

Reprinted

FEB 2 1995
Place On Calendar

HOUSE FILE 126
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 7)

Passed House, ^(p.440) Date 2/15/95 Passed Senate, ^(p.1449) Date 4/26/95
Vote: Ayes 68 Nays 26 Vote: Ayes 45 Nays 5
Approved April 29, 1995

A BILL FOR

1 An Act relating to certain franchise agreements by amending
2 provisions relating to transfer, termination, and nonrenewal
3 of franchise agreements, and to a civil cause of action for
4 appropriate relief, and repealing certain franchise
5 provisions.

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

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HF 126

1 Section 1. Section 523H.5, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 523H.5 TRANSFER OF FRANCHISE.

5 A franchisor shall not deny the surviving spouse or heirs
6 of a deceased or permanently incapacitated franchisee the
7 opportunity to participate in the ownership of the franchise
8 under a valid franchise agreement for a reasonable period of
9 time, which in no case need be more than one year after the
10 death or permanent incapacity of the franchisee. During that
11 time, the surviving spouse or heirs of the franchisee shall
12 either meet all of the qualifications which the franchisee was
13 subject to at the time of the death or permanent incapacity of
14 the franchisee, or sell, transfer, or assign the franchise to
15 a person who meets the franchisor's current qualifications for
16 a new franchisee. The rights granted pursuant to this
17 subsection shall be granted subject to the surviving spouse or
18 heirs of the franchisee maintaining all standards and
19 obligations of the franchise. This subsection does not
20 prohibit a franchisor from exercising the right of first
21 refusal contained in a franchise agreement after receipt of a
22 bona fide offer to purchase the franchise by a proposed
23 purchaser of the franchise.

24 Sec. 2. Section 523H.7, Code 1995, is amended to read as
25 follows:

26 523H.7 TERMINATION.

27 1. Except as otherwise provided by this chapter, a
28 franchisor shall not terminate a franchise prior to the
29 expiration of its term except for good cause. For purposes of
30 this section, "good cause" is cause based upon a legitimate
31 business reason. "Good cause" includes, but is not limited
32 to, the failure of the franchisee to comply with any material
33 lawful requirement of the franchise agreement, ~~provided that~~
34 ~~the termination by the franchisor is not arbitrary or~~
35 ~~capricious when compared to the actions of the franchisor in~~

1 ~~other-similar-circumstances.~~

2 2. Prior to termination of a franchise for good cause, a
3 franchisor shall provide a franchisee with written notice
4 stating the basis for the proposed termination. After service
5 of written notice, the franchisee shall have a reasonable
6 period of time to cure the default, which ~~in-no-event-shall-be~~
7 less need not be more than thirty days or more than ninety
8 days for any default other than the default of a valid payment
9 under the franchise agreement which need not be more than ten
10 days.

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

14 a. (1) The franchisee or the business to which the
15 franchise relates files for protection under applicable
16 federal bankruptcy laws, is declared bankrupt, or is
17 judicially determined to be insolvent.

18 (2) All or a substantial part of the assets of the
19 franchisee or the business to which the franchise relates are
20 assigned to or for the benefit of any creditor.

21 (3) The franchisee admits to an inability to pay debts as
22 they come due.

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

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

34 d. The franchisee knowingly makes any material
35 misrepresentations or knowingly omits to state any material

1 facts relating to the acquisition or ownership or operation of
2 the franchise business.

3 e. The franchisee repeatedly fails to comply with ~~the same~~
4 ~~material-provision one or more requirements of a the franchise~~
5 ~~agreement, when-the-enforcement-of-the-material-provision-by~~
6 ~~the-franchisor-is-not-arbitrary-or-capricious-when-compared-to~~
7 ~~the-franchisor-in-other-similar-circumstances whether or not~~
8 the franchisee complies after receiving notice of the failure
9 to comply.

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

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

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

19 Sec. 3. Section 523H.8, Code 1995, is amended to read as
20 follows:

21 523H.8 NONRENEWAL OF A FRANCHISE.

22 A franchisor shall not refuse to renew a franchise unless
23 ~~both~~ either of the following ~~apply~~ applies:

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

25 2. 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 and during the period prior to expiration of the franchise,
29 the franchisor permits the franchisee to sell the franchisee's
30 business to a purchaser who meets, at the time of the sale,
31 the franchisor's current requirements for a new franchisee,
32 and one or more of the following apply:

33 2.---Any-of-the-following-circumstances-exist:

34 a.---Good-cause-exists-as-defined-in-section-523H.7,

35 ~~provided-that-the-refusal-of-the-franchisor-to-renew-is-not~~

1 arbitrary-or-capricious-when-compared-to-the-actions-of-the
2 franchisor-in-other-similar-circumstances.

3 a. The refusal to renew is not for the purpose of
4 converting the franchisee's business premises to operation by
5 employees or agents of the franchisor under the direct control
6 and for the direct benefit of the franchisor, provided that
7 this paragraph does not prohibit a franchisor from exercising
8 a right of first refusal to purchase the franchisee's
9 business.

10 b. The franchisor and franchisee agree not to renew the
11 franchise~~7-provided-that-upon-the-expiration-of-the-franchise,~~
12 ~~the-franchisor-agrees-not-to-seek-to-enforce-any-covenant-of~~
13 ~~the-nonrenewed-franchise-not-to-compete-with-the-franchisor-or~~
14 ~~franchisees-of-the-franchisor.~~

15 c. The franchisor completely withdraws from directly or
16 indirectly distributing its products or services in the
17 geographic market served by the franchisee~~7-provided-that-upon~~
18 ~~expiration-of-the-franchise, the-franchisor-agrees-not-to-seek~~
19 ~~to-enforce-any-covenant-of-the-nonrenewed-franchisee-not-to~~
20 ~~compete-with-the-franchisor-or-franchisees-of-the-franchisor.~~

21 d. Upon expiration of the franchise, the franchisor agrees
22 not to seek to enforce any covenant of the nonrenewed
23 franchisee not to compete with the franchisor or franchisees
24 of the franchisor.

25 Sec. 4. Section 523H.13, Code 1995, is amended to read as
26 follows:

27 523H.13 PRIVATE CIVIL ACTION.

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

33 Sec. 5. Sections 523H.6, 523H.10, 523H.11, and 523H.12,
34 Code 1995, are repealed.

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EXPLANATION

1 This bill amends chapter 523H which applies to certain
2 franchises operated in this state.

3 Section 523H.5, relating to the transfer of a franchise, is
4 stricken and rewritten to provide that a franchisor shall not
5 deny a surviving spouse or heir of a deceased or permanently
6 incapacitated franchisee an opportunity to participate in the
7 ownership of the franchise under a valid agreement for a
8 reasonable period of time. The period of time need be no more
9 than one year after the death or permanent incapacity of the
10 franchisee during which time the surviving spouse or heirs of
11 the franchisee shall either meet all of the qualifications
12 which the franchisee was subject to at the time of the death
13 or permanent incapacity of the franchisee, or sell, transfer,
14 or assign the franchise to a person who meets the franchisor's
15 current qualifications for a new franchisee.

16 Currently, section 523H.5 provides that a franchisee may
17 transfer the franchised business and franchise to a
18 transferee, provided that the transferee satisfies the
19 reasonable current qualifications of the franchisor for new
20 franchisees; except as otherwise provided in the section, the
21 franchisor may exercise a right of first refusal after receipt
22 of a proposal from the franchisee to transfer the franchise; a
23 franchisor may require certain conditions including successful
24 training of the transferee and the payment of certain
25 expenses; a franchisor shall not withhold consent to a
26 franchisee making a public offering of the franchise's
27 securities without good cause; a franchisee may transfer the
28 franchisee's interest for the unexpired term of the franchise
29 agreement; a franchisee must give no less than 60 days'
30 written notice of a transfer, and on request of the franchisor
31 provide a written list of all ownership interests in the
32 franchise subsequent to the transfer; a franchisor shall not
33 transfer its interest in the franchise unless reasonable
34 provision is made for the performance of the franchisor's
35 obligations under the franchise agreement by the transferee; a

1 transfer by the franchisee is deemed to be approved 60 days
2 after the franchisee submits the request for consent unless
3 the franchisor withholds consent as evidenced in writing; the
4 franchisor shall not discriminate against a proposed
5 transferee on the basis of race, color, national origin, sex,
6 or physical handicap; a franchisor shall not obligate the
7 franchisee to undertake obligations or relinquish rights as a
8 condition of transfer, and a franchisor may not enforce any
9 agreement against the transferor which prohibits the
10 transferor from engaging in any lawful occupation or
11 enterprise; and defines certain occurrences which are not to
12 be considered a transfer requiring the consent of the
13 franchisor except for a transfer within an existing ownership
14 group.

15 Section 523H.7, which relates to the termination of a
16 franchise agreement, is amended by reducing the time period
17 considered reasonable for curing a default from not less than
18 30 days to a period which need not be more than 30 days for
19 any default other than the default of a valid payment under
20 the franchise agreement which need not be more than 10 days.
21 The section is also amended to provide that the franchisor may
22 terminate a franchisee upon written notice and without an
23 opportunity to cure if all or a substantial part of the assets
24 of the franchisee or the business to which the franchise
25 relates are assigned to or for the benefit of any creditor, or
26 the franchisee admits to an inability to pay debts as they
27 come due; or if a franchisee repeatedly fails to comply with
28 one or more requirements under the franchise agreement,
29 whether or not the franchisee complies after receiving notice
30 of a failure to comply.

31 Section 523H.7 is also amended to provide that a franchise
32 may be terminated if the franchisee is convicted of a felony
33 or other criminal misconduct which is likely to adversely
34 affect the franchise in the relevant market, or if the
35 franchisee operates the business in a manner that endangers

1 the public health and safety. Currently, those provisions
2 provide that termination may occur if the franchisee is
3 convicted of a felony or criminal misconduct which materially
4 and adversely affects the franchise, or operates the business
5 in a manner that imminently endangers the public health and
6 safety.

7 Section 523H.8 is amended to provide that a franchisor
8 shall not refuse to renew a franchise unless good cause
9 exists, or proper notice of the refusal to renew is given to
10 the franchisee and one or more other requirements apply.

11 Section 523H.13 is amended to provide that a person who
12 violates a provision of chapter 523H is subject to appropriate
13 relief. Current law also allows for the recovery of damages
14 caused by the violation, including, but not limited to, costs
15 and reasonable attorneys' and experts' fees.

16 Sections 523H.6, relating to encroachment; 523H.10,
17 relating to duty of good faith; 523H.11, relating to the
18 repurchase of assets; and 523H.12, relating to independent
19 sourcing, are repealed.

