

Senate Amendment 5289

Amendment Text

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1 1 Amend [House File 334](#), as passed by the House, as
1 2 follows:
1 3 #1. By striking everything after the enacting
1 4 clause and inserting the following:
1 5 "Section 1. NEW SECTION. 537A.10 FRANCHISE
1 6 AGREEMENTS.
1 7 1. DEFINITIONS.
1 8 When used in this section, unless the context
1 9 otherwise requires:
1 10 a. "Affiliate" means a person controlling,
1 11 controlled by, or under common control with another
1 12 person, every officer or director of such a person,
1 13 and every person occupying a similar status or
1 14 performing similar functions.
1 15 b. "Business day" means a day other than a
1 16 Saturday, Sunday, or federal holiday.
1 17 c. (1) "Franchise" means either of the following:
1 18 (a) An oral or written agreement, either express
1 19 or implied, which provides all of the following:
1 20 (i) Grants the right to distribute goods or
1 21 provide services under a marketing plan prescribed or
1 22 suggested in substantial part by the franchisor.
1 23 (ii) Requires payment of a franchise fee to a
1 24 franchisor or its affiliate.
1 25 (iii) Allows the franchise business to be
1 26 substantially associated with a trademark, service
1 27 mark, trade name, logotype, advertisement, or other
1 28 commercial symbol of or designating the franchisor or
1 29 its affiliate.
1 30 (b) A master franchise.
1 31 (2) "Franchise" does not include any business that
1 32 is operated under a lease or license on the premises
1 33 of the lessor or licensor as long as such business is
1 34 incidental to the business conducted by the lessor or
1 35 licensor on such premises, including, without
1 36 limitation, leased departments, licensed departments,
1 37 and concessions and the leased or licensed department
1 38 operates only under the trademark, trade name, service
1 39 mark, or other commercial symbol designating the
1 40 lessor or licensor.
1 41 (3) "Franchise" also does not include any contract
1 42 under which a petroleum retailer or petroleum
1 43 distributor is authorized or permitted to occupy
1 44 leased marketing premises, which premises are to be
1 45 employed in connection with the sale, consignment, or
1 46 distribution of motor fuel under a trademark which is
1 47 owned or controlled by a refiner which is regulated by
1 48 the federal Petroleum Marketing Practices Act, 15
1 49 U.S.C. } 2801 et seq. The term "refiner" means any
1 50 person engaged in the refining of crude oil to produce
2 1 motor fuel, and includes any affiliate of such person.
2 2 "Franchise" also does not include a contract entered
2 3 into by any person regulated under chapter 123, 322,
2 4 322A, 322B, 322C, 322D, 322F, 522, or 543B, or a
2 5 contract establishing a franchise relationship with
2 6 respect to the sale of construction equipment, lawn or
2 7 garden equipment, or real estate.

