

*Reprinted*

MAR 2 1992

HOUSE FILE 2362  
BY COMMITTEE ON COMMERCE

Place On Calendar

(SUCCESSOR TO HSB 558)

Passed House, Date <sup>(P. 1036)</sup> 4/2/92      Passed Senate, Date 4/6/92 <sup>(P. 1050)</sup>  
 Vote: Ayes 90    Nays 8                      Vote: Ayes 40    Nays 25  
 Approved April 23, 1992

**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:

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

HF 2362

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.1A 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.2 JURISDICTION AND NONJUDICIAL  
27 RESOLUTION OF DISPUTES.

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

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

35 3. Parties to a franchise may agree to independent

1 arbitration, mediation, or other nonjudicial resolution of an  
2 existing or future dispute.

3 Sec. 4. NEW SECTION. 523H.3 WAIVERS VOID.

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

16 Sec. 5. NEW SECTION. 523H.4 TRANSFER OF FRANCHISE.

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

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

33 3. A franchisor may require as a condition of a transfer  
34 any of the following:

35 a. That the transferee successfully complete a reasonable,

1 essential, and nondiscriminatory training program.

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

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

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

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

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

31 7. A franchisor shall not transfer its interest in a  
32 franchise unless the franchisor makes reasonable provision for  
33 the performance of the franchisor's obligations under the  
34 franchise agreement by the transferee. A franchisor shall  
35 provide the franchisee notice of a proposed transfer of the

1 franchisor's interest in the franchise at the time the  
2 disclosure is required of the franchisor under applicable  
3 securities laws, if interests in the franchisor are publicly  
4 traded, or if not publicly traded, at the time such disclosure  
5 would be required if the interests in the franchisor were  
6 publicly traded.

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

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

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

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

34 12. For purposes of this section, "transfer" means any  
35 change in ownership or control of a franchise, franchised



1 business, or a franchisee. However, "transfer" does not  
2 include any of the following:

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

7 b. Incorporation of a proprietorship franchisee.

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

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

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

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

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

31 Sec. 6. NEW SECTION. 523H.5 ENCROACHMENT.

32 A franchisor shall not compete with, or grant, either  
33 directly or indirectly, a franchise in unreasonable proximity  
34 to an established franchise offering goods or services  
35 identified by the same trademark as those offered from the new

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

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

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

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

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

23 Sec. 7. NEW SECTION. 523H.6 TERMINATION.

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

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

34 2. Situations in which the franchisee, without the  
35 requirement of notice and an opportunity to cure, does any of

1 the following:

2 a. Voluntarily abandons the franchised business.

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

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

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

12 Sec. 8. NEW SECTION. 523H.7 NONRENEWAL OF A FRANCHISE.

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

15 1. Good cause exists as defined in section 523H.6.

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

19 Sec. 9. NEW SECTION. 523H.8 FRANCHISEE'S RIGHT TO  
20 ASSOCIATE.

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

25 Sec. 10. NEW SECTION. 523H.9 DUTY OF GOOD FAITH.

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

30 Sec. 11. NEW SECTION. 523H.10 DUTY TO BARGAIN.

31 A franchisor has a duty to bargain in good faith with an  
32 organization of its franchisees that represents generally or  
33 on a specific issue or set of issues more than half of its  
34 franchisees in this state, or more than half of all of its  
35 franchisees in the United States, if both of the following

1 apply:

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

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

7 Sec. 12. NEW SECTION. 523H.11 REPURCHASE OF ASSETS.

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

17 Sec. 13. NEW SECTION. 523H.12 INDEPENDENT SOURCING.

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

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

32 Sec. 14. NEW SECTION. 523H.13 RULEMAKING.

33 The administrator may adopt rules, pursuant to chapter 17A,  
34 as necessary to implement this chapter.

35 Sec. 15. NEW SECTION. 523H.14 PRIVATE CIVIL ACTION.

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

7 Sec. 16. NEW SECTION. 523H.16 WAIVER AND CHOICE OF LAW.

8 A party to a franchise shall not waive a right or benefit  
9 conferred, or avoid a duty imposed, by this chapter or by a  
10 rule adopted under this chapter. A condition, stipulation, or  
11 provision requiring the application of the law of another  
12 state in lieu of this chapter is void.

13 Sec. 17. NEW SECTION. 523H.18 CONSTRUCTION WITH OTHER  
14 LAW.

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

19 Sec. 18. NEW SECTION. 523H.19 CONSTRUCTION.

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

22 EXPLANATION

23 This bill establishes a new chapter 523H relating to the  
24 regulation of franchise agreements. The bill provides that a  
25 civil action or proceeding arising out of the franchise  
26 agreement may be brought wherever jurisdiction over the  
27 parties or subject matter exists. The bill provides that a  
28 waiver of the duties and rights established under chapter 523H  
29 is void. The bill provides that a franchisor cannot refuse to  
30 permit the transfer of the franchise without good cause, and  
31 prohibits the franchisor from competing directly with a  
32 franchisee or granting another franchise in unreasonable  
33 proximity to the established franchise which offers goods or  
34 services identified by the same trademark. Certain  
35 restrictions related to the termination and nonrenewal of a

1 franchise are established. The bill also establishes a duty  
2 to perform in good faith and to bargain with respect to the  
3 agreement. The bill also establishes a civil cause of action  
4 against a person who violates any provision of this chapter.

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

HOUSE FILE 2362

H-5667

- 1 Amend the amendment, H-5658, to House File 2362 as  
2 follows:  
3 1. Page 8, by inserting after line 31, the  
4 following:  
5 "\_\_\_\_\_. For purposes of this section, "food  
6 establishment franchisor or food service establishment  
7 franchisor" does not include a franchisor whose total  
8 gross annual revenues from the sale of food which is  
9 prepared and intended for individual portion service,  
10 whether on or off the premises, is equal to or less  
11 than eighty percent of the franchisor's total gross  
12 annual revenues from all sales."  
13 2. Renumber as necessary.