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HOUSE FILE 126

H-3074

- 1 Amend House File 126 as follows:
- 2 1. Page 1, line 23, by inserting after the word
- 3 "franchise" the following: ", unless the bona fide
- 4 offer is received from a person who satisfies all of
- 5 the following:
- 6 a. The person was an existing partner, approved by
- 7 the franchisor, in the franchise for which the offer
- 8 is made at the time of the death or permanent
- 9 incapacity of the franchisee.
- 10 b. The person remained a partner in the franchise
- 11 for which the offer is made until the time of the sale
- 12 or transfer of the franchise.
- 13 c. The person meets the current qualifications of
- 14 the franchisor for new franchisees at the time of the
- 15 sale or transfer of the franchise".

By DINKLA of Guthrie
VANDE HOEF of Osceola
METCALF of Polk

(P.429) **WITHDRAWN** 2/15/95
H-3074 FILED FEBRUARY 9, 1995

HOUSE FILE 126

H-3078

- 1 Amend House File 126 as follows:
- 2 1. Page 4, line 33, by striking the figure
- 3 "523H.10,".
- 4 2. By renumbering as necessary.

By KREMER of Buchanan
HEATON of Henry

(P.438) **lost** 2/15/95
H-3078 FILED FEBRUARY 13, 1995

HOUSE FILE 126

H-3079

- 1 Amend House File 126 as follows:
- 2 1. Page 1, by striking lines 1 through 23.
- 3 2. By renumbering as necessary.

By KREMER of Buchanan
HEATON of Henry

H-3079 FILED FEBRUARY 13, 1995

(P.430) **LOST** 2-15-95

HOUSE FILE 126

H-3080

- 1 Amend House File 126 as follows:
- 2 1. Page 3, by striking lines 3 through 9 and
- 3 inserting the following:
- 4 "e. The franchisee repeatedly fails to comply with
- 5 the same material provision of a franchise agreement,
- 6 when the enforcement of the material provision by the
- 7 franchisor is not arbitrary or capricious when
- 8 compared to the franchisor in other similar cir-
- 9 cumstances."

By KREMER of Buchanan
HEATON of Henry

(P.434) **LOST** 2/15/95
H-3080 FILED FEBRUARY 13, 1995

HOUSE FILE 126

H-3081

- 1 Amend House File 126 as follows:
- 2 1. Page 3, by striking line 23 and inserting the
- 3 following: "both of the following apply:".

By KREMER of Buchanan
HEATON of Henry

H-3081 FILED FEBRUARY 13, 1995

(p.435) 2/15/95 lost

HOUSE FILE 126

H-3082

- 1 Amend House File 126 as follows:
- 2 1. Page 2, by striking lines 18 through 21 and
- 3 inserting the following:
- 4 "(2) The franchisee admits to an inability to pay
- 5 debts as".

By KREMER of Buchanan
HEATON of Henry

H-3082 FILED FEBRUARY 13, 1995

(p.432) adapted 2/15/95

HOUSE FILE 126

H-3083

- 1 Amend House File 126 as follows:
- 2 1. Page 1, line 32, by striking the word
- 3 "~~material~~" and inserting the following: "material".

By KREMER of Buchanan
HEATON of Henry

H-3083 FILED FEBRUARY 13, 1995

(p.431) LOST 2-15-95

HOUSE FILE 126

H-3084

- 1 Amend House File 126 as follows:
- 2 1. Page 4, line 33, by striking the figure
- 3 "523H.6,".

By KREMER of Buchanan
HEATON of Henry

H-3084 FILED FEBRUARY 13, 1995

(p.430) out of order 2-15-95

HOUSE FILE 126

H-3085

- 1 Amend House File 126 as follows:
- 2 1. Page 4, by striking lines 25 through 32.
- 3 2. By renumbering as necessary.

By KREMER of Buchanan
HEATON of Henry

H-3085 FILED FEBRUARY 13, 1995

*(p.437) Lost
2/15/95*

HOUSE FILE 126

H-3086

- 1 Amend House File 126 as follows:
- 2 1. Page 1, line 23, by inserting after the word
- 3 "franchise" the following: ", unless the bona fide
- 4 offer is received from a person who is currently a
- 5 partner in the franchise for which the offer is made".

By KREMER of Buchanan
HEATON of Henry

H-3086 FILED FEBRUARY 13, 1995

WITHDRAWN 2-15-95 (P.429)

HOUSE FILE 126

H-3087

- 1 Amend House File 126 as follows:
- 2 1. By striking page 1, line 31, through page 2,
- 3 line 1, and inserting the following: "business
- 4 reason. "Good cause" includes the failure of the
- 5 franchisee to comply with any material lawful
- 6 requirement of the franchise agreement, provided that
- 7 the termination by the franchisor is not arbitrary or
- 8 capricious when compared to the actions of the
- 9 franchisor in other similar circumstances."

By KREMER of Buchanan
HEATON of Henry

H-3087 FILED FEBRUARY 13, 1995

(P.432) LOST 2-15-95

HOUSE FILE 126

H-3088

- 1 Amend House File 126 as follows:
- 2 1. Page 1, by inserting after line 23 the
- 3 following:
- 4 "Sec. _____. Section 523H.6, subsection 1,
- 5 paragraphs a and b, Code 1995, are amended to read as
- 6 follows:
- 7 a. A ~~three-mile~~ two-mile radius, using a straight
- 8 line measurement, from the center of an already
- 9 existing franchise.
- 10 b. A circular radius, using a straight line
- 11 measurement, from an existing franchise business which
- 12 comprises a population of ~~thirty~~ twenty thousand or
- 13 greater."
- 14 2. Page 4, line 33, by striking the figure
- 15 "523H.6,".
- 16 3. By renumbering as necessary.

By KREMER of Buchanan
HEATON of Henry

H-3088 FILED FEBRUARY 13, 1995

WITHDRAWN 2/15/95

(P.430)

HOUSE FILE 126

H-3089

1 Amend House File 126 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:4 "Section 1. Section 523H.2, Code 1995, is amended
5 to read as follows:

6 523H.2 APPLICABILITY.

7 This chapter applies to a ~~new-or-existing~~ franchise
8 ~~that-is-operated-in-the-state-of-Iowa~~ created and
9 operated in this state on or after July 1, 1995. For
10 purposes of this chapter, the franchise is operated in
11 this state only if the premises from which the
12 franchise is operated is physically located in this
13 state. For purposes of this chapter, a franchise
14 including marketing rights in or to this state, is
15 deemed to be operated in this state only if the
16 franchisee's principal business office is physically
17 located in this state. This chapter does not apply to
18 a franchise solely because an agreement relating to
19 the franchise provides that the agreement is subject
20 to or governed by the laws of this state. The
21 provisions of this chapter do not apply to ~~any~~
22 ~~existing-or-future~~ contracts between Iowa franchisors
23 ~~or non-Iowa franchisors~~ and ~~out-of-state~~ franchisees
24 operating franchises physically located outside of
25 this state."

26 2. By renumbering as necessary.

By KREMER of Buchanan
HEATON of Henry

H-3089 FILED FEBRUARY 13, 1995

(p. 438) *Lost*
2/15/95

HOUSE FILE 126

H-3090

1 Amend House File 126 as follows:

2 1. Page 4, line 33, by striking the word and
3 figures "523H.11, and 523H.12," and inserting the
4 following: "and 523H.11,".

By KREMER of Buchanan
HEATON of Henry

H-3090 FILED FEBRUARY 13, 1995

(p. 438) **WITHDRAWN**
2/15/95

HOUSE FILE 126

H-3091

1 Amend House File 126 as follows:

2 1. Page 1, by inserting after line 23 the
3 following:4 "Sec. _____. Section 523H.6, Code 1995, is amended
5 by striking the section and inserting in lieu thereof
6 the following:

7 523H.6 ENCROACHMENT.

8 A franchise agreement shall include a statement as
9 to whether the franchise is to be granted for a
10 specific geographic area. If the agreement includes a
11 statement that the franchise is to be granted for a
12 specific geographic area, the agreement shall also
13 indicate whether the specified geographic area is
14 granted to the franchisee as an exclusive franchise,
15 or, if not exclusive, the agreement shall indicate any
16 limitations upon the franchisor's ability or right to
17 establish additional franchises or franchisor-owned
18 outlets or stores within the specified geographic
19 area."20 2. Page 4, line 33, by striking the figure
21 "523H.6,".

22 3. Renumber as necessary.

By WISE of Lee

MYERS of Johnson

NELSON of Pottawattamie

.KOENIGS of Mitchell

WARNSTADT of Woodbury

BELL of Jasper

H-3091 FILED FEBRUARY 13, 1995

(P.430) 2-15-95 Adopted 2-15-95

HOUSE FILE 126

H-3092

1 Amend House File 126 as follows:

2 1. Page 1, line 23, by inserting after the word
3 "franchise" the following: ", unless the bona fide
4 offer is received from a person who is currently a
5 partner or an employee in the franchise for which the
6 offer is made".By KREMER of Buchanan
HEATON of Henry

H-3092 FILED FEBRUARY 13, 1995

(P.429) Lost 2-15-95

HOUSE FILE 126

H-3093

1 Amend House File 126 as follows:

2 1. Page 4, line 33, by striking the figure
3 "523H.11,".

By WEIGEL of Chickasaw

H-3093 FILED FEBRUARY 14, 1995

2/15/95 (P.438)
HOUSE FILE 126

H-3094

1 Amend House File 126 as follows:

2 1. Page 4, by inserting after line 24 the
3 following:

4 "Sec. _____. Section 523H.12, subsection 1, Code
5 1995, is amended to read as follows:

6 1. Except as provided in subsection 2, a
7 franchisor shall allow a franchisee to obtain
8 equipment, fixtures, supplies, and services used in
9 the establishment and operation of the franchised
10 business from sources of the franchisee's choosing,
11 provided that such goods and services are purchased on
12 a cooperative basis with other franchisees who have
13 franchise agreements with the same franchisor, and the
14 goods and services which are cooperatively purchased
15 meet standards as to their nature and quality
16 promulgated by the franchisor."

17 2. Page 4, line 33, by striking the word and
18 figures "523H.11, and 523H.12," and inserting the
19 following: "and 523H.11,".

20 3. By renumbering as necessary.

By WITT of Black Hawk

HEATON of Henry

KREMER of Buchanan

MERTZ of Kossuth

H-3094 FILED FEBRUARY 14, 1995

(P.437) LOST
2/15/95

HOUSE FILE 126

H-3095

1 Amend House File 126 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. NEW SECTION. 523H.4A ENCROACHMENT --
5 GOOD FAITH REQUIREMENT -- COMPENSATION AND INJUNCTIVE
6 RELIEF.

