

## FRANCHISES

### Footnotes

Agreements entered into on or after July 1, 2000,  
are subject to § 537A.10; see § 523H.2A

#### 523H.1 Definitions.

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

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

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

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

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

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

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

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

(2) A master franchise.

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

c. "*Franchise*" also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term "*refiner*" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. "*Franchise*" also does not include a contract entered into by any person regulated under chapter 103A, division IV, or chapter 123, 322, 322A, 322C, 322D, 322F, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

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

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

- b. Payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale.
  - c. An agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.
  - d. The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements, real property, supplies, or other materials reasonably necessary to enter into or continue a business.
  - e. Payments by a purchaser pursuant to a bona fide loan from a seller to the purchaser.
  - f. Payment of rent which reflects payment for the economic value of leased real or personal property.
  - g. The purchase or agreement to purchase promotional or demonstration supplies, materials, or equipment furnished at fair market value and not intended for resale.
5. "*Franchisee*" means a person to whom a franchise is granted. Franchisee includes the following:
- a. A subfranchisor with regard to its relationship with a franchisor.
  - b. A subfranchisee with regard to its relationship with a subfranchisor.
6. "*Franchisor*" means a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this chapter.
7. "*Marketing plan*" means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include any of the following:
- a. Price specification, special pricing systems, or discount plans.
  - b. Sales or display equipment or merchandising devices.
  - c. Sales techniques.
  - d. Promotional or advertising materials or cooperative advertising.
  - e. Training regarding the promotion, operation, or management of the business.
  - f. Operational, managerial, technical, or financial guidelines or assistance.
8. "*Master franchise*" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.
9. "*Offer*" or "*offer to sell*" means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.
10. "*Person*" means a person as defined in section 4.1, subsection 20.
11. "*Sale*" or "*sell*" means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.
12. "*Subfranchise*" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

13. "*Subfranchisee*" means a person who is granted a franchise from a subfranchisor.

14. "*Subfranchisor*" means a person who is granted a master franchise.

92 Acts, ch 1134, § 1; 2001 Acts, ch 16, §13, 37; 2006 Acts, ch 1090, §21, 26

## **523H.2 Applicability.**

This chapter applies to a new or existing franchise that is operated in the state of Iowa. For purposes of this chapter, the franchise is operated in this state only if the premises from which the franchise is operated is physically located in this state. For purposes of this chapter, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This chapter does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this chapter do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out of state.

92 Acts, ch 1134, § 2; 95 Acts, ch 117, §1

## **523H.2A Applicability limitation.**

1. Notwithstanding section 523H.2, this chapter does not apply to a franchise agreement which is entered into on or after July 1, 2000. A franchise agreement which is entered into on or after July 1, 2000, shall be subject to section 537A.10.

2. This chapter shall govern all actions with respect to a franchise agreement entered into prior to July 1, 2000, no matter when the occurrence giving rise to such action occurs.

2000 Acts, ch 1093, §2

## **523H.3 Jurisdiction and nonjudicial resolution of disputes.**

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

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

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

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

92 Acts, ch 1134, § 3

## **523H.4 Waivers void.**

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

**523H.5 Transfer of franchise.**

1. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.
2. Except as otherwise provided in this section, a franchisor may exercise a right of first refusal contained in a franchise agreement after receipt of a proposal from the franchisee to transfer the franchise.
3. A franchisor may require as a condition of a transfer any of the following:
  - a. That the transferee successfully complete a reasonable training program.
  - b. That a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer.
  - c. That the franchisee pay or make provision reasonably acceptable to the franchisor to pay any amount due the franchisor or the franchisor's affiliate.
  - d. That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.
4. A franchisee may transfer the franchisee's interest in the franchise, for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a new or different franchise agreement as a condition of the transfer.
5. A franchisee shall give the franchisor no less than sixty days' written notice of a transfer which is subject to the provisions of this section, and on request from the franchisor shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate. A franchisee shall not circumvent the intended effect of a contractual provision governing the transfer of the franchise or an interest in the franchise by means of a management agreement, lease, profit-sharing agreement, conditional assignment, or other similar device.
6. A franchisor shall not transfer its interest in a franchise unless the franchisor makes reasonable provision for the performance of the franchisor's obligations under the franchise agreement by the transferee. For purposes of this subsection, "*reasonable provision*" means that upon the transfer, the entity assuming the franchisor's obligations has the financial means to perform the franchisor's obligations in the ordinary course of business, but does not mean that the franchisor transferring the franchise is required to guarantee obligations of the underlying franchise agreement.
7. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.
8. A franchisor shall not discriminate against a proposed transferee of a franchise on the basis of race, color, national origin, religion, sex, or disability.

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

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

11. For purposes of this section, "*transfer*" means any change in ownership or control of a franchise, franchised business, or a franchisee.

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

*a.* The succession of ownership of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or a partner active in the management of the franchisee unless the successor fails to meet within one year the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious.

*b.* Incorporation of a proprietorship franchisee, provided that such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise.