By HAVERLAND of Polk

H-5667 FILED APRIL 2, 1992  
LOST (p. 1035)

HOUSE FILE 2362

H-5670

- 1 Amend the amendment, H-5658, to House File 2362 as  
2 follows:  
3 1. Page 3, line 28, by striking the words "new or  
4 existing".  
5 2. Page 3, by striking line 29 and inserting the  
6 following: "granted and operated in the state of Iowa  
7 after the effective date of this Act. For purposes".

By CHAPMAN of Linn  
RENKEN of Grundy

H-5670 FILED APRIL 2, 1992  
LOST (p. 1034)

HOUSE FILE 2362

H-5675

- 1 Amend the amendment, H-5658, to House File 2362 as  
2 follows:  
3 1. Page 5, line 18, by striking the word "thirty"  
4 and inserting the following: "ninety".  
5 2. Page 5, line 43, by striking the word "thirty"  
6 and inserting the following: "ninety".  
7 3. Page 5, line 49, by striking the word "thirty-  
8 day" and inserting the following: "ninety-day".  
9 4. Page 6, by striking lines 9 and 10, and  
10 inserting the following: "broader than a".  
11 5. Page 9, line 12, by striking the word  
12 "threatened" and inserting the following:  
13 "irreparable".  
14 6. Page 9, line 13, by striking the words "or  
15 threatened violation".

By RAFFERTY of Scott  
NEUHAUSER of Johnson

H-5675 FILED APRIL 2, 1992 (p. 1035)  
DIVISION A - LOST, DIVISION B - WITHDRAWN

HOUSE FILE 2362  
FISCAL NOTE

---

A fiscal note for House File 2362 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

---

House File 2362 establishes Chapter 523H relating to the regulation of franchise agreements and assigns the Insurance Commissioner as the administrator of this Chapter. Major provisions of the Chapter include:

1. A civil action or proceeding arising out of a franchise agreement may be brought wherever jurisdiction over parties or subject matter exists.
2. Waiver of duties and rights established under this Chapter is void.
3. A franchisor cannot refuse to permit the transfer of the franchise without good cause.
4. Prohibits the franchisor from competing directly with a franchisee or granting another franchise in unreasonable proximity to the established franchise which offers goods or services identified by the same trademark.
5. Establishes certain restrictions related to the termination and nonrenewal of a franchise.
6. Establishes a duty to perform in good faith and to bargain with respect to the agreement.
7. Establishes a civil cause of action against a person who violates any provision of this Chapter.

Assumption:

1. The Insurance Division of the Department of Commerce will be responsible for rule-making and handling complaints. The Division estimates the need for a Compliance Officer position.
2. Independent arbitration, mediation, or other nonjudicial resolution of disputes referred to in Section 3 of the bill will be handled by independent private groups and will be paid for by the parties in the dispute.

Fiscal Impact:

This bill will increase General Fund expenditures by \$38,000 in FY 1993 and \$35,000 in FY 1994 for increased staff and startup expenses of the Insurance Division.

Source: Department of Commerce - Insurance Division

(LSB 5399hv, MAS)

FILED MARCH 26, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR



## HOUSE FILE 2362

H-5266

1 Amend House File 2362 as follows:

2 1. Page 10, line 24, by inserting after the word  
3 "activities." the following: "However, franchisees  
4 shall not join together for the purpose of entering  
5 into any arrangement or negotiating with the  
6 franchisor on any issue including the prices charged  
7 by the franchisor for goods or services or the  
8 allocation of exclusive territories among competitors,  
9 when such arrangement or negotiation would be in  
10 violation of state or federal antitrust or other  
11 laws."

12 2. Page 10, line 31, by inserting before the word  
13 "A" the following: "1."

14 3. Page 10, line 33, by striking the word "half"  
15 and inserting the following: "two-thirds".

16 4. Page 10, line 34, by striking the word "half"  
17 and inserting the following: "two-thirds".

18 5. Page 11, line 2, by striking the figure "1."  
19 and inserting the following: "a."

20 6. Page 11, line 4, by striking the figure "2."  
21 and inserting the following: "b."

22 7. Page 11, by inserting after line 6, the  
23 following:

24 "2. An organization of franchisees purporting to  
25 represent more than two-thirds of a franchisor's  
26 franchisees in this state or in the United States,  
27 prior to entering into any negotiations with a  
28 franchisor, must be certified by the administrator as  
29 the sole franchisee representative. The  
30 qualifications for certification must be filed with  
31 and verified by the administrator and shall include  
32 all of the following:

33 a. A written statement of over two-thirds of the  
34 franchisees in this state or in the United States  
35 appointing the organization of franchisees as its  
36 franchisee representative.

37 b. The written agreement of all franchisees of the  
38 franchisor to be irrevocably bound by the results of  
39 any negotiations.

40 c. The written and irrevocable waiver by each  
41 franchisee of the franchisor of all rights to bring a  
42 civil action, either individually or as a class, under  
43 state or federal law for any matter based in whole or  
44 in part on, or arising out of, the franchise agreement  
45 or the franchise relationship between the parties.

46 3. Upon being certified as a franchisee  
47 representative, the organization shall notify all  
48 franchisees of the franchisor of its certification and  
49 periodically notify franchisees of any issues about  
50 which it will enter into negotiations with the

H-5266

H-5266

Page 2

1 franchisor. Any certified franchisee representative  
2 shall be decertified upon receipt by the administrator  
3 of the written statements of more than two-thirds of  
4 the franchisees in the state or in the United States,  
5 appointing a new franchisee representative or revoking  
6 approval of the currently certified franchisee  
7 representative."

By SHERZAN of Polk

H-5266 FILED MARCH 11, 1992

*Out of order 4/2 (p. 1035)*

## HOUSE FILE 2362

H-5474

1 Amend House File 2362 as follows:

2 1. Page 4, line 12, by striking the words "new or  
3 existing".4 2. Page 4, by striking line 13 and inserting the  
5 following: "granted and operated in the state of Iowa  
6 after the effective date of this Act. For purposes of  
7 this chapter,".By CHAPMAN of Linn  
RENKEN of Grundy

H-5474 FILED MARCH 24, 1992

*Out of order 4/2 (p. 1035)*

## HOUSE FILE 2362

H-5658

1 Amend House File 2362 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,

H-5658

H-5658

Page 2

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.