7 Notwithstanding the terms, provisions, or
8 conditions of an agreement or franchise, if a
9 franchisor seeks to establish a new outlet, company-
10 owned store, or carry-out store, the franchisor shall
11 make a good faith effort not to divert market share of
12 an existing franchisee to the new outlet, company-
13 owned store, or carry-out store. A franchisor who
14 does not make a good faith effort as required by this
15 section, shall be liable for damages proximately
16 caused by the establishment of the new outlet,
17 company-owned store, or carry-out store. The
18 franchisee may bring a cause of action under this
19 section for damages or injunctive relief. A
20 petitioner praying for injunctive relief shall not be
21 required to allege facts necessary to show, or tending
22 to show, a lack of adequate remedy at law, that
23 irreparable damage or loss will result if the action
24 is brought at law, or that unique or special
25 circumstances exist."

26 2. By renumbering as necessary.

By WITT of Black Hawk

MERTZ of Kossuth

KREMER of Buchanan

HEATON of Henry

H-3095 FILED FEBRUARY 14, 1995

(P.439) Lost 2/15/95

HOUSE FILE 126

H-3096

1 Amend House File 126 as follows:

2 1. Page 2, by striking lines 6 through 10 and
3 inserting the following: "period of time to cure the
4 default, which in no event shall be less than thirty
5 days or more than ninety days. However, during that
6 period, the franchise may be terminated if the
7 franchisee fails to make reasonable progress in curing
8 the default."

By WITT of Black Hawk

KREMER of Buchanan

MERTZ of Kossuth

H-3096 FILED FEBRUARY 14, 1995

(P.432) adapted 2-15-95

HOUSE FILE 126

H-3097

1 Amend House File 126 as follows:

2 1. Page 1, line 5, by inserting before the word

3 "A" the following: "1."

4 2. Page 1, by inserting after line 23 the

5 following:

6 "2. A franchisor shall not deny the transfer of an
7 ownership interest in a franchise to an existing
8 partner in the franchise who has previously been
9 approved by the franchisor and who, since being
10 approved, has remained active in the management of the
11 franchise as a partner."

By DINKLA of Guthrie

HARRISON of Scott

VANDE HOEF of Osceola

BRAUNS of Muscatine

RENKEN of Grundy

CORNELIUS of Jackson

H-3097 FILED FEBRUARY 14, 1995

(P.428) 2/15/95 Adopted

HOUSE FILE 126

H-3099

1 Amend House File 126 as follows:

2 1. Page 4, by inserting after line 24 the

3 following:

4 "Sec. ____ . Section 523H.10, Code 1995, is amended
5 to read as follows:

6 523H.10 DUTY OF GOOD FAITH.

7 A franchise imposes on the parties a duty of good
8 faith, as determined under the common law by the Iowa
9 supreme court, in performance and enforcement of the
10 franchise agreement. ~~"Good-faith"-means-honesty-in
11 fact-and-the-observance-of-reasonable-commercial
12 standards-of-fair-dealing-in-the-trade."~~

13 2. Page 4, line 33, by striking the figure
14 "523H.10,".

15 3. By renumbering as necessary.

By HOLVECK of Polk

KREMER of Buchanan

HEATON of Henry

WEIGEL of Chickasaw

H-3099 FILED FEBRUARY 14, 1995

(P.440) ADOPTED
2/15/95

HOUSE FILE 126

H-3100

1 Amend House File 126 as follows:

2 1. Page 1, line 5, by inserting before the word
3 "A" the following: "1."4 2. Page 1, line 19, by inserting after the word
5 "franchise" the following: "but does prohibit a
6 franchisor from exercising a right of first refusal
7 with respect to a transfer of a franchise to a

8 surviving spouse or heir who is seeking to qualify as

A. 9 a franchisee or who becomes qualified as a
10 franchisee".11 3. Page 1, by inserting after line 23 the
12 following:B. 13 "2. A transfer of interest in a franchise within
14 an existing ownership group of a franchise shall not
15 be refused by a franchisor and shall not be considered
16 a transfer subject to a right of first refusal,
17 provided that more than fifty percent of a franchise
18 is held by persons who meet the franchisor's
19 reasonable current qualifications for franchisees."

By DODERER of Johnson

KREMER of Buchanan

H-3100 FILED FEBRUARY 14, 1995

(P. 429) A. out of order 2-15-95
B. lost 2-15-95 (P. 430)

HOUSE FILE 126

H-3101

1 Amend the amendment, H-3074, to House File 126 as
2 follows:3 1. Page 1, line 6, by inserting after the word
4 "partner" the following: "or shareholder".5 2. Page 1, line 10, by inserting after the word
6 "partner" the following: "or shareholder".

By DODERER of Johnson

KREMER of Buchanan

H-3101 FILED FEBRUARY 15, 1995

OUT OF ORDER

HOUSE FILE 126

H-3102

1 Amend the amendment, H-3097, to House File 126 as
2 follows:

3 1. Page 1, by inserting after line 3 the
4 following:

5 "_____. Page 1, line 19, by inserting after the
6 word "franchise" the following: "but does prohibit a
7 franchisor from exercising a right of first refusal
8 with respect to a transfer of a franchise to a
A 9 surviving spouse or heir who is seeking to qualify as
10 a franchisee or who becomes qualified as a
11 franchisee".

12 2. Page 1, line 8, by inserting after the word
13 "partner" the following: "or shareholder".

B 14 3. Page 1, line 11, by inserting after the word
15 "partner" the following: "or shareholder".

16 4. Renumber as necessary.

By DODERER of Johnson
KREMER of Buchanan

H-3102 FILED FEBRUARY 15, 1995

DIV. A - ADOPTED DIV. B ~~ADOPTED~~ *lost (Correction)**(P. 428)*

HOUSE FILE 126

H-3103

1 Amend the amendment, H-3082, to House File 126, as
2 follows:

3 1. Page 1, by striking lines 2 through 5 and
4 inserting the following:

5 "_____. Page 2, line 20, by inserting after the
6 word "creditor" the following: "which is subject to
7 chapter 681. An assignment for the benefit of any
8 creditor pursuant to this subparagraph does not
9 include the granting of a security interest in the
10 normal course of business".

By DINKLA of Guthrie
HEATON of Henry

H-3103 FILED FEBRUARY 15, 1995

ADOPTED

HOUSE FILE 126

H-3104

1 Amend the amendment, H-3087, to House File 126 as
2 follows:

3 1. Page 1, by striking lines 6 through 9 and
4 inserting the following: "requirement of the
5 franchise agreement, ~~provided that the termination by~~
6 ~~the franchisor is not arbitrary or capricious when~~
7 ~~compared to the actions of the franchisor in other~~
8 ~~similar circumstances.~~"

By KREMER of Buchanan

H-3104 FILED FEBRUARY 15, 1995

ADOPTED

HOUSE FILE 126

H-3105

- 1 Amend the amendment, H-3080, to House File 126 as
- 2 follows:
- 3 1. Page 1, by striking lines 5 through 9 and
- 4 inserting the following: "the same material provision
- 5 of a franchise agreement, ~~when the enforcement of the~~
- 6 ~~material provision by the franchisor is not arbitrary~~
- 7 ~~or capricious when compared to the franchisor in other~~
- 8 ~~similar circumstances.~~"

By KREMER of Buchanan

H-3105 FILED FEBRUARY 15, 1995

ADOPTED

HOUSE FILE 126

H-3107

- 1 Amend the amendment, H-3100, to House File 126, as
- 2 follows:
- 3 1. Page 1, by striking lines 4 through 10 and
- 4 inserting the following:
- 5 "____. Page 1, line 19, by inserting after the
- 6 word "franchise." the following: "A right of first
- 7 refusal contained in a franchise agreement shall not
- 8 be exercised by the franchisor in the event of the
- 9 devise of the franchise to, or receipt of the
- 10 franchise as a distributee from the estate of an
- 11 intestate franchisee by, or the purchase of the
- 12 franchise by, the qualifying surviving spouse or the
- 13 qualifying heirs of the franchisee."
- 14 2. By renumbering as necessary.

By DINKLA of Guthrie

H-3107 FILED FEBRUARY 15, 1995

OUT OF ORDER

HOUSE FILE 126

H-3108

- 1 Amend the amendment, H-3095, to House File 126 as
- 2 follows:
- 3 1. Page 1, by striking lines 19 through 25 and
- 4 inserting the following: "section for damages or
- 5 injunctive relief."

By WITT of Black Hawk
HOLVECK of Polk
KREMER of Buchanan

H-3108 FILED FEBRUARY 15, 1995

ADOPTED

(P.439)

11/18/95

5-4/16/95 Amend & ~~7/16~~
S. 4/13/95 Placed on unfinished Business
S. 4/26/95 motion to R/c by ~~Yumetal~~
HOUSE FILE 126 ~~Deleheny~~

BY COMMITTEE ON COMMERCE AND
REGULATION

S. 4/26/95 motion to R/c Withdraw

(SUCCESSOR TO HSB 7)

(As Amended and Passed by the House February 15, 1995)

Passed House, (p. 440) Date 2/15/95 Passed Senate, (P. 1449) Date 4/26/95
Vote: Ayes 68 Nays 26 Vote: Ayes 44 Nays 5

Approved April 29, 1995
Passed 4-28-95
vote 86-9

A BILL FOR

1 An Act relating to certain franchise agreements by amending
2 provisions relating to transfer, termination, and nonrenewal
3 of franchise agreements, and to a civil cause of action for
4 appropriate relief, and repealing certain franchise
5 provisions.

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

7

8

9

House Amendments _____

10

Deleted Language *

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TLSB 1654HV 76

mj/jj/8

1 Section 1. Section 523H.5, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 523H.5 TRANSFER OF FRANCHISE.

5 1. A franchisor shall not deny the surviving spouse or
6 heirs of a deceased or permanently incapacitated franchisee
7 the opportunity to participate in the ownership of the
8 franchise under a valid franchise agreement for a reasonable
9 period of time, which in no case need be more than one year
10 after the death or permanent incapacity of the franchisee.
11 During that time, the surviving spouse or heirs of the
12 franchisee shall either meet all of the qualifications which
13 the franchisee was subject to at the time of the death or
14 permanent incapacity of the franchisee, or sell, transfer, or
15 assign the franchise to a person who meets the franchisor's
16 current qualifications for a new franchisee. The rights
17 granted pursuant to this subsection shall be granted subject
18 to the surviving spouse or heirs of the franchisee maintaining
19 all standards and obligations of the franchise but does
20 prohibit a franchisor from exercising a right of first refusal
21 with respect to a transfer of a franchise to a surviving
22 spouse or heir who is seeking to qualify as a franchisee or
23 who becomes qualified as a franchisee. This subsection does
24 not prohibit a franchisor from exercising the right of first
25 refusal contained in a franchise agreement after receipt of a
26 bona fide offer to purchase the franchise by a proposed
27 purchaser of the franchise.

28 2. A franchisor shall not deny the transfer of an
29 ownership interest in a franchise to an existing partner in
30 the franchise who has previously been approved by the
31 franchisor and who, since being approved, has remained active
32 in the management of the franchise as a partner.