2 8 d. "Franchise fee" means a direct or indirect
2 9 payment to purchase or operate a franchise. Franchise
2 10 fee does not include any of the following:
2 11 (1) Payment of a reasonable service charge to the
2 12 issuer of a credit card by an establishment accepting
2 13 the credit card.
2 14 (2) Payment to a trading stamp company by a person
2 15 issuing trading stamps in connection with a retail
2 16 sale.
2 17 (3) An agreement to purchase at a bona fide
2 18 wholesale price a reasonable quantity of tangible
2 19 goods for resale.
2 20 (4) The purchase or agreement to purchase, at a
2 21 fair market value, any fixtures, equipment, leasehold
2 22 improvements, real property, supplies, or other
2 23 materials reasonably necessary to enter into or
2 24 continue a business.
2 25 (5) Payments by a purchaser pursuant to a bona
2 26 fide loan from a seller to the purchaser.
2 27 (6) Payment of rent which reflects payment for the
2 28 economic value of leased real or personal property.
2 29 (7) The purchase or agreement to purchase
2 30 promotional or demonstration supplies, materials, or
2 31 equipment furnished at fair market value and not
2 32 intended for resale.
2 33 e. "Franchisee" means a person to whom a franchise
2 34 is granted. Franchisee includes the following:
2 35 (1) A subfranchisor with regard to its
2 36 relationship with a franchisor.
2 37 (2) A subfranchisee with regard to its
2 38 relationship with a subfranchisor.
2 39 f. "Franchisor" means a person who grants a
2 40 franchise or master franchise, or an affiliate of such
2 41 a person. Franchisor includes a subfranchisor with
2 42 regard to its relationship with a franchisee, unless
2 43 stated otherwise in this section.
2 44 g. "Marketing plan" means a plan or system
2 45 concerning a material aspect of conducting business.
2 46 Indicia of a marketing plan include any of the
2 47 following:
2 48 (1) Price specification, special pricing systems,
2 49 or discount plans.
2 50 (2) Sales or display equipment or merchandising
3 1 devices.
3 2 (3) Sales techniques.
3 3 (4) Promotional or advertising materials or
3 4 cooperative advertising.
3 5 (5) Training regarding the promotion, operation,
3 6 or management of the business.
3 7 (6) Operational, managerial, technical, or
3 8 financial guidelines or assistance.
3 9 h. "Master franchise" means an agreement by which
3 10 a person pays a franchisor for the right to sell or
3 11 negotiate the sale of franchises.
3 12 i. "Offer" or "offer to sell" means every attempt
3 13 to offer or to dispose of, or solicitation of an offer
3 14 to buy, a franchise or interest in a franchise for
3 15 value.
3 16 j. "Person" means a person as defined in section
3 17 4.1, subsection 20.
3 18 k. "Sale" or "sell" means every contract or
3 19 agreement of sale of, contract to sell or disposition
3 20 of, a franchise or interest in a franchise for value.
3 21 l. "Subfranchise" means an agreement by which a
3 22 person pays a franchisor for the right to sell or
3 23 negotiate the sale of franchises.
3 24 m. "Subfranchisee" means a person who is granted a

3 25 franchise from a subfranchisor.

3 26 n. "Subfranchisor" means a person who is granted a
3 27 master franchise.

3 28 2. APPLICABILITY. This section applies to a new
3 29 or existing franchise that is operated in the state of
3 30 Iowa. For purposes of this section, the franchise is
3 31 operated in this state only if the premises from which
3 32 the franchise is operated is physically located in
3 33 this state. For purposes of this section, a franchise
3 34 including marketing rights in or to this state, is
3 35 deemed to be operated in this state only if the
3 36 franchisee's principal business office is physically
3 37 located in this state. This section does not apply to
3 38 a franchise solely because an agreement relating to
3 39 the franchise provides that the agreement is subject
3 40 to or governed by the laws of this state. The
3 41 provisions of this section do not apply to any
3 42 existing or future contracts between Iowa franchisors
3 43 and franchisees who operate franchises located out of
3 44 state.

3 45 3. JURISDICTION OF DISPUTES.

3 46 a. A provision in a franchise agreement
3 47 restricting jurisdiction to a forum outside this state
3 48 is void with respect to a claim otherwise enforceable
3 49 under this section.

3 50 b. A civil action or proceeding arising out of a
4 1 franchise may be commenced wherever jurisdiction over
4 2 the parties or subject matter exists, even if the
4 3 agreement limits actions or proceedings to a
4 4 designated jurisdiction.

4 5 4. WAIVERS VOID. A condition, stipulation, or
4 6 provision requiring a franchisee to waive compliance
4 7 with or relieving a person of a duty or liability
4 8 imposed by or a right provided by this section or a
4 9 rule or order under this section is void. This
4 10 subsection shall not affect the settlement of
4 11 disputes, claims, or civil lawsuits arising or brought
4 12 pursuant to this section.

4 13 5. TRANSFER OF FRANCHISE.

4 14 a. A franchisee may transfer the franchised
4 15 business and franchise to a transferee, provided that
4 16 the transferee satisfies the reasonable current
4 17 qualifications of the franchisor for new franchisees.
4 18 For the purposes of this subsection, a reasonable
4 19 current qualification for a new franchisee is a
4 20 qualification based upon a legitimate business reason.
4 21 If the proposed transferee does not meet the
4 22 reasonable current qualifications of the franchisor,
4 23 the franchisor may refuse to permit the transfer,
4 24 provided that the refusal of the franchisor to consent
4 25 to the transfer is not arbitrary or capricious.