H-5658

-2-

H-5658

Page 3

- 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.

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

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.

44 Sec. 3. NEW SECTION. 523H.3 JURISDICTION AND  
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

H-5658

-3-

H-5658

Page 4

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

H-5658

-4-

H-5658

Page 5

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

H-5658

-5-

H-5658

Page 6

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

H-5658

-6-



H-5658

Page 7

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

H-5658

-7-

H-5658

Page 8

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. 523H.6 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

H-5658

-8-

H-5658

Page 9

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.

H-5658

-9-

H-5658

Page 10

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.

H-5658

-10-

H-5658

Page 11

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

H-5658

-11-

H-5658

Page 12

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 BLANSHAN of Greene  
KREMER of Buchanan

H-5658 FILED APRIL 1, 1992

*Adopted 4/2 (p.1035)*

HOUSE FILE 2362  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 558)

(As Amended and Passed by the House April 2, 1992)

Re Passed House, Date 4/15/92 (p. 1481) Passed Senate, Date 4/10/92 (p. 1349)  
Vote: Ayes 87 Nays 11 Vote: Ayes 40 Nays 5  
Approved April 23, 1992

**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:

6

7

ALL NEW LANGUAGE BY THE HOUSE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

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

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

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

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

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

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

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

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

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

22 (2) A master franchise.

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

32 c. "Franchise" also does not include any contract under  
33 which a petroleum retailer or petroleum distributor is  
34 authorized or permitted to occupy leased marketing premises,  
35 which premises are to be employed in connection with the sale,



1 consignment, or distribution of motor fuel under a trademark  
2 which is owned or controlled by a refiner which is regulated  
3 by the federal Petroleum Marketing Practices Act, 15 U.S.C. §  
4 2801 et seq. The term "refiner" means any person engaged in  
5 the refining of crude oil to produce motor fuel, and includes  
6 any affiliate of such person. "Franchise" also does not  
7 include a contract entered into by any person regulated under  
8 chapter 117, 123, 322, 322A, 322B, 322C, 322D, 322F, or 522,  
9 or a contract establishing a franchise relationship with  
10 respect to the sale of construction equipment, lawn or garden  
11 equipment, or real estate.

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

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

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

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

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

25 e. Payments by a purchaser pursuant to a bona fide loan  
26 from a seller to the purchaser.

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

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

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

34 a. A subfranchisor with regard to its relationship with a  
35 franchisor.

- 1     b. A subfranchisee with regard to its relationship with a  
2 subfranchisor.
- 3     6. "Franchisor" means a person who grants a franchise or  
4 master franchise, or an affiliate of such a person.  
5 Franchisor includes a subfranchisor with regard to its  
6 relationship with a franchisee, unless stated otherwise in  
7 this chapter.
- 8     7. "Fraud" and "deceit" are not limited to common law  
9 fraud and deceit.
- 10    8. "Marketing plan" means a plan or system concerning a  
11 material aspect of conducting business. Indicia of a  
12 marketing plan include any of the following:  
13     a. Price specification, special pricing systems, or  
14 discount plans.  
15     b. Sales or display equipment or merchandising devices.  
16     c. Sales techniques.  
17     d. Promotional or advertising materials or cooperative  
18 advertising.  
19     e. Training regarding the promotion, operation, or  
20 management of the business.  
21     f. Operational, managerial, technical, or financial  
22 guidelines or assistance.
- 23    9. "Master franchise" means an agreement by which a person  
24 pays a franchisor for the right to sell or negotiate the sale  
25 of franchises.
- 26    10. "Offer" or "offer to sell" means every attempt to  
27 offer or to dispose of, or solicitation of an offer to buy, a  
28 franchise or interest in a franchise for value.
- 29    11. "Person" means a person as defined in section 4.1,  
30 subsection 13.
- 31    12. "Sale" or "sell" means every contract or agreement of  
32 sale of, contract to sell or disposition of, a franchise or  
33 interest in a franchise for value.
- 34    13. "Subfranchise" means an agreement by which a person  
35 pays a franchisor for the right to sell or negotiate the sale

1 of franchises.

2 14. "Subfranchisee" means a person who is granted a  
3 franchise from a subfranchisor.

4 15. "Subfranchisor" means a person who is granted a master  
5 franchise.

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

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

21 Sec. 3. NEW SECTION. 523H.3 JURISDICTION AND NONJUDICIAL  
22 RESOLUTION OF DISPUTES.

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

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

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

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

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

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

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

8 1. A franchisee may transfer the franchised business and  
9 franchise to a transferee, provided that the transferee  
10 satisfies the reasonable current qualifications of the  
11 franchisor for new franchisees. For the purposes of this  
12 section, a reasonable current qualification for a new  
13 franchisee is a qualification based upon a legitimate business  
14 reason. If the proposed transferee does not meet the  
15 reasonable current qualifications of the franchisor, the  
16 franchisor may refuse to permit the transfer, provided that  
17 the refusal of the franchisor to consent to the transfer is  
18 not arbitrary or capricious when compared to the actions of  
19 the franchisor in other similar circumstances.

20 2. Except as otherwise provided in this section, a  
21 franchisor may exercise a right of first refusal contained in  
22 a franchise agreement after receipt of a proposal from the  
23 franchisee to transfer the franchise.

24 3. A franchisor may require as a condition of a transfer  
25 any of the following:

26 a. That the transferee successfully complete a reasonable  
27 training program.

28 b. That a reasonable transfer fee be paid to reimburse the  
29 franchisor for the franchisor's reasonable and actual expenses  
30 directly attributable to the transfer.

31 c. That the franchisee pay or make provision reasonably  
32 acceptable to the franchisor to pay any amount due the  
33 franchisor or the franchisor's affiliate.