33 Sec. 2. Section 523H.6, Code 1995, is amended by striking
34 the section and inserting in lieu thereof the following:

35 523H.6 ENCROACHMENT.

1 A franchise agreement shall include a statement as to
2 whether the franchise is to be granted for a specific
3 geographic area. If the agreement includes a statement that
4 the franchise is to be granted for a specific geographic area,
5 the agreement shall also indicate whether the specified
6 geographic area is granted to the franchisee as an exclusive
7 franchise, or, if not exclusive, the agreement shall indicate
8 any limitations upon the franchisor's ability or right to
9 establish additional franchises or franchisor-owned outlets or
10 stores within the specified geographic area.

11 Sec. 3. Section 523H.7, Code 1995, is amended to read as
12 follows:

13 523H.7 TERMINATION.

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

24 2. Prior to termination of a franchise for good cause, a
25 franchisor shall provide a franchisee with written notice
26 stating the basis for the proposed termination. After service
27 of written notice, the franchisee shall have a reasonable
28 period of time to cure the default, which in no event shall be
29 less than thirty days or more than ninety days. However,
30 during that period, the franchise may be terminated if the
31 franchisee fails to make reasonable progress in curing the
32 default.

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

1 a. (1) The franchisee or the business to which the
2 franchise relates files for protection under applicable
3 federal bankruptcy laws, is declared bankrupt, or is
4 judicially determined to be insolvent.

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

12 (3) The franchisee admits to an inability to pay debts as
13 they come due.

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

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

25 d. The franchisee knowingly makes any material
26 misrepresentations or knowingly omits to state any material
27 facts relating to the acquisition or ownership or operation of
28 the franchise business.

29 e. The franchisee repeatedly fails to comply with the same
30 material-provision one or more requirements of a the franchise
31 agreement, when-the-enforcement-of-the-material-provision-by
32 the-franchisor-is-not-arbitrary-or-capricious-when-compared-to
33 the-franchisor-in-other-similar-circumstances whether or not
34 the franchisee complies after receiving notice of the failure
35 to comply.

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

4 g. The franchisee is convicted of a felony or any other
5 criminal misconduct which ~~materially-and~~ is likely to
6 adversely ~~affects~~ affect the operation, maintenance, or
7 goodwill of the franchise in the relevant market.

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

10 Sec. 4. Section 523H.8, Code 1995, is amended to read as
11 follows:

12 523H.8 NONRENEWAL OF A FRANCHISE.

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

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

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 and during the period prior to expiration of the franchise,
20 the franchisor permits the franchisee to sell the franchisee's
21 business to a purchaser who meets, at the time of the sale,
22 the franchisor's current requirements for a new franchisee,
23 and one or more of the following apply:

24 ~~2.--Any-of-the-following-circumstances-exist:~~

25 ~~a.--Good-cause-exists-as-defined-in-section-523H.7,~~

26 ~~provided-that-the-refusal-of-the-franchisor-to-renew-is-not~~
27 ~~arbitrary-or-capricious-when-compared-to-the-actions-of-the~~
28 ~~franchisor-in-other-similar-circumstances.~~

29 a. The refusal to renew is not for the purpose of
30 converting the franchisee's business premises to operation by
31 employees or agents of the franchisor under the direct control
32 and for the direct benefit of the franchisor, provided that
33 this paragraph does not prohibit a franchisor from exercising
34 a right of first refusal to purchase the franchisee's
35 business.

1 b. The franchisor and franchisee agree not to renew the
2 franchise~~7-provided-that-upon-the-expiration-of-the-franchise7~~
3 ~~the-franchisor-agrees-not-to-seek-to-enforce-any-covenant-of~~
4 ~~the-nonrenewed-franchise-not-to-compete-with-the-franchisor-or~~
5 ~~franchisees-of-the-franchisor.~~

6 c. The franchisor completely withdraws from directly or
7 indirectly distributing its products or services in the
8 geographic market served by the franchisee~~7-provided-that-upon~~
9 ~~expiration-of-the-franchise7-the-franchisor-agrees-not-to-seek~~
10 ~~to-enforce-any-covenant-of-the-nonrenewed-franchisee-not-to~~
11 ~~compete-with-the-franchisor-or-franchisees-of-the-franchisor.~~

12 d. Upon expiration of the franchise, the franchisor agrees
13 not to seek to enforce any covenant of the nonrenewed
14 franchisee not to compete with the franchisor or franchisees
15 of the franchisor.

16 Sec. 5. Section 523H.10, Code 1995, is amended to read as
17 follows:

18 523H.10 DUTY OF GOOD FAITH.

19 A franchise imposes on the parties a duty of good faith, as
20 determined under the common law by the Iowa supreme court, in
21 performance and enforcement of the franchise agreement. "Good
22 faith"-means-honesty-in-fact-and-the-observance-of-reasonable
23 commercial-standards-of-fair-dealing-in-the-trade.

24 Sec. 6. Section 523H.13, Code 1995, is amended to read as
25 follows:

26 523H.13 PRIVATE CIVIL ACTION.

27 A person who violates a provision of this chapter ~~or-order~~
28 ~~issued-under-this-chapter~~ is liable-for-damages-caused-by-the
29 ~~violation7-including7-but-not-limited-to7-costs-and-reasonable~~
30 ~~attorneys1-and-experts1-fees7-and~~ subject to other appropriate
31 relief including injunctive and other equitable relief.

*32 Sec. 7. Sections 523H.11, and 523H.12, Code 1995, are
33 repealed.

34

35

HOUSE FILE 126

S-3373

1 Amend House File 126, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking page 1, line 35, through page 2,
4 line 10, and inserting the following:

5 "523H.6 FRANCHISE MARKET AREA.

6 1. This section applies to a franchise which is
7 not a food service franchise or food service
8 establishment franchise subject to section 523H.6A.

9 2. An action by a franchisor or its licensee which
10 diverts trade away from an existing franchisee and
11 which materially injures the franchisee's business is
12 a violation of the duty of good faith and results in a
13 cause of action accruing to the franchisee for
14 damages, injunctive relief, or other appropriate
15 remedy as determined by the court. In any action
16 brought pursuant to this section, proof of a
17 correlation between the action of the franchisor or
18 its licensee and the diversion of trade establishes a
19 prima facie case of a violation of this section.

20 3. This section shall apply notwithstanding the
21 terms, provisions, or conditions of an agreement or
22 franchise.

23 Sec. ____ . NEW SECTION. 523H.6A FOOD SERVICE
24 FRANCHISE OR FOOD SERVICE ESTABLISHMENT FRANCHISE
25 MARKET AREA.

26 1. a. For purposes of a food service franchise or
27 food service establishment franchise, a rebuttable
28 presumption arises that a breach of the duty of good
29 faith has occurred as a result of the diversion of
30 trade if a franchisor establishes a new company-owned
31 outlet or store or a new franchise outlet or store
32 within a two-mile radius, using a straight line
33 measurement, from the center of an already existing
34 franchise, or within an area with a radius, using a
35 straight line measurement, from the center of an
36 already existing franchise, which contains a
37 population of twenty thousand or greater.

38 b. With respect to locations within the relevant
39 consumer market area of an existing franchise
40 operation which are located outside of the geographic
41 area defined in paragraph "a", a rebuttable
42 presumption arises that a breach of the duty of good
43 faith has not occurred as a result of the diversion of
44 trade.

45 2. A franchisor shall establish and make available
46 a written policy outlining reasonable objective
47 criteria to be used by the franchisor to determine
48 whether an existing franchisee is eligible to
49 participate in the establishment of an additional
50 outlet or location which is proposed to be located

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1 within the relevant consumer market area of the
2 existing franchise, but which is outside of the
3 geographic area as defined in subsection 1, paragraph
4 "a", or which is proposed to be located within the
5 same community in which an existing franchise is
6 located and within the geographic area as defined in
7 subsection 1, paragraph "a". The franchisor shall
8 provide a copy of this policy to all existing
9 franchisees or potential franchisees upon request. A
10 franchisor, upon the request of a franchisee, shall
11 notify the franchisee as to whether the franchisee may
12 acquire additional outlets or locations of the
13 franchisor as identified in this subsection. A
14 franchisor shall not adopt a policy that unreasonably
15 prohibits an existing franchisee from acquiring such
16 outlets or locations.

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

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

41 2. By renumbering as necessary.

By COMMITTEE ON COMMERCE

PATRICK J. DELUHERY, Chairperson

S-3373 FILED APRIL 6, 1995

*OUT of
ORDER
4/26/95
(P.1449)*

HOUSE FILE 126

S-3575

1 Amend House File 126, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "Section 1. Section 523H.2, Code 1995, is amended
6 to read as follows:

7 523H.2 APPLICABILITY.

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

25 Sec. 2. Section 523H.5, Code 1995, is amended to
26 read as follows:

27 523H.5 TRANSFER OF FRANCHISE.

28 1. A franchisee may transfer the franchised
29 business and franchise to a transferee, provided that
30 the transferee satisfies the reasonable current
31 qualifications of the franchisor for new franchisees.
32 For the purposes of this section, a reasonable current
33 qualification for a new franchisee is a qualification
34 based upon a legitimate business reason. If the
35 proposed transferee does not meet the reasonable
36 current qualifications of the franchisor, the
37 franchisor may refuse to permit the transfer, provided
38 that the refusal of the franchisor to consent to the
39 transfer is not arbitrary or capricious ~~when-compared~~
40 ~~to-the-actions-of-the-franchisor-in-other-similar~~
41 ~~circumstances.~~

42 2. Except as otherwise provided in this section, a
43 franchisor may exercise a right of first refusal
44 contained in a franchise agreement after receipt of a
45 proposal from the franchisee to transfer the
46 franchise.

47 3. A franchisor may require as a condition of a
48 transfer any of the following:

49 a. That the transferee successfully complete a
50 reasonable training program.

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

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

9 d. That the financial terms of the transfer comply
10 at the time of the transfer with the franchisor's
11 current financial requirements for franchisees.

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

18 5. 4. A franchisee may transfer the franchisee's
19 interest in the franchise, for the unexpired term of
20 the franchise agreement, and a franchisor shall not
21 require the franchisee or the transferee to enter into
22 a new or different franchise agreement as a condition
23 of the transfer.

24 6. 5. A franchisee shall give the franchisor no
25 less than sixty days' written notice of a transfer
26 which is subject to the provisions of this section,
27 and on request from the franchisor shall provide in
28 writing the ownership interests of all persons holding
29 or claiming an equitable or beneficial interest in the
30 franchise subsequent to the transfer or the
31 franchisee, as appropriate. A franchisee shall not
32 circumvent the intended effect of a contractual
33 provision governing the transfer of the franchise or
34 an interest in the franchise by means of a management
35 agreement, lease, profit-sharing agreement,
36 conditional assignment, or other similar device.