4 26 b. (1) A franchisee may transfer less than a
4 27 controlling interest in the franchise to an employee
4 28 stock ownership plan, or employee incentive plan
4 29 provided that more than fifty percent of the entire
4 30 franchise is held by those who meet the franchisor's
4 31 reasonable current qualifications for franchisees, and
4 32 such transfer is approved by the franchisor. Approval
4 33 of such transfer shall not be unreasonably withheld.

4 34 (2) If pursuant to such a transfer less than fifty
4 35 percent of the entire franchise would be owned by
4 36 persons who meet the franchisor's reasonable current
4 37 qualifications, the franchisor may refuse to authorize
4 38 the transfer, provided that enforcement of the
4 39 reasonable current qualifications is not arbitrary or
4 40 capricious.

4 41 (3) Participation by an employee in an employee

4 42 stock ownership plan or employee incentive plan
4 43 established pursuant to this subsection does not
4 44 confer upon such employee any right to access trade
4 45 secrets protected under the franchise agreement which
4 46 access the employee would not otherwise have if the
4 47 employee did not participate in such plan.

4 48 c. A franchisor may require as a condition of a
4 49 transfer any of the following:

4 50 (1) That the transferee successfully complete a
5 1 training program.

5 2 (2) That a transfer fee be paid to reimburse the
5 3 franchisor for the franchisor's actual expenses
5 4 directly attributable to the transfer.

5 5 (3) That the franchisee pay or make provision
5 6 acceptable to the franchisor to pay any amount due the
5 7 franchisor or the franchisor's affiliate.

5 8 (4) That the financial terms of the transfer
5 9 comply at the time of the transfer with the
5 10 franchisor's current financial requirements for
5 11 franchisees.

5 12 d. A franchisee shall give the franchisor no less
5 13 than sixty days' written notice of a transfer which is
5 14 subject to this subsection, and on request from the
5 15 franchisor shall provide in writing the ownership
5 16 interests of all persons holding or claiming an
5 17 equitable or beneficial interest in the franchise
5 18 subsequent to the transfer or the franchisee, as
5 19 appropriate. A franchisee shall not circumvent the
5 20 intended effect of a contractual provision governing
5 21 the transfer of the franchise or an interest in the
5 22 franchise by means of a management agreement, lease,
5 23 profit-sharing agreement, conditional assignment, or
5 24 other similar device.

5 25 e. A transfer by a franchisee is deemed to be
5 26 approved sixty days after the franchisee submits the
5 27 request for consent to the transfer unless the
5 28 franchisor withholds consent to the transfer as
5 29 evidenced in writing, specifying the reason or reasons
5 30 for withholding the consent. The written notice must
5 31 be delivered to the franchisee prior to the expiration
5 32 of the sixty-day period. Any such notice is
5 33 privileged and is not actionable based upon a claim of
5 34 defamation.

5 35 f. The following occurrences shall not be
5 36 considered transfers requiring the consent of the
5 37 franchisor under a franchise agreement, and shall not
5 38 result in the imposition of any penalties or make
5 39 applicable any right of first refusal by the
5 40 franchisor:

5 41 (1) The succession of ownership of a franchise
5 42 upon the death or disability of a franchisee, or of an
5 43 owner of a franchise, to the surviving spouse, child
5 44 or children, or a partner active in the management of
5 45 the franchise unless the successor fails to meet
5 46 within one year the then current reasonable
5 47 qualifications of the franchisor for franchisees and
5 48 the enforcement of the reasonable current
5 49 qualifications is not arbitrary or capricious.

5 50 (2) Incorporation of a proprietorship franchisee,
6 1 provided that such incorporation does not prohibit a
6 2 franchisor from requiring a personal guaranty by the
6 3 franchisee of obligations related to the franchise.