34 4. A franchisor shall not withhold consent to a franchisee  
35 making a public offering of the franchisee's securities

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

6 5. A franchisee may transfer the franchisee's interest in  
7 the franchise, for the unexpired term of the franchise  
8 agreement, and a franchisor shall not require the franchisee  
9 or the transferee to enter into a new or different franchise  
10 agreement as a condition of the transfer.

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

22 7. A franchisor shall not transfer its interest in a  
23 franchise unless the franchisor makes reasonable provision for  
24 the performance of the franchisor's obligations under the  
25 franchise agreement by the transferee. A franchisor shall  
26 provide the franchisee notice of a proposed transfer of the  
27 franchisor's interest in the franchise at the time the  
28 disclosure is required of the franchisor under applicable  
29 securities laws, if interests in the franchisor are publicly  
30 traded, or if not publicly traded, at the time such disclosure  
31 would be required if the interests in the franchisor were  
32 publicly traded.

33 8. A transfer by a franchisee is deemed to be approved  
34 thirty days after the franchisee submits the request for  
35 consent to the transfer unless the franchisor withholds

1 consent to the transfer as evidenced in writing, specifying  
2 the reason or reasons for withholding the consent. The  
3 written notice must be delivered to the franchisee prior to  
4 the expiration of the thirty-day period. Any such notice is  
5 privileged and is not actionable based upon a claim of  
6 defamation.

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

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

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

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

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

33 a. The succession of ownership of a franchise upon the  
34 death or disability of a franchisee, or of an owner of a  
35 franchise, to the franchisee's spouse, child or children, or a

1 partner of the franchisee unless the successor fails to meet  
2 the then current reasonable qualifications of the franchisor  
3 for franchisees and the enforcement of the reasonable current  
4 qualifications is not arbitrary or capricious when compared to  
5 actions of the franchisor in other similar circumstances.

6 b. The succession of a spouse, child, partner, or other  
7 owner as operating manager upon the death or disability of the  
8 operating manager, unless the successor fails to meet the then  
9 current reasonable qualifications of the franchisor for an  
10 operating manager, and enforcement of the reasonable current  
11 qualifications is not arbitrary or capricious when compared to  
12 actions of the franchisor in other similar circumstances.

13 c. Incorporation of a proprietorship franchisee, provided  
14 that such incorporation does not prohibit a franchisor from  
15 requiring a personal guaranty by the franchisee of obligations  
16 related to the franchise.

17 d. A transfer within an existing ownership group of a  
18 franchise provided that more than fifty percent of the  
19 franchise is held by persons who meet the franchisor's  
20 reasonable current qualifications for franchisees. If less  
21 than fifty percent of the franchise would be owned by persons  
22 who meet the franchisor's reasonable current qualifications,  
23 the franchisor may refuse to authorize the transfer, provided  
24 that enforcement of the reasonable current qualifications is  
25 not arbitrary or capricious when compared to actions of the  
26 franchisor in other similar circumstances.

27 e. A transfer of less than a controlling interest in the  
28 franchise to the franchisee's spouse or child or children,  
29 provided that more than fifty percent of the entire franchise  
30 is held by those who meet the franchisor's reasonable current  
31 qualifications. If less than fifty percent of the franchise  
32 would be owned by persons who meet the franchisor's reasonable  
33 current qualifications, the franchisor may refuse to authorize  
34 the transfer, provided that enforcement of the reasonable  
35 current qualifications is not arbitrary or capricious when

1 compared to actions of the franchisor in other similar  
2 circumstances.

3 f. A transfer of less than a controlling interest in the  
4 franchise of an employee stock ownership plan, or employee  
5 incentive plan, provided that more than fifty percent of the  
6 entire franchise is held by those who meet the franchisor's  
7 reasonable current qualifications for franchisees. If less  
8 than fifty percent would be owned by persons who meet the  
9 franchisor's reasonable current qualifications, the franchisor  
10 may refuse to authorize the transfer, provided that  
11 enforcement of the reasonable current qualifications is not  
12 arbitrary or capricious when compared to actions of the  
13 franchisor in other similar circumstances.

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

24 14. A franchisor shall not interfere or attempt to  
25 interfere with any disposition of an interest in a franchise  
26 or franchised business as described in subsection 13,  
27 paragraphs "a" through "g".

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

29 1. Notwithstanding the terms, provisions, or conditions of  
30 an agreement or franchise, if a franchisor seeks to establish  
31 a new outlet, company-owned store, or carry-out store within  
32 an unreasonable proximity of an existing franchisee, the  
33 existing franchisee, at the option of the franchisor, shall  
34 have either a right of first refusal with respect to the  
35 proposed new outlet, company-owned store, or carry-out store



1 or a right to compensation for market share diverted by the  
2 new outlet. For the purposes of this section, "unreasonable  
3 proximity" as applied to a food establishment franchisor or  
4 food service establishment franchisor, including outlets and  
5 carry-out stores as defined by section 137A.1, subsection 2,  
6 and section 137B.2, subsection 6, includes but is not limited  
7 to the shortest distance as measured by the following methods:

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

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

13 2. With respect to a right of first refusal, the parties  
14 shall in good faith seek to establish a mutually agreeable  
15 price and terms. If the parties are unable to agree, each  
16 party shall appoint an independent appraiser. If the  
17 independent appraisers are unable to agree upon a price and  
18 terms, the independent appraisers shall name a third appraiser  
19 to determine the price and terms upon which the right of first  
20 refusal may be exercised. The determination of the  
21 independent appraiser shall be final and not subject to  
22 judicial review.

23 If two or more existing franchises are located within an  
24 unreasonable proximity to the proposed outlet, the closest  
25 franchisee shall have the first right of first refusal, and if  
26 declined, the right of first refusal shall pass to the next  
27 closest franchisee.

