

Senate Amendment 3373

Amendment Text

PAG LIN

1 1 Amend [House File 126](#), as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. By striking page 1, line 35, through page 2,
1 4 line 10, and inserting the following:
1 5 "523H.6 FRANCHISE MARKET AREA.
1 6 1. This section applies to a franchise which is
1 7 not a food service franchise or food service
1 8 establishment franchise subject to section 523H.6A.
1 9 2. An action by a franchisor or its licensee which
1 10 diverts trade away from an existing franchisee and
1 11 which materially injures the franchisee's business is
1 12 a violation of the duty of good faith and results in a
1 13 cause of action accruing to the franchisee for
1 14 damages, injunctive relief, or other appropriate
1 15 remedy as determined by the court. In any action
1 16 brought pursuant to this section, proof of a
1 17 correlation between the action of the franchisor or
1 18 its licensee and the diversion of trade establishes a
1 19 prima facie case of a violation of this section.
1 20 3. This section shall apply notwithstanding the
1 21 terms, provisions, or conditions of an agreement or
1 22 franchise.
1 23 Sec. ____ . NEW SECTION. 523H.6A FOOD SERVICE
1 24 FRANCHISE OR FOOD SERVICE ESTABLISHMENT FRANCHISE
1 25 MARKET AREA.
1 26 1. a. For purposes of a food service franchise or
1 27 food service establishment franchise, a rebuttable
1 28 presumption arises that a breach of the duty of good
1 29 faith has occurred as a result of the diversion of
1 30 trade if a franchisor establishes a new company-owned
1 31 outlet or store or a new franchise outlet or store
1 32 within a two-mile radius, using a straight line
1 33 measurement, from the center of an already existing
1 34 franchise, or within an area with a radius, using a
1 35 straight line measurement, from the center of an
1 36 already existing franchise, which contains a
1 37 population of twenty thousand or greater.
1 38 b. With respect to locations within the relevant
1 39 consumer market area of an existing franchise
1 40 operation which are located outside of the geographic
1 41 area defined in paragraph "a", a rebuttable
1 42 presumption arises that a breach of the duty of good
1 43 faith has not occurred as a result of the diversion of
1 44 trade.
1 45 2. A franchisor shall establish and make available
1 46 a written policy outlining reasonable objective
1 47 criteria to be used by the franchisor to determine
1 48 whether an existing franchisee is eligible to
1 49 participate in the establishment of an additional
1 50 outlet or location which is proposed to be located
2 1 within the relevant consumer market area of the
2 2 existing franchise, but which is outside of the
2 3 geographic area as defined in subsection 1, paragraph
2 4 "a", or which is proposed to be located within the
2 5 same community in which an existing franchise is
2 6 located and within the geographic area as defined in
2 7 subsection 1, paragraph "a". The franchisor shall

2 8 provide a copy of this policy to all existing
2 9 franchisees or potential franchisees upon request. A
2 10 franchisor, upon the request of a franchisee, shall
2 11 notify the franchisee as to whether the franchisee may
2 12 acquire additional outlets or locations of the
2 13 franchisor as identified in this subsection. A
2 14 franchisor shall not adopt a policy that unreasonably
2 15 prohibits an existing franchisee from acquiring such
2 16 outlets or locations.

2 17 3. Upon the determination of a franchisor to
2 18 establish an additional outlet or location within a
2 19 geographic area as defined in subsection 1, paragraph
2 20 "a", the franchisor shall give a right of first
2 21 refusal to the nearest franchisee located within the
2 22 geographic area. If the franchisee declines to
2 23 exercise the right of first refusal, the right of
2 24 first refusal shall pass consecutively to the next
2 25 closest franchisee located within the geographic area.
2 26 If all such franchisees located within the geographic
2 27 area decline to exercise the right of first refusal,
2 28 the franchisor may proceed to establish a new
2 29 franchise or company-owned outlet or location.

2 30 4. If an existing franchisee located within a
2 31 geographic area as defined in subsection 1, paragraph
2 32 "a", determines that the franchisee has been aggrieved
2 33 as a result of the action of a franchisor which
2 34 establishes a new franchise or company-owned outlet or
2 35 location within the geographic area, the franchisee,
2 36 upon motion to the district court, shall be granted a
2 37 temporary injunction prohibiting the establishment of
2 38 a new franchise or company-owned outlet or location.
2 39 The proceeding shall be summary in nature and triable
2 40 as an equitable action."

2 41 #2. By renumbering as necessary.

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2 45 COMMITTEE ON [COMMERCE](#)

2 46 PATRICK J. DELUHERY, Chairperson

2 47 [HF 126](#).706 76

2 48 mj/sc