6 4 (3) A transfer within an existing ownership group
6 5 of a franchise provided that more than fifty percent
6 6 of the franchise is held by persons who meet the
6 7 franchisor's reasonable current qualifications for
6 8 franchisees. If less than fifty percent of the

6 9 franchise would be owned by persons who meet the
6 10 franchisor's reasonable current qualifications, the
6 11 franchisor may refuse to authorize the transfer,
6 12 provided that enforcement of the reasonable current
6 13 qualifications is not arbitrary or capricious.
6 14 (4) A transfer of less than a controlling interest
6 15 in the franchise to the franchisee's spouse or child
6 16 or children, provided that more than fifty percent of
6 17 the entire franchise is held by those who meet the
6 18 franchisor's reasonable current qualifications. If
6 19 less than fifty percent of the franchise would be
6 20 owned by persons who meet the franchisor's reasonable
6 21 current qualifications, the franchisor may refuse to
6 22 authorize the transfer, provided that enforcement of
6 23 the reasonable current qualifications is not arbitrary
6 24 or capricious.

6 25 6. ENCROACHMENT.

6 26 a. If a franchisor develops, or grants to a
6 27 franchisee the right to develop, a new outlet or
6 28 location which sells essentially the same goods or
6 29 services under the same trademark, service mark, trade
6 30 name, logotype, or other commercial symbol as an
6 31 existing franchisee and the new outlet or location has
6 32 an adverse effect on the gross sales of the existing
6 33 franchisee's outlet or location, the existing
6 34 adversely affected franchisee has a cause of action
6 35 for monetary damages in an amount calculated pursuant
6 36 to paragraph "d", unless any of the following apply:

6 37 (1) The franchisor has first offered the new
6 38 outlet or location to the existing franchisee on the
6 39 same basic terms and conditions available to the other
6 40 potential franchisee and such franchisee meets the
6 41 reasonable current qualifications of the franchisor
6 42 including any financial requirements, or, if the new
6 43 outlet or location is to be owned by the franchisor,
6 44 on the terms and conditions that would ordinarily be
6 45 offered to a franchisee for a similarly situated
6 46 outlet or location.

6 47 (2) The adverse impact on the existing
6 48 franchisee's annual gross sales, based on a comparison
6 49 to the annual gross sales from the existing outlet or
6 50 location during the twelve-month period immediately
7 1 preceding the opening of the new outlet or location,
7 2 is determined to have been less than six percent
7 3 during the first twelve months of operation of the new
7 4 outlet or location.

7 5 (3) The existing franchisee, at the time the
7 6 franchisor develops, or grants to a franchisee the
7 7 right to develop, a new outlet or location, is not in
7 8 compliance with the franchisor's then current
7 9 reasonable criteria for eligibility for a new
7 10 franchise, not including any financial requirements.

7 11 (4) The existing franchisee has been granted
7 12 reasonable territorial rights and the new outlet or
7 13 location does not violate those territorial rights.

7 14 b. (1) The franchisor, with respect to claims
7 15 made under paragraph "a", shall establish both of the
7 16 following:

7 17 (a) A formal procedure for hearing and acting upon
7 18 claims by an existing franchisee with regard to a
7 19 decision by the franchisor to develop, or grant to a
7 20 franchisee the right to develop, a new outlet or
7 21 location, prior to the opening of the new outlet or
7 22 location.

7 23 (b) A reasonable formal procedure for mediating
7 24 compensation or other form of consideration to a
7 25 franchisee to offset all or a portion of the

7 26 franchisee's lost profits caused by the establishment
7 27 of the new outlet or location. The procedure shall
7 28 involve a neutral third-party mediator. The procedure
7 29 shall be deemed reasonable if approved by a majority
7 30 of the franchisor's franchisees in the United States.

7 31 (2) A dispute submitted to a formal procedure
7 32 under subparagraph (1) does not diminish the rights of
7 33 a franchisor or franchisee to bring a cause of action
7 34 for a violation of this subsection if no settlement
7 35 results from such procedure.

7 36 c. A franchisor shall establish and make available
7 37 to its franchisees a written policy setting forth its
7 38 reasonable criteria to be used by the franchisor to
7 39 determine whether an existing franchisee is eligible
7 40 for a franchise for an additional outlet or location.

7 41 d. (1) In establishing damages under a cause of
7 42 action brought pursuant to this subsection, the
7 43 franchisee has the burden of proving the amount of
7 44 lost profits attributable to the compensable sales.