28 3. If the franchisor does not offer a right of first  
29 refusal, the franchisor shall compensate existing franchisees  
30 for market share diverted by the opening of the new outlet.  
31 If the franchisor and existing franchisees cannot agree upon  
32 the proper amount of such compensation, each party shall  
33 appoint an independent appraiser. If the independent  
34 appraisers are unable to agree, the independent appraisers  
35 shall appoint a third appraiser who shall establish the level

1 of compensation. The determination of the independent  
2 appraiser shall be final and not subject to judicial review.

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

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

7 1. Except as otherwise provided by this chapter, a  
8 franchisor shall not terminate a franchise prior to the  
9 expiration of its term except for good cause. For purposes of  
10 this section, "good cause" is cause based upon a legitimate  
11 business reason. "Good cause" includes the failure of the  
12 franchisee to comply with any material lawful requirement of  
13 the franchise agreement, provided that the termination by the  
14 franchisor is not arbitrary or capricious when compared to the  
15 actions of the franchisor in other similar circumstances.

16 2. Prior to termination of a franchise for good cause, a  
17 franchisor shall provide a franchisee with written notice  
18 stating the basis for the proposed termination. After service  
19 of written notice, the franchisee shall have a reasonable  
20 period of time to cure the default, which in no event shall be  
21 less than thirty days.

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

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

28 b. The franchisee voluntarily abandons the franchise by  
29 failing to operate the business for five consecutive business  
30 days during which the franchisee is required to operate the  
31 business under the terms of the franchise, or any shorter  
32 period after which it is not unreasonable under the facts and  
33 circumstances for the franchisor to conclude that the  
34 franchisee does not intend to continue to operate the  
35 franchise, unless the failure to operate is due to

1 circumstances beyond the control of the franchisee.

2 c. The franchisor and franchisee agree in writing to  
3 terminate the franchise.

4 d. The franchisee knowingly makes any material  
5 misrepresentations or knowingly omits to state any material  
6 facts relating to the acquisition or ownership or operation of  
7 the franchise business.

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

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

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

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

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

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

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

28 2. Any of the following circumstances exist:

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

33 b. The franchisor and franchisee agree not to renew the  
34 franchise, provided that upon the expiration of the franchise,  
35 the franchisor agrees not to seek to enforce any covenant of

1 the nonrenewed franchise not to compete with the franchisor or  
2 franchisees of the franchisor.

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

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

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

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

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

20 Sec. 11. NEW SECTION. 523H.11 REPURCHASE OF ASSETS.

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

35 Sec. 12. NEW SECTION. 523H.12 INDEPENDENT SOURCING.

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

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

15 Sec. 13. NEW SECTION. 523H.13 PRIVATE CIVIL ACTION.

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

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

22 A condition, stipulation, or provision requiring the  
23 application of the law of another state in lieu of this  
24 chapter is void.

25 Sec. 15. NEW SECTION. 523H.15 CONSTRUCTION WITH OTHER  
26 LAW.

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

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

32 This chapter shall be liberally construed to effectuate its  
33 purposes.

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

35 If any provision or clause of this chapter or any

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

- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

## HOUSE FILE 2362

S-5628

1 Amend House File 2362 as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 12, line 8, by striking the words "the  
4 same".

5 2. Page 12, line 9, by striking the word  
6 "provision" and inserting the following:  
7 "provisions".

8 3. Page 12, by striking lines 10 through 12 and  
9 inserting the following: "enforcement of the  
10 provisions is similar to that imposed on other  
11 franchisees of the franchisor."

By JIM LIND

S-5628 FILED APRIL 10, 1992

LOST (p. 1347)

## HOUSE FILE 2362

S-5632

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 3, by striking lines 8 and 9.

4 2. Page 6, by striking lines 3 through 5 and in-  
5 serting the following: "voting power in the  
6 franchise."

7 3. Page 6, line 12, by striking the word "thirty"  
8 and inserting the following: "sixty".

9 4. Page 6, line 34, by striking the word "thirty"  
10 and inserting the following: "sixty".

11 5. Page 7, line 4, by striking the word "thirty-  
12 day" and inserting the following: "sixty-day".

13 6. Page 10, by striking lines 21 and 22, and  
14 inserting the following: "independent appraiser shall  
15 be final and binding, and subject to judicial review  
16 under chapter 679A."

17 7. Page 11, by striking line 2 and inserting the  
18 following: "appraiser shall be final and binding, and  
19 subject to judicial review under chapter 679A."

20 8. Page 11, line 21, by inserting after the word  
21 "days" the following: "or more than ninety days".

22 9. By renumbering as necessary.

By AL STURGEON  
JIM KERSTEN  
RICHARD VARN

JOHN JENSEN  
PAT DELUHERY

S-5632 FILED APRIL 10, 1992

ADOPTED (p. 1346)

HOUSE FILE 2362

S-5579

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 4, line 7, by striking the words "new or  
4 existing".  
5 2. Page 4, by striking line 8 and inserting the  
6 following: "granted and operated in the state of Iowa  
7 on or after the effective date of this Act. For  
8 purposes of this chapter,".

By HARRY SLIFE  
WILLIAM D. PALMER

S-5579 FILED APRIL 7, 1992

*lost 4/10 (p. 1347)*

HOUSE FILE 2362

S-5578

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 4, line 14, by inserting after the word  
4 "state." the following: "This chapter does not apply  
5 to a franchise where the franchisee is not required to  
6 make an initial investment, including any franchise  
7 fee, capitalization requirements, and any other  
8 expenditures required by the franchisor, in an amount  
9 greater than one hundred thousand dollars."

By WILLIAM D. PALMER

S-5578 FILED APRIL 7, 1992

*w/d 4/10 (p. 1347)*

HOUSE FILE 2362

S-5617

1 Amend House File 2362 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 2, line 10, by inserting after the word  
4 "equipment," the following: "tire retreading  
5 products, equipment, or services,".

