the
13 franchisor.

14 11. A franchisor, after a transfer of a franchise,
15 shall not seek to enforce any covenant of the
16 transferred franchise against the transferor which
17 prohibits the transferor from engaging in any lawful
18 occupation or enterprise. However, this subsection
19 does not prohibit the franchisor from enforcing a
20 contractual covenant against the transferor not to
21 exploit the franchisor's trade secrets or intellectual
22 property rights, unless otherwise agreed to by the
23 parties.

24 12. For purposes of this section, "transfer" means
25 any change in ownership or control of a franchise,
26 franchised business, or a franchisee.

27 13. The following occurrences shall not be
28 considered transfers requiring the consent of the
29 franchisor under a franchise agreement, and shall not
30 result in the imposition of any penalties or make
31 applicable any right of first refusal by the
32 franchisor:

33 a. The succession of ownership of a franchise upon
34 the death or disability of a franchisee, or of an
35 owner of a franchise, to the franchisee's spouse,
36 child or children, or a partner of the franchisee
37 unless the successor fails to meet the then current
38 reasonable qualifications of the franchisor for
39 franchisees and the enforcement of the reasonable
40 current qualifications is not arbitrary or capricious
41 when compared to actions of the franchisor in other
42 similar circumstances.

43 b. The succession of a spouse, child, partner, or
44 other owner as operating manager upon the death or
45 disability of the operating manager, unless the
46 successor fails to meet the then current reasonable
47 qualifications of the franchisor for an operating
48 manager, and enforcement of the reasonable current
49 qualifications is not arbitrary or capricious when
50 compared to actions of the franchisor in other similar

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1 circumstances.

2 c. Incorporation of a proprietorship franchisee,
3 provided that such incorporation does not prohibit a
4 franchisor from requiring a personal guaranty by the
5 franchisee of obligations related to the franchise.

6 d. A transfer within an existing ownership group
7 of a franchise provided that more than fifty percent
8 of the franchise is held by persons who meet the
9 franchisor's reasonable current qualifications for
10 franchisees. If less than fifty percent of the
11 franchise would be owned by persons who meet the
12 franchisor's reasonable current qualifications, the
13 franchisor may refuse to authorize the transfer,
14 provided that enforcement of the reasonable current
15 qualifications is not arbitrary or capricious when
16 compared to actions of the franchisor in other similar
17 circumstances.

18 e. A transfer of less than a controlling interest
19 in the franchise to the franchisee's spouse or child
20 or children, provided that more than fifty percent of
21 the entire franchise is held by those who meet the
22 franchisor's reasonable current qualifications. If
23 less than fifty percent of the franchise would be
24 owned by persons who meet the franchisor's reasonable
25 current qualifications, the franchisor may refuse to
26 authorize the transfer, provided that enforcement of
27 the reasonable current qualifications is not arbitrary
28 or capricious when compared to actions of the
29 franchisor in other similar circumstances.

30 f. A transfer of less than a controlling interest
31 in the franchise of an employee stock ownership plan,
32 or employee incentive plan, provided that more than
33 fifty percent of the entire franchise is held by those
34 who meet the franchisor's reasonable current
35 qualifications for franchisees. If less than fifty
36 percent would be owned by persons who meet the
37 franchisor's reasonable current qualifications, the
38 franchisor may refuse to authorize the transfer,
39 provided that enforcement of the reasonable current
40 qualifications is not arbitrary or capricious when
41 compared to actions of the franchisor in other similar
42 circumstances.

43 g. A grant or retention of a security interest in
44 the franchised business or its assets, or an ownership
45 interest in the franchisee, provided the security
46 agreement establishes an obligation on the part of the
47 secured party enforceable by the franchisor to give
48 the franchisor notice of the secured party's intent to
49 foreclose on the collateral simultaneously with notice
50 to the franchisee, and a reasonable opportunity to

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1 redeem the interests of the secured party and recover
2 the secured party's interest in the franchise or
3 franchised business by paying the secured obligation.

4 14. A franchisor shall not interfere or attempt to
5 interfere with any disposition of an interest in a
6 franchise or franchised business as described in
7 subsection 13, paragraphs "a" through "g".