7 45 In any action brought under this subsection, the
7 46 damages payable shall be limited to no more than three
7 47 years of the proven lost profits. For purposes of
7 48 this paragraph, "compensable sales" means the annual
7 49 gross sales from the existing outlet or location
7 50 during the twelve-month period immediately preceding

8 1 the opening of the new outlet or location less both of

8 2 the following:

8 3 (a) Six percent.

8 4 (b) The actual gross sales from the operation of
8 5 the existing outlet or location for the twelve-month
8 6 period immediately following the opening of the new
8 7 outlet or location.

8 8 (2) Compensable sales shall exclude any amount
8 9 attributable to factors other than the opening and
8 10 operation of the new outlet or location.

8 11 e. Any cause of action brought under this
8 12 subsection must be filed within eighteen months of the
8 13 opening of the new outlet or location or within thirty
8 14 days after the completion of the procedure under
8 15 paragraph "b", subparagraph (1), whichever is later.

8 16 f. Upon petition by the franchisor or the
8 17 franchisee, the district court may grant a permanent
8 18 or preliminary injunction to prevent injury or
8 19 threatened injury for a violation of this subsection
8 20 or to preserve the status quo pending the outcome of
8 21 the formal procedure under paragraph "b", subparagraph
8 22 (1), subparagraph subdivision (b).

8 23 7. TERMINATION.

8 24 a. Except as otherwise provided by this section, a
8 25 franchisor shall not terminate a franchise prior to
8 26 the expiration of its term except for good cause. For
8 27 purposes of this subsection, "good cause" is cause
8 28 based upon a legitimate business reason. "Good cause"
8 29 includes the failure of the franchisee to comply with
8 30 any material lawful requirement of the franchise
8 31 agreement, provided that the termination by the
8 32 franchisor is not arbitrary or capricious when
8 33 compared to the actions of the franchisor in other
8 34 similar circumstances. The burden of proof of showing
8 35 that action of the franchisor is arbitrary or
8 36 capricious shall rest with the franchisee.

8 37 b. Prior to termination of a franchise for good
8 38 cause, a franchisor shall provide a franchisee with
8 39 written notice stating the basis for the proposed
8 40 termination. After service of written notice, the
8 41 franchisee shall have a reasonable period of time to
8 42 cure the default, which in no event shall be less than

8 43 thirty days or more than ninety days. In the event of
8 44 nonpayment of moneys due under the franchise
8 45 agreement, the period to cure need not exceed thirty
8 46 days.

8 47 c. Notwithstanding paragraph "b", a franchisor may
8 48 terminate a franchisee upon written notice and without
8 49 an opportunity to cure if any of the following apply:

8 50 (1) The franchisee or the business to which the
9 1 franchise relates is declared bankrupt or judicially
9 2 determined to be insolvent.

9 3 (2) All or a substantial part of the assets of the
9 4 franchise or the business to which the franchisee
9 5 relates are assigned to or for the benefit of any
9 6 creditor which is subject to chapter 681. An
9 7 assignment for the benefit of any creditor pursuant to
9 8 this subparagraph does not include the granting of a
9 9 security interest in the normal course of business.

9 10 (3) The franchisee voluntarily abandons the
9 11 franchise by failing to operate the business for five
9 12 consecutive business days during which the franchisee
9 13 is required to operate the business under the terms of
9 14 the franchise, or any shorter period after which it is
9 15 not unreasonable under the facts and circumstances for
9 16 the franchisor to conclude that the franchisee does
9 17 not intend to continue to operate the franchise,
9 18 unless the failure to operate is due to circumstances
9 19 beyond the control of the franchisee.

9 20 (4) The franchisor and franchisee agree in writing
9 21 to terminate the franchise.

9 22 (5) The franchisee knowingly makes any material
9 23 misrepresentations or knowingly omits to state any
9 24 material facts relating to the acquisition or
9 25 ownership or operation of the franchise business.

9 26 (6) After three material breaches of a franchise
9 27 agreement occurring within a twelve-month period, for
9 28 which the franchisee has been given notice and an
9 29 opportunity to cure, the franchisor may terminate upon
9 30 any subsequent material breach within the twelve-month
9 31 period without providing an opportunity to cure,
9 32 provided that the action is not arbitrary and
9 33 capricious.