By RICHARD F. DRAKE  
JACK RIFE

S-5617 FILED APRIL 9, 1992

*lost 4/10 (p. 1346)*



## HOUSE FILE 2362

S-5633

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

- A 3 1. Page 7, by striking lines 17 through 24.
- C 4 2. Page 9, line 34, by striking the word  
5 "either".
- 6 3. Page 10, by striking lines 1 and 2, and  
7 inserting the following: ". For the purposes of this  
8 section, "unreasonable".
- A 9 4. By striking page 10, line 28 through page 11,  
10 line 2.
- B 11 5. Page 13, line 5, by inserting after the word  
12 "franchisee" the following: "or if the franchisor is  
13 otherwise altering its method of doing business to  
14 accommodate changes in economic or market  
15 circumstances and such alterations are applied  
16 nondiscriminatorily".
- 17 6. By renumbering as necessary.

By WILMER RENSINK

S-5633 FILED APRIL 10, 1992 (

DIV. A-WITHDRAWN, DIV. B-LOST, DIV. C-WITHDRAWN (p.1347)

## HOUSE FILE 2362

S-5635

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

- B 3 1. Page 1, lines 11 and 12, by striking the words  
4 ", either express or implied,".
- 5 2. Page 2, line 12, by striking the words "direct  
6 or indirect".
- A 7 3. Page 3, by striking lines 8 and 9.
- 8 4. By renumbering as necessary.

By WILMER RENSINK

S-5635 FILED APRIL 10, 1992

DIV. A-WITHDRAWN, DIV. B-LOST (p.1348)

## HOUSE FILE 2362

S-5627

1 Amend House File 2362 as amended, passed, and  
2 reprinted by the House, as follows:

- 3 1. Page 12, by inserting after line 21 the  
4 following:  
5 "\_\_\_\_. The franchisee falsifies books and records  
6 of account with respect to the operations of the  
7 franchised business."  
8 2. By relettering as necessary.

By JIM LIND

S-5627 FILED APRIL 10, 1992

LOST (p.1348)

## HOUSE FILE 2362

S-5636

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

- B 3 1. Page 2, by inserting after line 11 the  
4 following:  
5 " \_\_\_\_ . Franchise also does not include a contract  
6 or agreement which does all of the following:  
7 (1) A person authorizes another to use trademark,  
8 service mark, trade name, logotype, advertisement, or  
9 another commercial symbol of the person in connection  
10 with a business.  
11 (2) The person does not offer significant  
12 assistance in connection with the operation of that  
13 business.  
14 (3) The person does not impose a significant  
15 degree of control over the operation of the business."  
16 2. Page 3, line 11, by inserting after the word  
17 "business" the following: "where the sales volume,  
18 measured in dollars, from the use of the plan or  
19 system would represent no less than seventy-five  
20 percent of the total sales volume".
- A 21 3. Page 4, line 7, by striking the words "or  
22 existing franchise" and inserting the following:  
23 "franchise, and an existing franchise upon renewal,  
24 modification, or replacement after July 1, 1992,".  
25 4. By renumbering as necessary.

By WILMER RENSIINK

S-5636 FILED APRIL 10, 1992  
DIV. A-WITHDRAWN, DIV. B-LOST (p. 1349)

## HOUSE FILE 2362

S-5637

1 Amend House File 2362 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 11, by striking line 4 and inserting the  
4 following: "injunction pursuant to Iowa rule of civil  
5 procedure 321 to prevent irreparable injury from".

By WILMER RENSINK  
DONALD V. DOYLE

S-5637 FILED APRIL 10, 1992  
LOST (p. 1347)

## HOUSE FILE 2362

S-5638

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, line 16, by inserting after the word  
4 "fee" the following: "of five hundred dollars or  
5 more".

6 2. Page 1, by striking lines 18 through 21 and  
7 inserting the following:

8 "(c) Allows the franchise business to be  
9 identified with a trademark, service mark, or trade  
10 name."

11 3. Page 2, line 12, by striking the words "direct  
12 or indirect".

13 4. Page 5, line 22, by striking the words "a  
14 proposal" and inserting the following: "a notice as  
15 required in subsection 6".

16 5. Page 5, by striking lines 29 and 30, and  
17 inserting the following: "franchisor for expenses  
18 attributable to the transfer."

19 6. Page 6, lines 13 and 14, by striking the words  
20 "on request from the franchisor".

21 7. Page 6, line 14, by inserting after the word  
22 "writing" the following: "the terms of the proposed  
23 transfer and".

24 8. Page 7, by striking lines 17 through 24.

25 9. By renumbering as necessary.

By WILMER RENSINK

S-5638 FILED APRIL 10, 1992

LOST (p. 134A)

## HOUSE FILE 2362

S-5639

1 Amend House File 2362, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 12, line 12, by inserting after the word  
4 "circumstances." the following: "Under any  
5 circumstances, three defaults in any one-year period  
6 is deemed to be good cause to terminate."

7 2. Page 12, by striking lines 24 through 28 and  
8 inserting the following: "any of the following  
9 apply:".

10 3. Page 12, line 29, by striking the letter "a."  
11 and inserting the following: "1."

12 4. Page 12, line 33, by striking the letter "b."  
13 and inserting the following: "2."

14 5. Page 13, line 3, by striking the letter "c."  
15 and inserting the following: "3."

16 6. Page 13, line 8, by inserting after the words  
17 "franchisees of the franchisor" the following: ", and  
18 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  
21 agreement".