8 Sec. 6. NEW SECTION. 523K.C ENCROACHMENT.

9 1. Notwithstanding the terms, provisions, or
10 conditions of an agreement or franchise, if a
11 franchisor seeks to establish a new outlet, company-
12 owned store, or carry-out store within an unreasonable
13 proximity of an existing franchisee, the existing
14 franchisee, at the option of the franchisor, shall
15 have either a right of first refusal with respect to
16 the proposed new outlet, company-owned store, or
17 carry-out store or a right to compensation for market
18 share diverted by the new outlet. For the purposes of
19 this section, "unreasonable proximity" as applied to a
20 food establishment franchisor or food service
21 establishment franchisor, including outlets and carry-
22 out stores as defined by section 137A.1, subsection 2,
23 and section 137B.2, subsection 6, includes but is not
24 limited to the shortest distance as measured by the
25 following methods:

26 a. A three-mile radius, using a straight line
27 measurement, from the center of an already existing
28 franchise.

29 b. A circular radius, using a straight line
30 measurement, from an existing franchise business which
31 comprises a population of thirty thousand or greater.

32 2. With respect to a right of first refusal, the
33 parties shall in good faith seek to establish a
34 mutually agreeable price and terms. If the parties
35 are unable to agree, each party shall appoint an
36 independent appraiser. If the independent appraisers
37 are unable to agree upon a price and terms, the
38 independent appraisers shall name a third appraiser to
39 determine the price and terms upon which the right of
40 first refusal may be exercised. The determination of
41 the independent appraiser shall be final and not
42 subject to judicial review.

43 If two or more existing franchises are located
44 within an unreasonable proximity to the proposed
45 outlet, the closest franchisee shall have the first
46 right of first refusal, and if declined, the right of
47 first refusal shall pass to the next closest
48 franchisee.

49 3. If the franchisor does not offer a right of
50 first refusal, the franchisor shall compensate

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1 existing franchisees for market share diverted by the
2 opening of the new outlet. If the franchisor and
3 existing franchisees cannot agree upon the proper
4 amount of such compensation, each party shall appoint
5 an independent appraiser. If the independent
6 appraisers are unable to agree, the independent
7 appraisers shall appoint a third appraiser who shall
8 establish the level of compensation. The
9 determination of the independent appraiser shall be
10 final and not subject to judicial review.

11 4. The court may grant a permanent or preliminary
12 injunction to prevent injury or threatened injury from
13 the violation or threatened violation of this section.

14 Sec. 7. NEW SECTION. 523H.7 TERMINATION.

15 1. Except as otherwise provided by this chapter, a
16 franchisor shall not terminate a franchise prior to
17 the expiration of its term except for good cause. For
18 purposes of this section, "good cause" is cause based
19 upon a legitimate business reason. "Good cause"
20 includes the failure of the franchisee to comply with
21 any material lawful requirement of the franchise
22 agreement, provided that the termination by the
23 franchisor is not arbitrary or capricious when
24 compared to the actions of the franchisor in other
25 similar circumstances.

26 2. Prior to termination of a franchise for good
27 cause, a franchisor shall provide a franchisee with
28 written notice stating the basis for the proposed
29 termination. After service of written notice, the
30 franchisee shall have a reasonable period of time to
31 cure the default, which in no event shall be less than
32 thirty days.

33 3. Notwithstanding subsection 2, a franchisor may
34 terminate a franchisee upon written notice and without
35 an opportunity to cure if any of the following apply:

36 a. The franchisee or the business to which the
37 franchise relates is declared bankrupt or judicially
38 determined to be insolvent.

39 b. The franchisee voluntarily abandons the
40 franchise by failing to operate the business for five
41 consecutive business days during which the franchisee
42 is required to operate the business under the terms of
43 the franchise, or any shorter period after which it is
44 not unreasonable under the facts and circumstances for
45 the franchisor to conclude that the franchisee does
46 not intend to continue to operate the franchise,
47 unless the failure to operate is due to circumstances
48 beyond the control of the franchisee.

49 c. The franchisor and franchisee agree in writing
50 to terminate the franchise.

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1 d. The franchisee knowingly makes any material
2 misrepresentations or knowingly omits to state any
3 material facts relating to the acquisition or
4 ownership or operation of the franchise business.

5 e. The franchisee repeatedly fails to comply with
6 the same material provision of a franchise agreement,
7 when the enforcement of the material provision by the
8 franchisor is not arbitrary or capricious when
9 compared to the franchisor in other similar
10 circumstances.

11 f. The franchised business or business premises of
12 the franchisee are lawfully seized, taken over, or
13 foreclosed by a government authority or official.

14 g. The franchisee is convicted of a felony or any
15 other criminal misconduct which materially and
16 adversely affects the operation, maintenance, or
17 goodwill of the franchise in the relevant market.