37 7. 6. A franchisor shall not transfer its interest
38 in a franchise unless the franchisor makes reasonable
39 provision for the performance of the franchisor's
40 obligations under the franchise agreement by the
41 transferee. ~~A franchisor shall provide the franchisee~~
42 ~~notice of a proposed transfer of the franchisor's~~
43 ~~interest in the franchise at the time the disclosure~~
44 ~~is required of the franchisor under applicable~~
45 ~~securities laws, if interests in the franchisor are~~
46 ~~publicly traded, or if not publicly traded, at the~~
47 ~~time such disclosure would be required if the~~
48 ~~interests in the franchisor were publicly traded. For~~
49 purposes of this subsection, "reasonable provision"
50 means that upon the transfer, the entity assuming the

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1 franchisor's obligations has the financial means to
2 perform the franchisor's obligations in the ordinary
3 course of business, but does not mean that the
4 franchisor transferring the franchise is required to
5 guarantee obligations of the underlying franchise
6 agreement.

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

17 9- 8. A franchisor shall not discriminate against
18 a proposed transferee of a franchise on the basis of
19 race, color, national origin, religion, sex, or
20 physical-handicap disability.

21 10- 9. A franchisor, as a condition to a transfer
22 of a franchise, shall not obligate a franchisee to
23 undertake obligations or relinquish any rights
24 unrelated to the franchise proposed to be transferred,
25 or to enter into a release of claims broader than a
26 similar release of claims by the franchisor against
27 the franchisee which is entered into by the
28 franchisor.

29 11- 10. A franchisor, after a transfer of a
30 franchise, shall not seek to enforce any covenant of
31 the transferred franchise against the transferor which
32 prohibits the transferor from engaging in any lawful
33 occupation or enterprise. However, this subsection
34 does not prohibit the franchisor from enforcing a
35 contractual covenant against the transferor not to
36 exploit the franchisor's trade secrets or intellectual
37 property rights, unless otherwise agreed to by the
38 parties.

39 12- 11. For purposes of this section, "transfer"
40 means any change in ownership or control of a
41 franchise, franchised business, or a franchisee.

42 13- 12. The following occurrences shall not be
43 considered transfers requiring the consent of the
44 franchisor under a franchise agreement, and shall not
45 result in the imposition of any penalties or make
46 applicable any right of first refusal by the
47 franchisor:

48 a. The succession of ownership of a franchise upon
49 the death or disability of a franchisee, or of an
50 owner of a franchise, to the franchisee's surviving

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1 spouse, child-or-children heir, or a partner active in
2 the management of the franchisee unless the successor
3 fails to meet within one year the then current
4 reasonable qualifications of the franchisor for
5 franchisees and the enforcement of the reasonable
6 current qualifications is not arbitrary or capricious
7 ~~when-compared-to-actions-of-the-franchisor-in-other~~
8 ~~similar-circumstances.~~

9 ~~b.--The-succession-of-a-spouse,-child,-partner,-or~~
10 ~~other-owner-as-operating-manager-upon-the-death-or~~
11 ~~disability-of-the-operating-manager,-unless-the~~
12 ~~successor-fails-to-meet-the-then-current-reasonable~~
13 ~~qualifications-of-the-franchisor-for-an-operating~~
14 ~~manager,-and-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 c. b. Incorporation of a proprietorship
19 franchisee, provided that such incorporation does not
20 prohibit a franchisor from requiring a personal
21 guaranty by the franchisee of obligations related to
22 the franchise.

23 d. c. A transfer within an existing ownership
24 group of a franchise provided that more than fifty
25 percent of the franchise is held by persons who meet
26 the franchisor's reasonable current qualifications for
27 franchisees. If less than fifty percent of the
28 franchise would be owned by persons who meet the
29 franchisor's reasonable current qualifications, the
30 franchisor may refuse to authorize the transfer,
31 provided that enforcement of the reasonable current
32 qualifications is not arbitrary or capricious when
33 ~~compared-to-actions-of-the-franchisor-in-other-similar~~
34 ~~circumstances.~~

35 e. d. A transfer of less than a controlling
36 interest in the franchise to the franchisee's spouse
37 or child or children, provided that more than fifty
38 percent of the entire franchise is held by those who
39 meet the franchisor's reasonable current
40 qualifications. If less than fifty percent of the
41 franchise would be owned by persons who meet the
42 franchisor's reasonable current qualifications, the
43 franchisor may refuse to authorize the transfer,
44 provided that enforcement of the reasonable current
45 qualifications is not arbitrary or capricious when
46 ~~compared-to-actions-of-the-franchisor-in-other-similar~~
47 ~~circumstances.~~

48 f. e. A transfer of less than a controlling
49 interest in the franchise of an employee stock
50 ownership plan, or employee incentive plan, provided

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1 that more than fifty percent of the entire franchise
2 is held by those who meet the franchisor's reasonable
3 current qualifications for franchisees. If less than
4 fifty percent would be owned by persons who meet the
5 franchisor's reasonable current qualifications, the
6 franchisor may refuse to authorize the transfer,
7 provided that enforcement of the reasonable current
8 qualifications is not arbitrary or capricious when
9 compared to actions of the franchisor in other similar
10 circumstances.

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

23 14- 13. A franchisor shall not interfere or
24 attempt to interfere with any disposition of an
25 interest in a franchise or franchised business as
26 described in subsection 13 12, paragraphs "a" through
27 "g" "f".

28 Sec. 3. Section 523H.6, Code 1995, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 523H.6 ENCROACHMENT.

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

43 a. The franchisor has first offered the new outlet
44 or location to the existing franchisee on the same
45 basic terms and conditions available to the other
46 potential franchisee, or, if the new outlet or
47 location is to be owned by the franchisor, on the
48 terms and conditions that would ordinarily be offered
49 to a franchisee for a similarly situated outlet or
50 location.

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

9 c. The existing franchisee, at the time the
10 franchisor develops, or grants to a franchisee the
11 right to develop, a new outlet or location is not in
12 compliance with the franchisor's then current
13 reasonable criteria for eligibility for a new
14 franchise. A franchisee determined to be ineligible
15 pursuant to this paragraph shall be afforded the
16 opportunity to seek compensation pursuant to the
17 formal procedure established under paragraph "d",
18 subparagraph (2). Such procedure shall be the
19 franchisee's exclusive remedy.

20 d. The franchisor has established both of the
21 following:

22 (1) A formal procedure for hearing and acting upon
23 claims by an existing franchisee with regard to a
24 decision by the franchisor to develop, or grant to a
25 franchisee the right to develop, a new outlet or
26 location, prior to the opening of the new outlet or
27 location.

28 (2) A reasonable formal procedure for awarding
29 compensation or other form of consideration to a
30 franchisee to offset all or a portion of the
31 franchisee's lost profits caused by the establishment
32 of the new outlet or location. The procedure shall
33 involve, at the option of the franchisee, one of the
34 following:

35 (a) A panel, comprised of an equal number of
36 members selected by the franchisee and the franchisor,
37 and one additional member to be selected unanimously
38 by the members selected by the franchisee and the
39 franchisor.

40 (b) A neutral third-party mediator or an
41 arbitrator with the authority to make a decision or
42 award in accordance with the formal procedure. The
43 procedure shall be deemed reasonable if approved by a
44 majority of the franchisor's franchisees in the United
45 States, either individually or by an elected
46 representative body.

47 (c) Arbitration of any dispute before neutral
48 arbitrators pursuant to the rules of the American
49 arbitration association. The award of an arbitrator
50 pursuant to this subparagraph subdivision is subject

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1 to judicial review pursuant to chapter 679A.

2 2. A franchisor shall establish and make available
3 to its franchisees a written policy setting forth its
4 reasonable criteria to be used by the franchisor to
5 determine whether an existing franchisee is eligible
6 for a franchise for an additional outlet or location.

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

19 (1) Five percent.

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

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

27 4. Any cause of action brought under this section
28 must be filed within eighteen months of the opening of
29 the new outlet or location or within three months
30 after the completion of the procedure under subsection
31 1, paragraph "d", subparagraph (2), whichever is
32 later.

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

40 Sec. 4. Section 523H.7, Code 1995, is amended to
41 read as follows:

42 523H.7 TERMINATION.

43 1. Except as otherwise provided by this chapter, a
44 franchisor shall not terminate a franchise prior to
45 the expiration of its term except for good cause. For
46 purposes of this section, "good cause" is cause based
47 upon a legitimate business reason. "Good cause"
48 includes the failure of the franchisee to comply with
49 any material lawful requirement of the franchise
50 agreement, provided that the termination by the

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1 franchisor is not arbitrary or capricious when
2 compared to the actions of the franchisor in other
3 similar circumstances. The burden of proof of showing
4 that action of the franchisor is arbitrary or
5 capricious shall rest with the franchisee.

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

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

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

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

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

39 c- d. The franchisor and franchisee agree in
40 writing to terminate the franchise.

41 d- e. The franchisee knowingly makes any material
42 misrepresentations or knowingly omits to state any
43 material facts relating to the acquisition or
44 ownership or operation of the franchise business.

45 e- f. ~~The franchisee repeatedly fails to comply~~
46 ~~with the same material provision of a franchise~~
47 ~~agreement, when the enforcement of the material~~
48 ~~provision by the franchisor is not arbitrary or~~
49 ~~capricious when compared to the franchisor in other~~
50 ~~similar circumstances.~~ After three material breaches

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1 of a franchise agreement occurring within a twelve-
2 month period, for which the franchisee has been given
3 notice and an opportunity to cure, the franchisor may
4 terminate upon any subsequent material breach within
5 the twelve-month period without providing an
6 opportunity to cure, provided that the action is not
7 arbitrary and capricious.

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

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

15 h- i. The franchisee operates the franchised
16 business in a manner that imminently endangers the
17 public health and safety.

18 Sec. 5. Section 523H.8, Code 1995, is amended to
19 read as follows:

20 523H.8 NONRENEWAL OF A FRANCHISE.

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

23 1- a. The franchisee has been notified of the
24 franchisor's intent not to renew at least six months
25 prior to the expiration date or any extension of the
26 franchise agreement.

27 2- b. Any of the following circumstances exist:

28 a- (1) Good cause exists as-defined-in-section
29 523H-7, provided that the refusal of the franchisor to
30 renew is not arbitrary or capricious when-compared-to
31 the-actions-of-the-franchisor-in-other-similar
32 circumstances. For purposes of this section, "good
33 cause" means cause based on a legitimate business
34 reason.

35 b- (2) 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- (3) 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 2. As a condition of renewal of the franchise, a
50 franchise agreement may require that the franchisee

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1 meet the then current requirements for franchises and
2 that the franchisee execute a new agreement
3 incorporating the then current terms and fees for new
4 franchises.