By WILMER RENSINK

S-5639 FILED APRIL 10, 1992

LOST (p. 1347)

SENATE AMENDMENT TO HOUSE FILE 2362

H-5867

- 1 Amend House File 2362, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 3, by striking lines 8 and 9.
- 4 2. Page 6, by striking lines 3 through 5 and in-
- 5 serting the following: "voting power in the
- 6 franchise."
- 7 3. Page 6, line 12, by striking the word "thirty"
- 8 and inserting the following: "sixty".
- 9 4. Page 6, line 34, by striking the word "thirty"
- 10 and inserting the following: "sixty".
- 11 5. Page 7, line 4, by striking the word "thirty-
- 12 day" and inserting the following: "sixty-day".
- 13 6. Page 10, by striking lines 21 and 22, and
- 14 inserting the following: "independent appraiser shall
- 15 be final and binding, and subject to judicial review
- 16 under chapter 679A."
- 17 7. Page 11, by striking line 2 and inserting the
- 18 following: "appraiser shall be final and binding, and
- 19 subject to judicial reievew under chapter 679A."
- 20 8. Page 11, line 21, by inserting after the word
- 21 "days" the following: "or more than ninety days".
- 22 9. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-5867 FILED APRIL 13, 1992

*House concurred 4/15 (p 1483)*

BLANSHAW, CHAIR  
HOLUECK  
J.L.L.  
BAKER  
Lundby 1-28-92  
KREMER  
Shoung

HSB 558 RWB

Commerce Now -

SENATE/HOUSE FILE 2362  
BY (RECOMMENDED BY FRANCHISE  
REGULATION STUDY COMMITTEE)

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 and  
3 providing certain exemptions.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

1 Section 1. NEW SECTION. 523G.23 JURISDICTION, VENUE, AND  
2 NONJUDICIAL RESOLUTION OF DISPUTES.

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

7 2. A civil action or proceeding arising out of a franchise  
8 may be commenced wherever jurisdiction over the parties or  
9 subject matter exists, even if the agreement limits actions or  
10 proceedings to a designated jurisdiction or venue. The court  
11 shall consider the doctrine of inconvenient forum.

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

15 Sec. 2. NEW SECTION. 523G.24 WAIVERS VOID.

16 A condition, stipulation, or provision requiring a  
17 franchisee to waive compliance with or relieving a person of a  
18 duty or liability imposed by or a right provided by this  
19 chapter or a rule or order under this chapter is void. An  
20 acknowledgment provision, disclaimer, integration clause, or a  
21 provision having a similar effect in a franchise agreement  
22 does not negate or act to remove from judicial review any  
23 statement, misrepresentation, or action that would violate a  
24 provision of this chapter or a rule or order under this  
25 chapter. This section shall not affect the settlement of  
26 disputes, claims, or civil lawsuits arising or brought  
27 pursuant to this chapter.

28 Sec. 3. NEW SECTION. 523G.25 TRANSFER OF FRANCHISE.

29 1. A franchisee may transfer the franchised business and  
30 franchise to a transferee who meets the franchisor's  
31 reasonable, essential, and nondiscriminatory standards for new  
32 franchisees or transferees established at the time of the  
33 transfer. A franchisor shall not withhold consent to the  
34 transfer of ownership under these circumstances without good  
35 cause. A provision in a franchise agreement restricting a

1 franchisee's rights under this section is void.

2 2. A franchisor may exercise a right of first refusal in  
3 connection with a proposed transfer if provided in the  
4 franchise agreement. However, this right shall not be  
5 exercised by the franchisor more than thirty days after  
6 receipt of the franchisee's request for the franchisor's  
7 consent to the transfer. A franchisor shall not exercise such  
8 right if by doing so the franchisor would hold a minority  
9 ownership interest in the franchise or franchisee.

10 3. A franchisor may require as a condition of a transfer  
11 any of the following:

12 a. That the transferee successfully complete a reasonable,  
13 essential, and nondiscriminatory training program.

14 b. That a reasonable transfer fee be paid to reimburse the  
15 franchisor for the franchisor's reasonable and actual expenses  
16 directly attributable to the transfer.

17 c. That the franchisee pay or make reasonable provision to  
18 pay any amount due the franchisor or the franchisor's  
19 affiliate.

20 4. A franchisor shall not withhold consent to a franchisee  
21 making a public offering of the franchisee's securities  
22 without good cause, provided the franchisee or the owners of  
23 the franchise retain control of more than fifty percent of the  
24 voting power in the franchise. A franchisor shall not  
25 withhold the franchisor's consent to a pooling of interests or  
26 exchange of assets by the franchisor's existing franchisees.

27 5. A franchisee may assign the franchisee's interest in  
28 the franchise, for the unexpired term of the franchise  
29 agreement, and a franchisor shall not require the franchisee  
30 or the transferee to enter into a new or different franchise  
31 agreement as a condition of the transfer.

32 6. A franchisee shall give the franchisor no less than  
33 thirty days' written notice of a transfer which is subject to  
34 the provisions of this section, and on request from the  
35 franchisor shall provide in writing the ownership interests of

1 all persons holding or claiming an equitable or beneficial  
2 interest in the franchise or the franchisee, as appropriate.  
3 A franchisee shall not circumvent the intended effect of a  
4 contractual provision governing the transfer of the franchise  
5 or an interest in the franchise by means of a management  
6 agreement, lease, profit-sharing agreement, conditional  
7 assignment, or other similar device.

8 7. A franchisor shall not transfer its interest in a  
9 franchise unless the franchisor makes reasonable provision for  
10 the performance of the franchisor's obligations under the  
11 franchise agreement by the transferee. A franchisor shall  
12 provide the franchisee notice of a proposed transfer of the  
13 franchisor's interest in the franchise at the time the  
14 disclosure is required of the franchisor under applicable  
15 securities laws, if interests in the franchisor are publicly  
16 traded, or if not publicly traded, at the time such disclosure  
17 would be required if the interests in the franchisor were  
18 publicly traded.

19 8. A transfer by a franchisee is deemed to be approved  
20 thirty days after the franchisee submits the request for  
21 consent to the transfer unless the franchisor withholds  
22 consent to the transfer as evidenced in writing, specifying  
23 the reason or reasons for withholding the consent. The  
24 written notice must be delivered to the franchisee prior to  
25 the expiration of the thirty-day period. Any such notice is  
26 privileged and is not actionable based upon a claim of  
27 defamation.

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

31 10. A franchisor, as a condition to a transfer of a  
32 franchise, shall not obligate a franchisee to undertake  
33 obligations or relinquish any rights unrelated to the  
34 franchise proposed to be transferred, or to enter into a  
35 release of claims broader than a similar release of claims by



1 the franchisor against the franchisee which is entered into by  
2 the franchisor.

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

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

15 a. The succession of ownership of a franchise upon the  
16 death or disability of a franchisee, or of an owner, officer,  
17 or director of a franchise, to the franchisee's spouse,  
18 children, or a partner in the franchise.