18 h. The franchisee operates the franchised business
19 in a manner that imminently endangers the public
20 health and safety.

21 Sec. 8. NEW SECTION. 523H.8 NONRENEWAL OF A
22 FRANCHISE.

23 A franchisor shall not refuse to renew a franchise
24 unless both of the following apply:

25 1. The franchisee has been notified of the
26 franchisor's intent not to renew at least six months
27 prior to the expiration date or any extension of the
28 franchise agreement.

29 2. Any of the following circumstances exist:

30 a. Good cause exists as defined in section 523H.7,
31 provided that the refusal of the franchisor to renew
32 is not arbitrary or capricious when compared to the
33 actions of the franchisor in other similar
34 circumstances.

35 b. The franchisor and franchisee agree not to
36 renew the franchise, provided that upon the expiration
37 of the franchise, the franchisor agrees not to seek to
38 enforce any covenant of the nonrenewed franchise not
39 to compete with the franchisor or franchisees of the
40 franchisor.

41 c. The franchisor completely withdraws from
42 directly or indirectly distributing its products or
43 services in the geographic market served by the
44 franchisee, provided that upon expiration of the
45 franchise, the franchisor agrees not to seek to
46 enforce any covenant of the nonrenewed franchisee not
47 to compete with the franchisor or franchisees of the
48 franchisor.

49 Sec. 9. NEW SECTION. 523H.9 FRANCHISEE'S RIGHT
50 TO ASSOCIATE.

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1 A franchisor shall not restrict a franchisee from
2 associating with other franchisees or from
3 participating in a trade association, and shall not
4 retaliate against a franchisee for engaging in these
5 activities.

6 Sec. 10. NEW SECTION. 523H.10 DUTY OF GOOD
7 FAITH.

8 A franchise imposes on the parties a duty of good
9 faith in performance and enforcement of the franchise
10 agreement. "Good faith" means honesty in fact and the
11 observance of reasonable commercial standards of fair
12 dealing in the trade.

13 Sec. 11. NEW SECTION. 523H.11 REPURCHASE OF
14 ASSETS.

15 A franchisor shall not prohibit a franchisee from,
16 or enforce a prohibition against a franchisee,
17 engaging in any lawful business at any location after
18 a termination or refusal to renew by a franchisor,
19 unless it is one which relies on a substantially
20 similar marketing program as the terminated or
21 nonrenewed franchise or unless the franchisor offers
22 in writing no later than ten business days before
23 expiration of the franchise to purchase the assets of
24 the franchised business for its fair market value as a
25 going concern. The value of the assets shall not
26 include the goodwill of the business attributable to
27 the trademark licensed to the franchisee in the
28 franchise agreement. The offer may be conditioned
29 upon the ascertainment of a fair market value by an
30 impartial appraiser.

31 Sec. 12. NEW SECTION. 523H.12 INDEPENDENT
32 SOURCING.

33 1. Except as provided in subsection 2, a
34 franchisor shall allow a franchisee to obtain
35 equipment, fixtures, supplies, and services used in
36 the establishment and operation of the franchised
37 business from sources of the franchisee's choosing,
38 provided that such goods and services meet standards
39 as to their nature and quality promulgated by the
40 franchisor.

41 2. Subsection 1 of this section does not apply to
42 reasonable quantities of inventory goods or services,
43 including display and sample items, that the
44 franchisor requires the franchisee to obtain from the
45 franchisor or its affiliate, but only if the goods or
46 services are central to the franchised business and
47 either are actually manufactured or produced by the
48 franchisor or its affiliate, or incorporate a trade
49 secret owned by the franchisor or its affiliate.

50 Sec. 13. NEW SECTION. 523H.13 PRIVATE CIVIL

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1 ACTION.

2 A person who violates a provision of this chapter
3 or order issued under this chapter is liable for
4 damages caused by the violation, including, but not
5 limited to, costs and reasonable attorneys' and
6 experts' fees, and subject to other appropriate relief
7 including injunctive and other equitable relief.

8 Sec. 14. NEW SECTION. 523H.14 CHOICE OF LAW.

9 A condition, stipulation, or provision requiring
10 the application of the law of another state in lieu of
11 this chapter is void.

12 Sec. 15. NEW SECTION. 523H.15 CONSTRUCTION WITH
13 OTHER LAW.

14 This chapter does not limit any liability that may
15 exist under another statute or at common law. Prior
16 law governs all actions based on facts occurring
17 before the effective date of this Act.