5 Sec. 6. Section 523H.11, Code 1995, is amended to
6 read as follows:

7 523H.11 REPURCHASE OF ASSETS.

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

By PATRICK J. DELUHERY
TONY BISIGNANO
MICHAEL E. GRONSTAL

JOHN W. JENSEN
DONALD B. REDFERN

(P. 1449)
S-3575 FILED APRIL 26, 1995
ADOPTED

HOUSE FILE 126

S-3580

1 Amend the amendment, S-3575, to House File 126, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 9, by striking lines 30 through 32 and
5 inserting the following: "renew is not arbitrary or
6 capricious when compared to the actions of the
7 franchisor in other similar circumstances. For
8 purposes of this section, "good"".

By RODNEY HALVORSON
EUGENE S. FRAISE
ANDY MCKEAN

(P. 1448)
S-3580 FILED APRIL 26, 1995
LOST

HOUSE FILE 126

S-3582

1 Amend the amendment, S-3575, to House File 126, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 7, by striking lines 11 through 13 and
5 inserting the following: "For purposes of this".

By RODNEY HALVORSON
EUGENE S. FRAISE

(P. 1448)
S-3582 FILED APRIL 26, 1995
LOST

H-4140

1 Amend House File 126, as amended, passed, and
2 reprinted by the House, as follows:

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

5 "Section 1. Section 523H.2, Code 1995, is amended
6 to read as follows:

7 523H.2 APPLICABILITY.

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

25 Sec. 2. Section 523H.5, Code 1995, is amended to
26 read as follows:

27 523H.5 TRANSFER OF FRANCHISE.

28 1. A franchisee may transfer the franchised
29 business and franchise to a transferee, provided that
30 the transferee satisfies the reasonable current
31 qualifications of the franchisor for new franchisees.
32 For the purposes of this section, a reasonable current
33 qualification for a new franchisee is a qualification
34 based upon a legitimate business reason. If the
35 proposed transferee does not meet the reasonable
36 current qualifications of the franchisor, the
37 franchisor may refuse to permit the transfer, provided
38 that the refusal of the franchisor to consent to the
39 transfer is not arbitrary or capricious ~~when-compared~~
40 ~~to-the-actions-of-the-franchisor-in-other-similar~~
41 ~~circumstances.~~

42 2. Except as otherwise provided in this section, a
43 franchisor may exercise a right of first refusal
44 contained in a franchise agreement after receipt of a
45 proposal from the franchisee to transfer the
46 franchise.

47 3. A franchisor may require as a condition of a
48 transfer any of the following:

49 a. That the transferee successfully complete a
50 reasonable training program.

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

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

9 d. That the financial terms of the transfer comply
10 at the time of the transfer with the franchisor's
11 current financial requirements for franchisees.

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

18 5. 4. A franchisee may transfer the franchisee's
19 interest in the franchise, for the unexpired term of
20 the franchise agreement, and a franchisor shall not
21 require the franchisee or the transferee to enter into
22 a new or different franchise agreement as a condition
23 of the transfer.

24 6. 5. A franchisee shall give the franchisor no
25 less than sixty days' written notice of a transfer
26 which is subject to the provisions of this section,
27 and on request from the franchisor shall provide in
28 writing the ownership interests of all persons holding
29 or claiming an equitable or beneficial interest in the
30 franchise subsequent to the transfer or the
31 franchisee, as appropriate. A franchisee shall not
32 circumvent the intended effect of a contractual
33 provision governing the transfer of the franchise or
34 an interest in the franchise by means of a management
35 agreement, lease, profit-sharing agreement,
36 conditional assignment, or other similar device.

37 7. 6. A franchisor shall not transfer its interest
38 in a franchise unless the franchisor makes reasonable
39 provision for the performance of the franchisor's
40 obligations under the franchise agreement by the
41 transferee. ~~A franchisor shall provide the franchisee~~
42 ~~notice of a proposed transfer of the franchisor's~~
43 ~~interest in the franchise at the time the disclosure~~
44 ~~is required of the franchisor under applicable~~
45 ~~securities laws, if interests in the franchisor are~~
46 ~~publicly traded, or if not publicly traded, at the~~
47 ~~time such disclosure would be required if the~~
48 ~~interests in the franchisor were publicly traded. For~~
49 purposes of this subsection, "reasonable provision"
50 means that upon the transfer, the entity assuming the

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1 franchisor's obligations has the financial means to
2 perform the franchisor's obligations in the ordinary
3 course of business, but does not mean that the
4 franchisor transferring the franchise is required to
5 guarantee obligations of the underlying franchise
6 agreement.

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

17 ~~9-~~ 8. A franchisor shall not discriminate against
18 a proposed transferee of a franchise on the basis of
19 race, color, national origin, religion, sex, or
20 physical-handicap disability.

21 ~~10-~~ 9. A franchisor, as a condition to a transfer
22 of a franchise, shall not obligate a franchisee to
23 undertake obligations or relinquish any rights
24 unrelated to the franchise proposed to be transferred,
25 or to enter into a release of claims broader than a
26 similar release of claims by the franchisor against
27 the franchisee which is entered into by the
28 franchisor.

29 ~~11-~~ 10. A franchisor, after a transfer of a
30 franchise, shall not seek to enforce any covenant of
31 the transferred franchise against the transferor which
32 prohibits the transferor from engaging in any lawful
33 occupation or enterprise. However, this subsection
34 does not prohibit the franchisor from enforcing a
35 contractual covenant against the transferor not to
36 exploit the franchisor's trade secrets or intellectual
37 property rights, unless otherwise agreed to by the
38 parties.

39 ~~12-~~ 11. For purposes of this section, "transfer"
40 means any change in ownership or control of a
41 franchise, franchised business, or a franchisee.

42 ~~13-~~ 12. The following occurrences shall not be
43 considered transfers requiring the consent of the
44 franchisor under a franchise agreement, and shall not
45 result in the imposition of any penalties or make
46 applicable any right of first refusal by the
47 franchisor:

48 a. The succession of ownership of a franchise upon
49 the death or disability of a franchisee, or of an
50 owner of a franchise, to the franchisee's surviving

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1 spouse, child-or-children heir, or a partner active in
2 the management of the franchisee unless the successor
3 fails to meet within one year the then current
4 reasonable qualifications of the franchisor for
5 franchisees and the enforcement of the reasonable
6 current qualifications is not arbitrary or capricious
7 ~~when-compared-to-actions-of-the-franchisor-in-other~~
8 ~~similar-circumstances.~~

9 ~~b.--The-succesion-of-a-spouse,-child,-partner,-or~~
10 ~~other-owner-as-operating-manager-upon-the-death-or~~
11 ~~disability-of-the-operating-manager,-unless-the~~
12 ~~successor-fails-to-meet-the-then-current-reasonable~~
13 ~~qualifications-of-the-franchisor-for-an-operating~~
14 ~~manager,-and-enforcement-of-the-reasonable-current~~
15 ~~qualifications-is-not-arbitrary-or-capricious-when~~
16 ~~compared-to-actions-of-the-franchisor-in-ether-similar~~
17 ~~circumstances.~~

18 e- b. Incorporation of a proprietorship
19 franchisee, provided that such incorporation does not
20 prohibit a franchisor from requiring a personal
21 guaranty by the franchisee of obligations related to
22 the franchise.

23 d- c. A transfer within an existing ownership
24 group of a franchise provided that more than fifty
25 percent of the franchise is held by persons who meet
26 the franchisor's reasonable current qualifications for
27 franchisees. If less than fifty percent of the
28 franchise would be owned by persons who meet the
29 franchisor's reasonable current qualifications, the
30 franchisor may refuse to authorize the transfer,
31 provided that enforcement of the reasonable current
32 qualifications is not arbitrary or capricious ~~when~~
33 ~~compared-to-actions-of-the-franchisor-in-other-similar~~
34 ~~circumstances.~~

35 e- d. A transfer of less than a controlling
36 interest in the franchise to the franchisee's spouse
37 or child or children, provided that more than fifty
38 percent of the entire franchise is held by those who
39 meet the franchisor's reasonable current
40 qualifications. If less than fifty percent of the
41 franchise would be owned by persons who meet the
42 franchisor's reasonable current qualifications, the
43 franchisor may refuse to authorize the transfer,
44 provided that enforcement of the reasonable current
45 qualifications is not arbitrary or capricious ~~when~~
46 ~~compared-to-actions-of-the-franchisor-in-other-similar~~
47 ~~circumstances.~~

48 f- e. A transfer of less than a controlling
49 interest in the franchise of an employee stock
50 ownership plan, or employee incentive plan, provided

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1 that more than fifty percent of the entire franchise
2 is held by those who meet the franchisor's reasonable
3 current qualifications for franchisees. If less than
4 fifty percent would be owned by persons who meet the
5 franchisor's reasonable current qualifications, the
6 franchisor may refuse to authorize the transfer,
7 provided that enforcement of the reasonable current
8 qualifications is not arbitrary or capricious when
9 ~~compared to actions of the franchisor in other similar~~
10 ~~circumstances.~~

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

23 ~~14. 13.~~ A franchisor shall not interfere or
24 attempt to interfere with any disposition of an
25 interest in a franchise or franchised business as
26 described in subsection ~~13~~ 12, paragraphs "a" through
27 ~~"g"~~ "f".

28 Sec. 3. Section 523H.6, Code 1995, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 523H.6 ENCROACHMENT.

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

43 a. The franchisor has first offered the new outlet
44 or location to the existing franchisee on the same
45 basic terms and conditions available to the other
46 potential franchisee, or, if the new outlet or
47 location is to be owned by the franchisor, on the
48 terms and conditions that would ordinarily be offered
49 to a franchisee for a similarly situated outlet or
50 location.

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

9 c. The existing franchisee, at the time the
10 franchisor develops, or grants to a franchisee the
11 right to develop, a new outlet or location is not in
12 compliance with the franchisor's then current
13 reasonable criteria for eligibility for a new
14 franchise. A franchisee determined to be ineligible
15 pursuant to this paragraph shall be afforded the
16 opportunity to seek compensation pursuant to the
17 formal procedure established under paragraph "d",
18 subparagraph (2). Such procedure shall be the
19 franchisee's exclusive remedy.

20 d. The franchisor has established both of the
21 following:

22 (1) A formal procedure for hearing and acting upon
23 claims by an existing franchisee with regard to a
24 decision by the franchisor to develop, or grant to a
25 franchisee the right to develop, a new outlet or
26 location, prior to the opening of the new outlet or
27 location.