19 b. Incorporation of a proprietorship franchisee.

20 c. A transfer within an existing ownership group of a  
21 franchise of less than a controlling interest in the  
22 franchise.

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

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

28 f. A grant or retention of a security interest in the  
29 franchise, the franchised business or its assets, or an  
30 ownership interest in the franchisee, provided the security  
31 agreement establishes an obligation on the part of the secured  
32 party enforceable by the franchisor to give the franchisor  
33 notice of the secured party's intent to foreclose on the  
34 collateral simultaneously with notice to the franchisee, and a  
35 reasonable opportunity to redeem the interest of the secured

1 party and recover the secured party's interest in the  
2 franchise or the franchised business by paying the secured  
3 obligations.

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

8 Sec. 4. NEW SECTION. 523G.26 ENCROACHMENT.

9 A franchisor shall not compete with, or grant, either  
10 directly or indirectly, a franchise in unreasonable proximity  
11 to an established franchise offering goods or services  
12 identified by the same trademark as those offered from the new  
13 franchise, or whose premises are identified by the same  
14 trademark as the new franchise. For purposes of this section,  
15 "unreasonable proximity" includes, but is not limited to,  
16 either of the following:

17 1. Circumstances where the established franchise suffers  
18 or expects to suffer a diminution of gross sales of more than  
19 ten percent in the twelve-month period following the  
20 establishment of the new franchise.

21 2. Circumstances where the new franchise is or is about to  
22 be located within a one-mile radius of the established  
23 franchise.

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

27 EXPLANATION

28 This bill includes recommendations for enactment made by  
29 the franchise regulation study committee.

30 The bill provides that a civil action or proceeding arising  
31 out of the franchise agreement may be brought wherever  
32 jurisdiction over the parties or subject matter exists. The  
33 bill also provides that a waiver of the duties and rights  
34 created under chapter 523G is void. The bill provides that a  
35 franchisor cannot refuse to permit the transfer of the

1 franchise without good cause, and prohibits the franchisor  
2 from competing directly with a franchisee or granting another  
3 franchise in unreasonable proximity to the established  
4 franchise which offers goods or services identified by the  
5 same trademark.

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

HOUSE FILE 2362

AN ACT

RELATING TO FRANCHISE AGREEMENTS AND THEIR ENFORCEMENT BY ESTABLISHING CERTAIN DUTIES AND LIMITATIONS ON FRANCHISORS, PROVIDING CERTAIN EXEMPTIONS, AND ESTABLISHING A CIVIL CAUSE OF ACTION.

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

Section 1. NEW SECTION. 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 117, 123, 322, 322A, 322B, 322C, 322D, 322F, or 522, 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 13.
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.
- Sec. 2. NEW SECTION. 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 out-of-state franchisees.

Sec. 3. NEW SECTION. 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.

Sec. 4. NEW SECTION. 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.

Sec. 5. NEW SECTION. 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 when compared to the actions of the franchisor in other similar circumstances.

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.

4. A franchisor shall not withhold consent to a franchisee making a public offering of the franchisee's securities without good cause, provided the franchisee or the owners of the franchise retain control of more than fifty percent of the voting power in the franchise.

5. 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.

6. 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.

7. 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. A franchisor shall provide the franchisee notice of a proposed transfer of the franchisor's interest in the franchise at the time the disclosure is required of the franchisor under applicable securities laws, if interests in the franchisor are publicly traded, or if not publicly traded, at the time such disclosure would be required if the interests in the franchisor were publicly traded.

8. 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.

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

10. 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.

11. 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.

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

13. 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 franchisee's spouse, child or children, or a partner of the franchisee unless the successor fails to meet the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious when compared to actions of the franchisor in other similar circumstances.

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

c. 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.

d. 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 when compared to actions of the franchisor in other similar circumstances.

e. 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 when compared to actions of the franchisor in other similar circumstances.

f. 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 when compared to actions of the franchisor in other similar circumstances.

g. 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.

14. 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 13, paragraphs "a" through "g".

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

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

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



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

2. With respect to a right of first refusal, the parties shall in good faith seek to establish a mutually agreeable price and terms. If the parties are unable to agree, each party shall appoint an independent appraiser. If the independent appraisers are unable to agree upon a price and terms, the independent appraisers shall name a third appraiser to determine the price and terms upon which the right of first refusal may be exercised. The determination of the independent appraiser shall be final and binding, and subject to judicial review under chapter 679A.

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

3. If the franchisor does not offer a right of first refusal, the franchisor shall compensate existing franchisees for market share diverted by the opening of the new outlet. If the franchisor and existing franchisees cannot agree upon the proper amount of such compensation, each party shall appoint an independent appraiser. If the independent appraisers are unable to agree, the independent appraisers shall appoint a third appraiser who shall establish the level of compensation. The determination of the independent appraiser shall be final and binding, and subject to judicial review under chapter 679A.

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

Sec. 7. NEW SECTION. 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.

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.

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. 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.

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

d. 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.

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

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

g. 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.

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

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

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

1. 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.

2. Any of the following circumstances exist:

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

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

c. 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.

Sec. 9. NEW SECTION. 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.

Sec. 10. NEW SECTION. 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.

Sec. 11. NEW SECTION. 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.

Sec. 12. NEW SECTION. 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.

Sec. 13. NEW SECTION. 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.

Sec. 14. NEW SECTION. 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.

Sec. 15. NEW SECTION. 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 the effective date of this Act.

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

This chapter shall be liberally construed to effectuate its purposes.

Sec. 17. NEW SECTION. 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.

\_\_\_\_\_  
ROBERT C. ARNOULD  
Speaker of the House

\_\_\_\_\_  
MICHAEL E. GRONSTAL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2362, Seventy-fourth General Assembly.

Approved  1992  
\_\_\_\_\_  
JOSEPH O'HERN  
Chief Clerk of the House

\_\_\_\_\_  
TERRY E. BRANSTAD  
Governor