18 Sec. 16. NEW SECTION. 523H.16 CONSTRUCTION.

19 This chapter shall be liberally construed to
20 effectuate its purposes.

21 Sec. 17. NEW SECTION. 523H.17 SEVERABILITY.

22 If any provision or clause of this chapter or any
23 application of this chapter to any person or
24 circumstances is held invalid, such invalidity shall
25 not affect other provisions or applications of the
26 chapter which can be given effect without the invalid
27 provision or application, and to this end the
28 provisions of this chapter are declared to be
29 severable."

By AL STURGEON

S-5551 FILED APRIL 3, 1992

Adopted 4/9/92 (p. 1318)

STURGEON, W.
BRONSTAL
JENSEN

SSB 2195
Commerce NOW

SENATE FILE 2176
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON DELUHERY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to franchise agreements and their enforcement by
2 establishing certain duties and limitations on franchisors,
3 providing certain exemptions, and establishing a civil cause
4 of action.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 523H.1 DEFINITIONS.

2 When used in this chapter, unless the context otherwise
3 requires:

4 1. "Administrator" means the commissioner of insurance.

5 2. "Advertisement" means a communication published in
6 connection with an offer or sale of a franchise.

7 3. "Affiliate" means a person controlling, controlled by,
8 or under common control with another person, every officer or
9 director of such a person, and every person occupying a
10 similar status or performing similar functions.

11 4. "Business day" means a day other than a Saturday,
12 Sunday, or federal holiday.

13 5. "Disclosure document" means the uniform franchise
14 offering circular as adopted and amended by the north American
15 securities administrators association, incorporated.

16 6. "Franchise" means either of the following:

17 a. An oral or written agreement, either express or
18 implied, which provides all of the following:

19 (1) Grants the right to distribute goods or provide
20 services under a marketing plan prescribed or suggested in
21 substantial part by the franchisor.

22 (2) Requires payment of a franchise fee to a franchisor or
23 its affiliate.

24 (3) Allows the franchise business to be substantially
25 associated with a trademark, service mark, trade name,
26 logotype, advertisement, or other commercial symbol of or
27 designating the franchisor or its affiliate.

28 b. A master franchise.

29 "Franchise" does not include any business that is operated
30 under a lease or license on the premises of the lessor or
31 licensor as long as such business is incidental to the
32 business conducted by the lessor or licensor on such premises,
33 including, without limitation, leased departments, licensed
34 departments, and concessions and the leased or licensed
35 department operates only under the trademark, trade name,

1 service mark, or other commercial symbol designating the
2 lessor or licensor.

3 "Franchise" also does not include any contract under which
4 a petroleum retailer or petroleum distributor is authorized or
5 permitted to occupy leased marketing premises, which premises
6 are to be employed in connection with the sale, consignment,
7 or distribution of motor fuel under a trademark which is owned
8 or controlled by a refiner which is regulated by the federal
9 Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq.
10 The term "refiner" means any person engaged in the refining of
11 crude oil to produce motor fuel, and includes any affiliate of
12 such person. "Franchise" also does not include a contract
13 entered into by any person regulated under chapter 117, 123,
14 322, 322A, 322B, 322C, 322D, 322F, or 522, or a retailer
15 selling construction equipment, or lawn and garden equipment.

16 7. "Franchise fee" means a direct or indirect payment to
17 purchase or operate a franchise. Franchise fee does not
18 include any of the following:

19 a. Payment of a reasonable service charge to the issuer of
20 a credit card by an establishment accepting the credit card.

21 b. Payment to a trading stamp company by a person issuing
22 trading stamps in connection with a retail sale.

23 c. An agreement to purchase at a bona fide wholesale price
24 a reasonable quantity of tangible goods for resale.

25 8. "Franchisee" means a person to whom a franchise is
26 granted. Franchisee includes the following:

27 a. A subfranchisor with regard to its relationship with a
28 franchisor.

29 b. A subfranchisee with regard to its relationship with a
30 subfranchisor.

31 9. "Franchisor" means a person who grants a franchise or
32 an affiliate of such a person. Franchisor includes a
33 subfranchisor with regard to its relationship with a
34 franchisee, unless stated otherwise in this chapter.

35 10. "Fraud" and "deceit" are not limited to common law

1 fraud and deceit.

2 11. "Marketing plan" means a plan or system concerning a
3 material aspect of conducting business. Indicia of a
4 marketing plan include any of the following:

5 a. Price specification, special pricing systems, or
6 discount plans.