28 (2) A reasonable formal procedure for awarding
29 compensation or other form of consideration to a
30 franchisee to offset all or a portion of the
31 franchisee's lost profits caused by the establishment
32 of the new outlet or location. The procedure shall
33 involve, at the option of the franchisee, one of the
34 following:

35 (a) A panel, comprised of an equal number of
36 members selected by the franchisee and the franchisor,
37 and one additional member to be selected unanimously
38 by the members selected by the franchisee and the
39 franchisor.

40 (b) A neutral third-party mediator or an
41 arbitrator with the authority to make a decision or
42 award in accordance with the formal procedure. The
43 procedure shall be deemed reasonable if approved by a
44 majority of the franchisor's franchisees in the United
45 States, either individually or by an elected
46 representative body.

47 (c) Arbitration of any dispute before neutral
48 arbitrators pursuant to the rules of the American
49 arbitration association. The award of an arbitrator
50 pursuant to this subparagraph subdivision is subject

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1 to judicial review pursuant to chapter 679A.

2 2. A franchisor shall establish and make available
3 to its franchisees a written policy setting forth its
4 reasonable criteria to be used by the franchisor to
5 determine whether an existing franchisee is eligible
6 for a franchise for an additional outlet or location.

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

19 (1) Five percent.

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

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

27 4. Any cause of action brought under this section
28 must be filed within eighteen months of the opening of
29 the new outlet or location or within three months
30 after the completion of the procedure under subsection
31 1, paragraph "d", subparagraph (2), whichever is
32 later.

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

40 Sec. 4. Section 523H.7, Code 1995, is amended to
41 read as follows:

42 523H.7 TERMINATION.

43 1. Except as otherwise provided by this chapter, a
44 franchisor shall not terminate a franchise prior to
45 the expiration of its term except for good cause. For
46 purposes of this section, "good cause" is cause based
47 upon a legitimate business reason. "Good cause"
48 includes the failure of the franchisee to comply with
49 any material lawful requirement of the franchise
50 agreement, provided that the termination by the

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1 franchisor is not arbitrary or capricious when
2 compared to the actions of the franchisor in other
3 similar circumstances. The burden of proof of showing
4 that action of the franchisor is arbitrary or
5 capricious shall rest with the franchisee.

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

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

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

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

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

39 c- d. The franchisor and franchisee agree in
40 writing to terminate the franchise.

41 d- e. The franchisee knowingly makes any material
42 misrepresentations or knowingly omits to state any
43 material facts relating to the acquisition or
44 ownership or operation of the franchise business.

45 e- f. ~~The franchisee repeatedly fails to comply~~
46 ~~with the same material provision of a franchise~~
47 ~~agreement, when the enforcement of the material~~
48 ~~provision by the franchisor is not arbitrary or~~
49 ~~capricious when compared to the franchisor in other~~
50 ~~similar circumstances.~~ After three material breaches

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1 of a franchise agreement occurring within a twelve-
2 month period, for which the franchisee has been given
3 notice and an opportunity to cure, the franchisor may
4 terminate upon any subsequent material breach within
5 the twelve-month period without providing an
6 opportunity to cure, provided that the action is not
7 arbitrary and capricious.

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

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

15 h- i. The franchisee operates the franchised
16 business in a manner that imminently endangers the
17 public health and safety.

18 Sec. 5. Section 523H.8, Code 1995, is amended to
19 read as follows:

20 523H.8 NONRENEWAL OF A FRANCHISE.

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

23 1- a. The franchisee has been notified of the
24 franchisor's intent not to renew at least six months
25 prior to the expiration date or any extension of the
26 franchise agreement.

27 2- b. Any of the following circumstances exist:

28 a- (1) Good cause exists ~~as defined in section~~
29 ~~523H.7, provided that the refusal of the franchisor to~~
30 ~~renew is not arbitrary or capricious when compared to~~
31 ~~the actions of the franchisor in other similar~~
32 ~~circumstances.~~ For purposes of this section, "good
33 cause" means cause based on a legitimate business
34 reason.

35 b- (2) 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- (3) 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 2. As a condition of renewal of the franchise, a
50 franchise agreement may require that the franchisee

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1 meet the then current requirements for franchises and
2 that the franchisee execute a new agreement
3 incorporating the then current terms and fees for new
4 franchises.

5 Sec. 6. Section 523H.11, Code 1995, is amended to
6 read as follows:

7 523H.11 REPURCHASE OF ASSETS.

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

RECEIVED FROM THE SENATE

H-4140 FILED APRIL 27, 1995

*House Concurred**4/28/95**(P. 2062)*

Dinkla, Chair
Metcalf
Renken
Holveck
Weigel

HSB 7

COMMERCE - REGULATION
Succeeded by
CE 115

HOUSE FILE 126

BY (PROPOSED COMMITTEE ON
COMMERCE AND REGULATION
BILL BY CHAIRPERSON METCALF)

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

A BILL FOR

1 An Act relating to certain franchise agreements by amending
2 provisions relating to transfer, termination, and nonrenewal
3 of franchise agreements, and to a civil cause of action for
4 appropriate relief, and repealing certain franchise
5 provisions.

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

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1 ~~Section 1.~~ Section 523H.5, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 523H.5 TRANSFER OF FRANCHISE.

5 A franchisor shall not deny the surviving spouse or heirs
6 of a deceased or permanently incapacitated franchisee the
7 opportunity to participate in the ownership of the franchise
8 under a valid franchise agreement for a reasonable period of
9 time, which in no case need be more than one year after the
10 death or permanent incapacity of the franchisee. During that
11 time, the surviving spouse or heirs of the franchisee shall
12 either meet all of the qualifications which the franchisee was
13 subject to at the time of the death or permanent incapacity of
14 the franchisee, or sell, transfer, or assign the franchise to
15 a person who meets the franchisor's current qualifications for
16 a new franchisee. The rights granted pursuant to this
17 subsection shall be granted subject to the surviving spouse or
18 heirs of the franchisee maintaining all standards and
19 obligations of the franchise. This subsection does not
20 prohibit a franchisor from exercising the right of first
21 refusal contained in a franchise agreement after receipt of a
22 bona fide offer to purchase the franchise by a proposed
23 purchaser of the franchise.

24 Sec. 2. Section 523H.7, Code 1995, is amended to read as
25 follows:

26 523H.7 TERMINATION.

27 1. Except as otherwise provided by this chapter, a
28 franchisor shall not terminate a franchise prior to the
29 expiration of its term except for good cause. For purposes of
30 this section, "good cause" is cause based upon a legitimate
31 business reason. "Good cause" includes, but is not limited
32 to, the failure of the franchisee to comply with any material
33 lawful requirement of the franchise agreement, ~~provided that~~
34 ~~the termination by the franchisor is not arbitrary or~~
35 ~~capricious when compared to the actions of the franchisor in~~

1 ~~other-similar-circumstances.~~

2 2. Prior to termination of a franchise for good cause, a
3 franchisor shall provide a franchisee with written notice
4 stating the basis for the proposed termination. After service
5 of written notice, the franchisee shall have a reasonable
6 period of time to cure the default, which ~~in-no-event-shall-be~~
7 ~~less need not be more~~ than thirty days ~~or-more-than-ninety~~
8 days for any default other than the default of a valid payment
9 under the franchise agreement which need not be more than ten
10 days.

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

14 a. (1) The franchisee or the business to which the
15 franchise relates files for protection under applicable
16 federal bankruptcy laws, is declared bankrupt, or is
17 judicially determined to be insolvent.

18 (2) All or a substantial part of the assets of the
19 franchisee or the business to which the franchise relates are
20 assigned to or for the benefit of any creditor.

21 (3) The franchisee admits to an inability to pay debts as
22 they come due.

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

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

34 d. The franchisee knowingly makes any material
35 misrepresentations or knowingly omits to state any material

1 facts relating to the acquisition or ownership or operation of
2 the franchise business.

3 e. The franchisee repeatedly fails to comply with ~~the same~~
4 ~~material provision one or more requirements of a the~~ franchise
5 agreement, ~~when the enforcement of the material provision by~~
6 ~~the franchisor is not arbitrary or capricious when compared to~~
7 ~~the franchisor in other similar circumstances whether or not~~
8 the franchisee complies after receiving notice of the failure
9 to comply.

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

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

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

19 Sec. 3. Section 523H.8, Code 1995, is amended to read as
20 follows:

21 523H.8 NONRENEWAL OF A FRANCHISE.

22 A franchisor shall not refuse to renew a franchise unless
23 ~~both~~ either of the following ~~apply~~ applies:

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

25 2. 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 and during the period prior to expiration of the franchise,
29 the franchisor permits the franchisee to sell the franchisee's
30 business to a purchaser who meets, at the time of the sale,
31 the franchisor's current requirements for a new franchisee,
32 and one or more of the following apply:

33 ~~2.---Any-of-the-following-circumstances-exist:~~

34 ~~a.---Good-cause-exists-as-defined-in-section-523H.7,~~

35 ~~provided-that-the-refusal-of-the-franchisor-to-renew-is-not~~

1 arbitrary-or-capricious-when-compared-to-the-actions-of-the
2 franchisor-in-other-similar-circumstances-

3 a. The refusal to renew is not for the purpose of
4 converting the franchisee's business premises to operation by
5 employees or agents of the franchisor under the direct control
6 and for the direct benefit of the franchisor, provided that
7 this paragraph does not prohibit a franchisor from exercising
8 a right of first refusal to purchase the franchisee's
9 business.

10 b. The franchisor and franchisee agree not to renew the
11 franchise~~7-provided-that-upon-the-expiration-of-the-franchise,~~
12 ~~the-franchisor-agrees-not-to-seek-to-enforce-any-covenant-of~~
13 ~~the-nonrenewed-franchise-not-to-compete-with-the-franchisor-or~~
14 ~~franchisees-of-the-franchisor.~~

15 c. The franchisor completely withdraws from directly or
16 indirectly distributing its products or services in the
17 geographic market served by the franchisee~~7-provided-that-upon~~
18 ~~expiration-of-the-franchise,7-the-franchisor-agrees-not-to-seek~~
19 ~~to-enforce-any-covenant-of-the-nonrenewed-franchisee-not-to~~
20 ~~compete-with-the-franchisor-or-franchisees-of-the-franchisor.~~

21 d. Upon expiration of the franchise, the franchisor agrees
22 not to seek to enforce any covenant of the nonrenewed
23 franchisee not to compete with the franchisor or franchisees
24 of the franchisor.

25 Sec. 4. Section 523H.13, Code 1995, is amended to read as
26 follows:

27 523H.13 PRIVATE CIVIL ACTION.

28 A person who violates a provision of this chapter or-order
29 issued-under-this-chapter is liable-for-damages-caused-by-the
30 violation~~7-including7-but-not-limited-to7-costs-and-reasonable~~
31 ~~attorneys'-and-experts'-fees7-and~~ subject to other appropriate
32 relief including injunctive and other equitable relief.