*c.* A transfer within an existing ownership group of a franchise provided that more than fifty percent of the franchise is held by persons who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

*d.* A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

*e.* A transfer of less than a controlling interest in the franchise of an employee stock ownership plan, or employee incentive plan, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

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

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

92 Acts, ch 1134, § 5; 95 Acts, ch 117, §2

## **523H.6 Encroachment.**

1. If a franchisor develops, or grants to a franchisee the right to develop, a new outlet or location which sells essentially the same goods or services under the same trademark, service mark, trade name, logotype, or other commercial symbol as an existing franchisee and the new outlet or location has an adverse effect on the gross sales of the existing franchisee's outlet or location, the existing adversely affected franchisee has a cause of action for monetary damages in an amount calculated pursuant to subsection 3, unless any of the following apply:

- a. The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.
- b. The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than five percent during the first twelve months of operation of the new outlet or location.
- c. The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location, is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise. A franchisee determined to be ineligible pursuant to this paragraph shall be afforded the opportunity to seek compensation pursuant to the formal procedure established under paragraph "d", subparagraph (2). Such procedure shall be the franchisee's exclusive remedy.
- d. The franchisor has established both of the following:
  - (1) A formal procedure for hearing and acting upon claims by an existing franchisee with regard to a decision by the franchisor to develop, or grant to a franchisee the right to develop, a new outlet or location, prior to the opening of the new outlet or location.
  - (2) A reasonable formal procedure for awarding compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve, at the option of the franchisee, one of the following:
    - (a) A panel, comprised of an equal number of members selected by the franchisee and the franchisor, and one additional member to be selected unanimously by the members selected by the franchisee and the franchisor.
    - (b) A neutral third-party mediator or an arbitrator with the authority to make a decision or award in accordance with the formal procedure. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States, either individually or by an elected representative body.
    - (c) Arbitration of any dispute before neutral arbitrators pursuant to the rules of the American arbitration association. The award of an arbitrator pursuant to this subparagraph subdivision is subject to judicial review pursuant to chapter 679A.
- 2. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a

franchise for an additional outlet or location.

3. *a.* In establishing damages under a cause of action brought pursuant to this section, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this section, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this subsection, "*compensable sales*" means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(1) Five percent.

(2) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.

*b.* Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.

4. Any cause of action brought under this section must be filed within eighteen months of the opening of the new outlet or location or within three months after the completion of the procedure under subsection 1, paragraph "*d*", subparagraph (2), whichever is later.

5. Upon petition by the franchisor or the franchisee, the district court may grant a permanent or preliminary injunction to prevent injury or threatened injury for a violation of this section or to preserve the status quo pending the outcome of the formal procedure under subsection 1, paragraph "*d*", subparagraph (2).

92 Acts, ch 1134, § 6; 95 Acts, ch 117, §3

## **523H.7 Termination.**

1. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, "*good cause*" is cause based upon a legitimate business reason. "*Good cause*" includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.

2. Prior to termination of a franchise for good cause, a franchisor shall provide a franchisee with written notice stating the basis for the proposed termination. After service of written notice, the franchisee shall have a reasonable period of time to cure the default, which in no event shall be less than thirty days or more than ninety days. In the event of nonpayment of moneys due under the franchise agreement, the period to cure need not exceed thirty days.

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

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

*b.* All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this paragraph does not include the granting of a security interest in the normal course of business.

c. The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee.

d. The franchisor and franchisee agree in writing to terminate the franchise.

e. The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business.

f. After three material breaches of a franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure, the franchisor may terminate upon any subsequent material breach within the twelve-month period without providing an opportunity to cure, provided that the action is not arbitrary and capricious.

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

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

i. The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.

92 Acts, ch 1134, § 7; 95 Acts, ch 117, §4

### **523H.8 Nonrenewal of a franchise.**

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

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

b. Any of the following circumstances exist:

(1) Good cause exists, provided that the refusal of the franchisor to renew is not arbitrary or capricious. For purposes of this section, "*good cause*" means cause based on a legitimate business reason.

(2) The franchisor and franchisee agree not to renew the franchise.

(3) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

2. As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.

92 Acts, ch 1134, § 8; 95 Acts, ch 117, §5

### **523H.9 Franchisee's right to associate.**

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

92 Acts, ch 1134, § 9

**523H.10 Duty of good faith.**

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

92 Acts, ch 1134, § 10

**523H.11 Repurchase of assets.**

A franchisor shall not prohibit a franchisee from, or enforce a prohibition against a franchisee, engaging in any lawful business at any location after a termination or refusal to renew by a franchisor, unless it is one which relies on a substantially similar marketing program as the terminated or nonrenewed franchise or unless the franchisor offers in writing no later than ten business days before expiration of the franchise to purchase the assets of the franchised business for its fair market value as a going concern. The value of the assets shall not include the goodwill of the business attributable to the trademark licensed to the franchisee in the franchise agreement. The offer may be conditioned upon the ascertainment of a fair market value by an impartial appraiser. This section does not apply to assets of the franchised business which the franchisee did not purchase from the franchisor, or the agent of the franchisor.

92 Acts, ch 1134, § 11; 95 Acts, ch 117, §6

**523H.12 Independent sourcing.**

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

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

92 Acts, ch 1134, § 12

**523H.13 Private civil action.**

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

92 Acts, ch 1134, § 13

**523H.14 Choice of law.**

A condition, stipulation, or provision requiring the application of the law of another state in lieu of this

chapter is void.

92 Acts, ch 1134, § 14

**523H.15 Construction with other law.**

This chapter does not limit any liability that may exist under another statute or at common law. Prior law governs all actions based on facts occurring before July 1, 1992.

92 Acts, ch 1134, § 15

**523H.16 Construction.**

This chapter shall be liberally construed to effectuate its purposes.

92 Acts, ch 1134, § 16

**523H.17 Severability.**

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

92 Acts, ch 1134, § 17