7 b. Sales or display equipment or merchandising devices.

8 c. Sales techniques.

9 d. Promotional or advertising materials or cooperative
10 advertising.

11 e. Training regarding the promotion, operation, or
12 management of the business.

13 f. Operational, managerial, technical, or financial
14 guidelines or assistance.

15 12. "Master franchise" means an agreement by which a
16 person pays a franchisor for the right to sell or negotiate
17 the sale of franchises.

18 13. "Offer" or "offer to sell" means every attempt to
19 offer or to dispose of, or solicitation of an offer to buy, a
20 franchise or interest in a franchise for value.

21 14. "Order" means a consent, authorization, approval, or
22 prohibition, issued by the administrator in a specific matter.

23 15. "Person" means a person as defined in section 4.1,
24 subsection 13.

25 16. "Publish" means to circulate generally by mail, print
26 media, or electronic media, or otherwise to disseminate
27 generally to the public.

28 17. "Registration application" means an initial franchise
29 application on the uniform franchise registration application
30 as adopted and amended by the north American securities
31 administrators association, incorporated, and any amendment or
32 renewal of the application.

33 18. "Sale" or "sell" means every contract or agreement of
34 sale of, contract to sell or disposition of, a franchise or
35 interest in a franchise for value.

1 19. "Salesperson" means a person employed by or
2 representing a franchisor in effecting or attempting to effect
3 the offer or sale of a franchise.

4 20. "Subfranchise" means an agreement by which a person
5 pays a franchisor for the right to sell or negotiate the sale
6 of franchises.

7 21. "Subfranchisor" means a person who grants a master
8 franchise.

9 22. "Subfranchisee" means a person who is granted a master
10 franchise or a subfranchise from a subfranchisor.

11 Sec. 2. NEW SECTION. 523H.2 APPLICABILITY.

12 This chapter applies to a new or existing franchise that is
13 operated in the state of Iowa. For purposes of this chapter,
14 the franchise is operated in this state only if the premises
15 from which the franchise is operated is physically located in
16 this state. For purposes of this chapter, a franchise
17 including marketing rights in or to this state, is deemed to
18 be operated in this state only if the franchisee's principal
19 business office is physically located in this state. This
20 chapter does not apply to a franchise solely because an
21 agreement relating to the franchise provides that the
22 agreement is subject to or governed by the laws of this state.
23 The provisions of this chapter do not apply to any existing or
24 future contracts between Iowa franchisors and out-of-state
25 franchisees.

26 Sec. 3. NEW SECTION. 523H.3 JURISDICTION, VENUE, AND
27 NONJUDICIAL RESOLUTION OF DISPUTES.

28 1. A provision in a franchise agreement restricting
29 jurisdiction or venue to a forum outside this state is void
30 with respect to a claim otherwise enforceable under this
31 chapter.

32 2. A civil action or proceeding arising out of a franchise
33 may be commenced wherever jurisdiction over the parties or
34 subject matter exists, even if the agreement limits actions or
35 proceedings to a designated jurisdiction or venue. The court

1 shall consider the doctrine of inconvenient forum.

2 3. Parties to a franchise may agree to independent
3 arbitration, mediation, or other nonjudicial resolution of an
4 existing or future dispute.

5 Sec. 4. NEW SECTION. 523H.4 WAIVERS VOID.

6 A condition, stipulation, or provision requiring a
7 franchisee to waive compliance with or relieving a person of a
8 duty or liability imposed by or a right provided by this
9 chapter or a rule or order under this chapter is void. An
10 acknowledgment provision, disclaimer, integration clause, or a
11 provision having a similar effect in a franchise agreement
12 does not negate or act to remove from judicial review any
13 statement, misrepresentation, or action that would violate a
14 provision of this chapter or a rule or order under this
15 chapter. This section shall not affect the settlement of
16 disputes, claims, or civil lawsuits arising or brought
17 pursuant to this chapter.

18 Sec. 5. NEW SECTION. 523H.5 TRANSFER OF FRANCHISE.

19 1. A franchisee may transfer the franchised business and
20 franchise to a transferee who meets the franchisor's
21 reasonable, essential, and nondiscriminatory standards for new
22 franchisees or transferees established at the time of the
23 transfer. A franchisor shall not withhold consent to the
24 transfer of ownership under these circumstances without good
25 cause. A provision in a franchise agreement restricting a
26 franchisee's rights under this section is void.