33 Sec. 5. Sections 523H.6, 523H.10, 523H.11, and 523H.12,
34 Code 1995, are repealed.

35

EXPLANATION

1 This bill amends chapter 523H which applies to certain
2 franchises operated in this state.

3 Section 523H.5, relating to the transfer of a franchise, is
4 stricken and rewritten to provide that a franchisor shall not
5 deny a surviving spouse or heir of a deceased or permanently
6 incapacitated franchisee an opportunity to participate in the
7 ownership of the franchise under a valid agreement for a
8 reasonable period of time. The period of time need be no more
9 than one year after the death or permanent incapacity of the
10 franchisee during which time the surviving spouse or heirs of
11 the franchisee shall either meet all of the qualifications
12 which the franchisee was subject to at the time of the death
13 or permanent incapacity of the franchisee, or sell, transfer,
14 or assign the franchise to a person who meets the franchisor's
15 current qualifications for a new franchisee.

16 Currently, section 523H.5 provides that a franchisee may
17 transfer the franchised business and franchise to a
18 transferee, provided that the transferee satisfies the
19 reasonable current qualifications of the franchisor for new
20 franchisees; except as otherwise provided in the section, the
21 franchisor may exercise a right of first refusal after receipt
22 of a proposal from the franchisee to transfer the franchise; a
23 franchisor may require certain conditions including successful
24 training of the transferee and the payment of certain
25 expenses; a franchisor shall not withhold consent to a
26 franchisee making a public offering of the franchise's
27 securities without good cause; a franchisee may transfer the
28 franchisee's interest for the unexpired term of the franchise
29 agreement; a franchisee must give no less than 60 days'
30 written notice of a transfer, and on request of the franchisor
31 provide a written list of all ownership interests in the
32 franchise subsequent to the transfer; a franchisor shall not
33 transfer its interest in the franchise unless reasonable
34 provision is made for the performance of the franchisor's
35 obligations under the franchise agreement by the transferee; a

1 transfer by the franchisee is deemed to be approved 60 days
2 after the franchisee submits the request for consent unless
3 the franchisor withholds consent as evidenced in writing; the
4 franchisor shall not discriminate against a proposed
5 transferee on the basis of race, color, national origin, sex,
6 or physical handicap; a franchisor shall not obligate the
7 franchisee to undertake obligations or relinquish rights as a
8 condition of transfer, and a franchisor may not enforce any
9 agreement against the transferor which prohibits the
10 transferor from engaging in any lawful occupation or
11 enterprise; and defines certain occurrences which are not to
12 be considered a transfer requiring the consent of the
13 franchisor except for a transfer within an existing ownership
14 group.

15 Section 523H.7, which relates to the termination of a
16 franchise agreement, is amended by reducing the time period
17 considered reasonable for curing a default from not less than
18 30 days to a period which need not be more than 30 days for
19 any default other than the default of a valid payment under
20 the franchise agreement which need not be more than 10 days.
21 The section is also amended to provide that the franchisor may
22 terminate a franchisee upon written notice and without an
23 opportunity to cure if all or a substantial part of the assets
24 of the franchisee or the business to which the franchise
25 relates are assigned to or for the benefit of any creditor, or
26 the franchisee admits to an inability to pay debts as they
27 come due; or if a franchisee repeatedly fails to comply with
28 one or more requirements under the franchise agreement,
29 whether or not the franchisee complies after receiving notice
30 of a failure to comply.

31 Section 523H.7 is also amended to provide that a franchise
32 may be terminated if the franchisee is convicted of a felony
33 or other criminal misconduct which is likely to adversely
34 affect the franchise in the relevant market, or if the
35 franchisee operates the business in a manner that endangers

1 the public health and safety. Currently, those provisions
2 provide that termination may occur if the franchisee is
3 convicted of a felony or criminal misconduct which materially
4 and adversely affects the franchise, or operates the business
5 in a manner that imminently endangers the public health and
6 safety.

7 Section 523H.8 is amended to provide that a franchisor
8 shall not refuse to renew a franchise unless good cause
9 exists, or proper notice of the refusal to renew is given to
10 the franchisee and one or more other requirements apply.

11 Section 523H.13 is amended to provide that a person who
12 violates a provision of chapter 523H is subject to appropriate
13 relief. Current law also allows for the recovery of damages
14 caused by the violation, including, but not limited to, costs
15 and reasonable attorneys' and experts' fees.

16 Sections 523H.6, relating to encroachment; 523H.10,
17 relating to duty of good faith; 523H.11, relating to the
18 repurchase of assets; and 523H.12, relating to independent
19 sourcing, are repealed.

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HOUSE FILE 126

AN ACT

RELATING TO CERTAIN FRANCHISE AGREEMENTS BY AMENDING PROVISIONS RELATING TO TRANSFER, TERMINATION, AND NONRENEWAL OF FRANCHISE AGREEMENTS, AND TO A CIVIL CAUSE OF ACTION FOR APPROPRIATE RELIEF, AND REPEALING CERTAIN FRANCHISE PROVISIONS.

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

Section 1. Section 523H.2, Code 1995, is amended to read as follows:

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 who operate franchises located out-of-state.

Sec. 2. Section 523H.5, Code 1995, is amended to read as follows:

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.

d. That the financial terms of the transfer comply at the time of the transfer with the franchisor's current financial requirements for franchisees.

~~4. A 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- 4. A franchisee may transfer the franchisee's interest in the franchise, for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a new or different franchise agreement as a condition of the transfer.

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

7- 6. A franchisor shall not transfer its interest in a franchise unless the franchisor makes reasonable provision for the performance of the franchisor's obligations under the franchise agreement by the transferee. ~~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.~~ For purposes of this subsection, "reasonable provision" means that upon the transfer, the entity assuming the franchisor's obligations has the financial means to perform the franchisor's obligations in the ordinary course of business, but does not mean that the franchisor transferring the franchise is required to guarantee obligations of the underlying franchise agreement.

8- 7. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for

consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

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

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

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

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

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

a. The succession of ownership of a franchise upon the death or disability of a franchisee, or of an owner of a franchise, to the franchisee's surviving spouse, child or children heir, or a partner active in the management of the franchise unless the successor fails to meet within one year the then current reasonable qualifications of the franchisor for franchisees and the enforcement of the reasonable current qualifications is not arbitrary or capricious 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. b. Incorporation of a proprietorship franchisee, provided that such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise.

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

e. d. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent of the franchise

would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious when compared to actions of the franchisor in other similar circumstances.

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

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

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

Sec. 3. Section 523H.6, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

523H.6 ENCROACHMENT.

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

a. The franchisor has first offered the new outlet or location to the existing franchisee on the same basic terms and conditions available to the other potential franchisee, or, if the new outlet or location is to be owned by the franchisor, on the terms and conditions that would ordinarily be offered to a franchisee for a similarly situated outlet or location.

b. The adverse impact on the existing franchisee's annual gross sales, based on a comparison to the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location, is determined to have been less than five percent during the first twelve months of operation of the new outlet or location.

c. The existing franchisee, at the time the franchisor develops, or grants to a franchisee the right to develop, a new outlet or location is not in compliance with the franchisor's then current reasonable criteria for eligibility for a new franchise. A franchisee determined to be ineligible pursuant to this paragraph shall be afforded the opportunity to seek compensation pursuant to the formal procedure established under paragraph "d", subparagraph (2). Such procedure shall be the franchisee's exclusive remedy.

d. The franchisor has established both of the following:

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

(2) A reasonable formal procedure for awarding compensation or other form of consideration to a franchisee to offset all or a portion of the franchisee's lost profits caused by the establishment of the new outlet or location. The procedure shall involve, at the option of the franchisee, one of the following:

(a) A panel, comprised of an equal number of members selected by the franchisee and the franchisor, and one additional member to be selected unanimously by the members selected by the franchisee and the franchisor.

(b) A neutral third-party mediator or an arbitrator with the authority to make a decision or award in accordance with the formal procedure. The procedure shall be deemed reasonable if approved by a majority of the franchisor's franchisees in the United States, either individually or by an elected representative body.

(c) Arbitration of any dispute before neutral arbitrators pursuant to the rules of the American arbitration association. The award of an arbitrator pursuant to this subparagraph subdivision is subject to judicial review pursuant to chapter 679A.

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

3. a. In establishing damages under a cause of action brought pursuant to this section, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this

section, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this subsection, "compensable sales" means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

- (1) Five percent.
 - (2) The actual gross sales from the operation of the existing outlet or location for the twelve-month period immediately following the opening of the new outlet or location.
- b. Compensable sales shall exclude any amount attributable to factors other than the opening and operation of the new outlet or location.
4. Any cause of action brought under this section must be filed within eighteen months of the opening of the new outlet or location or within three months after the completion of the procedure under subsection 1, paragraph "d", subparagraph (2), whichever is later.
5. Upon petition by the franchisor or the franchisee, the district court may grant a permanent or preliminary injunction to prevent injury or threatened injury for a violation of this section or to preserve the status quo pending the outcome of the formal procedure under subsection 1, paragraph "d", subparagraph (2).

Sec. 4. Section 523H.7, Code 1995, is amended to read as follows:

523H.7 TERMINATION.

1. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, "good cause" is cause based upon a legitimate business reason. "Good cause" includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the

franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. Section 523H.8, Code 1995, is amended to read as follows:

523H.8 NONRENEWAL OF A FRANCHISE.

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

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

2- b. Any of the following circumstances exist:

a- (1) 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. For purposes of this section, "good cause" means cause based on a legitimate business reason.

b- (2) 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- (3) The franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, provided that upon expiration of the franchise, the franchisor agrees not to seek to enforce any covenant of the nonrenewed franchisee not to compete with the franchisor or franchisees of the franchisor.

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

Sec. 6. Section 523H.11, Code 1995, is amended to read as follows:

523H.11 REPURCHASE OF ASSETS.

A franchisor shall not prohibit a franchisee from, or enforce a prohibition against a franchisee, engaging in any lawful business at any location after a termination or refusal to renew by a franchisor, unless it is one which relies on a substantially similar marketing program as the terminated or nonrenewed franchise or unless the franchisor offers in writing no later than ten business days before expiration of the franchise to purchase the assets of the franchised business for its fair market value as a going concern. The value of the assets shall not include the goodwill of the

business attributable to the trademark licensed to the franchisee in the franchise agreement. The offer may be conditioned upon the ascertainment of a fair market value by an impartial appraiser. This section does not apply to assets of the franchised business which the franchisee did not purchase from the franchisor, or the agent of the franchisor.

RON J. CORBETT

Speaker of the House

LEONARD L. BOSWELL

President of the Senate

I hereby certify that this bill originated in the House and is known as House File 126, Seventy-sixth General Assembly.

ELIZABETH ISAACSON

Chief Clerk of the House

Approved April 29, 1995

TERRY E. BRANSTAD

Governor