9 34 (7) The franchised business or business premises
9 35 of the franchisee are lawfully seized, taken over, or
9 36 foreclosed by a government authority or official.

9 37 (8) The franchisee is convicted of a felony or any
9 38 other criminal misconduct which materially and
9 39 adversely affects the operation, maintenance, or
9 40 goodwill of the franchise in the relevant market.

9 41 (9) The franchisee operates the franchised
9 42 business in a manner that imminently endangers the
9 43 public health and safety.

9 44 8. NONRENEWAL OF A FRANCHISE.

9 45 a. A franchisor shall not refuse to renew a
9 46 franchise unless both of the following apply:

9 47 (1) The franchisee has been notified of the
9 48 franchisor's intent not to renew at least six months
9 49 prior to the expiration date or any extension of the
9 50 franchise agreement.

10 1 (2) Any of the following circumstances exist:

10 2 (a) Good cause exists, provided that the refusal
10 3 of the franchisor to renew is not arbitrary or
10 4 capricious. For purposes of this subsection, "good
10 5 cause" means cause based on a legitimate business
10 6 reason.

10 7 (b) The franchisor and franchisee agree not to
10 8 renew the franchise.

10 9 (c) The franchisor completely withdraws from

10 10 directly or indirectly distributing its products or
10 11 services in the geographic market served by the
10 12 franchisee, provided that upon expiration of the
10 13 franchise, the franchisor agrees not to seek to
10 14 enforce any covenant of the nonrenewed franchisee not
10 15 to compete with the franchisor or franchisees of the
10 16 franchisor.

10 17 b. As a condition of renewal of the franchise, a
10 18 franchise agreement may require that the franchisee
10 19 meet the then current requirements for franchises and
10 20 that the franchisee execute a new agreement
10 21 incorporating the then current terms and fees for new
10 22 franchises.

10 23 9. FRANCHISEE'S RIGHT TO ASSOCIATE. A franchisor
10 24 shall not restrict a franchisee from associating with
10 25 other franchisees or from participating in a trade
10 26 association, and shall not retaliate against a
10 27 franchisee for engaging in these activities.

10 28 10. DUTY OF GOOD FAITH. A franchise imposes on
10 29 the parties a duty of good faith in performance and
10 30 enforcement of the franchise agreement. "Good faith"
10 31 means honesty in fact and the observance of reasonable
10 32 commercial standards of fair dealing in the trade.

10 33 The duty of good faith applies where the franchisor
10 34 opens a new outlet or location, or channel of
10 35 distribution, which has an adverse impact on an
10 36 existing franchisee.

10 37 11. PRIVATE CIVIL ACTION. A person who violates a
10 38 provision of this section or order issued under this
10 39 section is liable for damages caused by the violation,
10 40 including, but not limited to, costs and reasonable
10 41 attorneys' and experts' fees, and subject to other
10 42 appropriate relief including injunctive and other
10 43 equitable relief.

10 44 12. CHOICE OF LAW. A condition, stipulation, or
10 45 provision requiring the application of the law of
10 46 another state in lieu of this section is void.

10 47 13. CONSTRUCTION WITH OTHER LAW. This section
10 48 does not limit any liability that may exist under
10 49 another statute or at common law. Prior law governs
10 50 all actions based on facts occurring before July 1,
11 1 1998.

11 2 14. CONSTRUCTION. This section shall be liberally
11 3 construed to effectuate its purposes.

11 4 15. SEVERABILITY. If any provision or clause of
11 5 this section or any application of this section to any
11 6 person or circumstances is held invalid, such
11 7 invalidity shall not affect other provisions or
11 8 applications of the section which can be given effect
11 9 without the invalid provision or application, and to
11 10 this end the provisions of this section are declared
11 11 to be severable.

11 12 Sec. 2. Chapter 523H, Code 1997, is repealed."

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11 16 COMMITTEE ON [COMMERCE](#)

11 17 JOHN W. JENSEN, Chairperson

11 18 [HF 334.326](#) 77

11 19 mj/cf/28