27 2. A franchisor may exercise a right of first refusal in
28 connection with a proposed transfer if provided in the
29 franchise agreement. However, this right shall not be
30 exercised by the franchisor more than thirty days after
31 receipt of the franchisee's request for the franchisor's
32 consent to the transfer. A franchisor shall not exercise such
33 right if by doing so the franchisor would hold a minority
34 ownership interest in the franchise or franchisee.

35 3. A franchisor may require as a condition of a transfer

1 any of the following:

2 a. That the transferee successfully complete a reasonable,
3 essential, and nondiscriminatory training program.

4 b. That a reasonable transfer fee be paid to reimburse the
5 franchisor for the franchisor's reasonable and actual expenses
6 directly attributable to the transfer.

7 c. That the franchisee pay or make reasonable provision to
8 pay any amount due the franchisor or the franchisor's
9 affiliate.

10 4. A franchisor shall not withhold consent to a franchisee
11 making a public offering of the franchisee's securities
12 without good cause, provided the franchisee or the owners of
13 the franchise retain control of more than fifty percent of the
14 voting power in the franchise. A franchisor shall not
15 withhold the franchisor's consent to a pooling of interests or
16 exchange of assets by the franchisor's existing franchisees.

17 5. A franchisee may transfer the franchisee's interest in
18 the franchise, for the unexpired term of the franchise
19 agreement, and a franchisor shall not require the franchisee
20 or the transferee to enter into a new or different franchise
21 agreement as a condition of the transfer.

22 6. A franchisee shall give the franchisor no less than
23 thirty days' written notice of a transfer which is subject to
24 the provisions of this section, and on request from the
25 franchisor shall provide in writing the ownership interests of
26 all persons holding or claiming an equitable or beneficial
27 interest in the franchise or the franchisee, as appropriate.
28 A franchisee shall not circumvent the intended effect of a
29 contractual provision governing the transfer of the franchise
30 or an interest in the franchise by means of a management
31 agreement, lease, profit-sharing agreement, conditional
32 assignment, or other similar device.

33 7. A franchisor shall not transfer its interest in a
34 franchise unless the franchisor makes reasonable provision for
35 the performance of the franchisor's obligations under the

1 franchise agreement by the transferee. A franchisor shall
2 provide the franchisee notice of a proposed transfer of the
3 franchisor's interest in the franchise at the time the
4 disclosure is required of the franchisor under applicable
5 securities laws, if interests in the franchisor are publicly
6 traded, or if not publicly traded, at the time such disclosure
7 would be required if the interests in the franchisor were
8 publicly traded.

9 8. A transfer by a franchisee is deemed to be approved
10 thirty days after the franchisee submits the request for
11 consent to the transfer unless the franchisor withholds
12 consent to the transfer as evidenced in writing, specifying
13 the reason or reasons for withholding the consent. The
14 written notice must be delivered to the franchisee prior to
15 the expiration of the thirty-day period. Any such notice is
16 privileged and is not actionable based upon a claim of
17 defamation.

18 9. A franchisor shall not discriminate against a proposed
19 transferee of a franchise on the basis of race, color,
20 national origin, sex, or physical handicap.

21 10. A franchisor, as a condition to a transfer of a
22 franchise, shall not obligate a franchisee to undertake
23 obligations or relinquish any rights unrelated to the
24 franchise proposed to be transferred, or to enter into a
25 release of claims broader than a similar release of claims by
26 the franchisor against the franchisee which is entered into by
27 the franchisor.

28 11. A franchisor, after a transfer of a franchise, shall
29 not seek to enforce any covenant of the transferred franchise
30 against the transferor which prohibits the transferor from
31 engaging in any lawful occupation or enterprise. However,
32 this subsection does not prohibit the franchisor from
33 enforcing a contractual covenant against the transferor not to
34 exploit the franchisor's trade secrets or intellectual
35 property rights, unless otherwise agreed to by the parties.

1 12. For purposes of this section, "transfer" means any
2 change in ownership or control of a franchise, franchised
3 business, or a franchisee. However, "transfer" does not
4 include any of the following:

5 a. The succession of ownership of a franchise upon the
6 death or disability of a franchisee, or of an owner, officer,
7 or director of a franchise, to the franchisee's spouse,
8 children, or a partner in the franchise.

9 b. Incorporation of a proprietorship franchisee.

10 c. A transfer within an existing ownership group of a
11 franchise of less than a controlling interest in the
12 franchise.

13 d. A transfer of less than a controlling interest in the
14 franchise to the franchisee's spouse or children.

15 e. A transfer of less than a controlling interest in the
16 franchise to an employee stock ownership plan, or employee
17 incentive compensation or deferred benefit plan.

18 f. A grant or retention of a security interest in the
19 franchise, the franchised business or its assets, or an
20 ownership interest in the franchisee, provided the security
21 agreement establishes an obligation on the part of the secured
22 party enforceable by the franchisor to give the franchisor
23 notice of the secured party's intent to foreclose on the
24 collateral simultaneously with notice to the franchisee, and a
25 reasonable opportunity to redeem the interest of the secured
26 party and recover the secured party's interest in the
27 franchise or the franchised business by paying the secured
28 obligations.

29 13. A franchisor shall not interfere or attempt to
30 interfere with any disposition of an interest in a franchise
31 or franchised business as described in subsection 12,
32 paragraphs "a" through "f".

33 Sec. 6. NEW SECTION. 523H.6 ENCROACHMENT.

34 A franchisor shall not compete with, or grant, either
35 directly or indirectly, a franchise in unreasonable proximity

1 to an established franchise offering goods or services
2 identified by the same trademark as those offered from the new
3 franchise, or whose premises are identified by the same
4 trademark as the new franchise. For purposes of this section,
5 "unreasonable proximity" as applied to a food establishment
6 franchisor or food service establishment franchisor, including
7 outlets and carry-out stores as defined by section 137A.1,
8 subsection 2, and section 137B.2, subsection 6, includes but
9 is not limited to the shortest distance as measured under the
10 following methods:

11 1. A three-mile radius, using a straight line measurement,
12 from the center of an already existing franchise.

13 2. A circular radius, using a straight line measurement,
14 from an existing franchise business which comprises a
15 population of thirty thousand or greater.

16 Within an area defined as unreasonable proximity, the
17 existing franchisee shall have the right of first refusal, at
18 a mutually agreed price, for the establishment or development
19 of any new franchise business, including outlets and carry-out
20 stores, established or developed directly or indirectly by the
21 franchisee's franchisor.

22 The court may grant a permanent or preliminary injunction
23 to prevent injury or threatened injury from the violation or
24 threatened violation of this section.

25 Sec. 7. NEW SECTION. 523H.7 TERMINATION.

26 A franchisor shall not terminate a franchise prior to its
27 expiration except for good cause. For purposes of this
28 section, "good cause" includes either of the following:

29 1. The failure of the franchisee to comply with a material
30 provision of the franchise agreement after a notice and a
31 thirty-day period to cure the default or if the default cannot
32 be cured within thirty days, the failure of the franchisee to
33 initiate within thirty days, substantial continuing action to
34 cure the default. Enforcement of the provision must be
35 similar to that imposed on other franchisees.

1 2. Situations in which the franchisee, without the
2 requirement of notice and an opportunity to cure, does any of
3 the following:

4 a. Voluntarily abandons the franchised business.

5 b. Is convicted of a crime that substantially impairs the
6 good will associated with the franchisor's trademark, service
7 mark, trade name, logotype advertising, or other commercial
8 symbol.

9 c. Repeatedly fails to comply with the same material
10 provision of the franchise agreement, when the enforcement of
11 the provision is similar to that imposed on other franchisees.

12 d. Operates the franchised business in a manner that
13 imminently endangers the public health or safety.

14 Sec. 8. NEW SECTION. 523H.8 NONRENEWAL OF A FRANCHISE.

15 A franchisor shall not refuse to renew a franchise unless
16 both of the following apply:

17 1. Good cause exists as defined in section 523H.7.

18 2. The franchisee has been notified of the franchisor's
19 intent not to renew at least six months prior to the
20 expiration date or any extension of the franchise agreement.

21 Sec. 9. NEW SECTION. 523H.9 FRANCHISEE'S RIGHT TO
22 ASSOCIATE.

23 A franchisor shall not restrict a franchisee from
24 associating with other franchisees or from participating in a
25 trade association, and shall not retaliate against a
26 franchisee for engaging in these activities.

27 Sec. 10. NEW SECTION. 523H.10 DUTY OF GOOD FAITH.

28 A franchise imposes on the parties a duty of good faith in
29 performance and enforcement of the franchise agreement. "Good
30 faith" means honesty in fact and the observance of reasonable
31 commercial standards of fair dealing in the trade.

32 Sec. 11. NEW SECTION. 523H.11 DUTY TO BARGAIN.

33 A franchisor has a duty to bargain in good faith with an
34 organization of its franchisees that represents generally or
35 on a specific issue or set of issues more than half of its

1 franchisees in this state, or more than half of all of its
2 franchisees in the United States, if both of the following
3 apply:

4 1. The franchisor conducts business, or offers franchises,
5 or has ten or more franchises outstanding, in this state.

6 2. The franchisor has more than five hundred franchises
7 outstanding, or more than three hundred franchisees, in the
8 United States.

9 Sec. 12. NEW SECTION. 523H.12 REPURCHASE OF ASSETS.

10 A franchisor shall not prohibit a franchisee from, or
11 enforce a prohibition against a franchisee, engaging in any
12 lawful business at any location after a termination or refusal
13 to renew by a franchisor, unless the franchisor offers in
14 writing no later than ten business days before expiration of
15 the franchise to purchase the assets of the franchised
16 business for its fair market value as a going concern. The
17 offer may be conditioned upon the ascertainment of a fair
18 market value by an impartial appraiser.

19 Sec. 13. NEW SECTION. 523H.13 INDEPENDENT SOURCING.

20 1. Except as provided in subsection 2, a franchisee may
21 obtain equipment, fixtures, supplies, and services used in the
22 establishment and operation of the franchised business from
23 sources of the franchisee's choosing, provided that such goods
24 and services meet standards as to their nature and quality
25 promulgated by the franchisor.

26 2. Subsection 1 of this section does not apply to
27 reasonable quantities of inventory goods or services,
28 including display and sample items, that the franchisor
29 requires the franchisee to obtain from the franchisor or its
30 affiliate, but only if the goods or services are central to
31 the franchised business and either are actually manufactured
32 or produced by the franchisor or its affiliate, or incorporate
33 a trade secret owned by the franchisor or its affiliate.

34 Sec. 14. NEW SECTION. 523H.14 RULEMAKING.

35 The administrator may adopt rules, pursuant to chapter 17A,

1 as necessary to implement this chapter.

2 Sec. 15. NEW SECTION. 523H.15 PRIVATE CIVIL ACTION.

3 A person who violates a provision of this chapter or a rule
4 adopted or order issued under this chapter is liable for
5 damages caused by the violation, including, but not limited
6 to, costs and reasonable attorneys' and experts' fees, and
7 subject to other appropriate relief including injunctive and
8 other equitable relief.

9 Sec. 16. NEW SECTION. 523H.16 LIMITATION OF ACTIONS.

10 A civil action or proceeding for a violation of this
11 chapter shall not be maintained unless commenced before the
12 earlier of two years after the plaintiff discovers the facts
13 constituting the violation or five years after the act or
14 transaction constituting the violation.

15 Sec. 17. NEW SECTION. 523H.17 WAIVER AND CHOICE OF LAW.

16 A party to a franchise shall not waive a right or benefit
17 conferred, or avoid a duty imposed, by this chapter or by a
18 rule adopted under this chapter. A condition, stipulation, or
19 provision requiring the application of the law of another
20 state in lieu of this chapter is void.

21 Sec. 18. NEW SECTION. 523H.18 CONSTRUCTION WITH OTHER
22 LAW.

23 This chapter does not limit any liability that may exist
24 under another statute or at common law. Prior law governs all
25 actions based on facts occurring before the effective date of
26 this Act.

27 Sec. 19. NEW SECTION. 523H.19 CONSTRUCTION.

28 This chapter shall be liberally construed to effectuate its
29 purposes.

30 EXPLANATION

31 This bill establishes a new chapter 523H relating to the
32 regulation of franchise agreements. The bill provides that a
33 civil action or proceeding arising out of the franchise
34 agreement may be brought wherever jurisdiction over the
35 parties or subject matter exists. The bill provides that a

1 waiver of the duties and rights established under chapter 523H
2 is void. The bill provides that a franchisor cannot refuse to
3 permit the transfer of the franchise without good cause, and
4 prohibits the franchisor from competing directly with a
5 franchisee or granting another franchise in unreasonable
6 proximity to the established franchise which offers goods or
7 services identified by the same trademark. Certain
8 restrictions related to the termination and nonrenewal of a
9 franchise are established. The bill also establishes a duty
10 to perform in good faith and to bargain with respect to the
11 agreement. The bill also establishes a civil cause of action
- 12 against a person who violates any provision of this chapter.

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