

FEB 15 1996
Place On Calendar

HOUSE FILE 2235
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 542)

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 the definition of a franchise, and
3 applicability, transfer, encroachment, termination,
4 nonrenewal, repurchase of assets, independent sourcing, and
5 enforcement.

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

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HF 2235

1 Section 1. Section 523H.1, subsection 3, Code 1995, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. d. "Franchise" also does not include a
4 nonprofit organization operated on a cooperative basis by and
5 for independent retailers which offers goods and services
6 primarily to its member retailers on a wholesale basis.

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

9 523H.2 APPLICABILITY.

10 This chapter applies only to a ~~new-or-existing~~ franchise
11 that is operated ~~in-the-state-of-Iowa~~ within this state
12 pursuant to a franchise agreement entered into on or after
13 July 1, 1996. For purposes of this chapter, the franchise is
14 operated in this state only if the premises from which the
15 franchise is operated is physically located in this state.
16 For purposes of this chapter, a franchise including marketing
17 rights in or to this state, is deemed to be operated in this
18 state only if the franchisee's principal business office is
19 physically located in this state. This chapter does not apply
20 to a franchise solely because an agreement relating to the
21 franchise provides that the agreement is subject to or
22 governed by the laws of this state. The provisions of this
23 chapter do not apply to any existing or future contracts
24 between Iowa franchisors and franchisees who operate
25 franchises located out of state.

26 Sec. 3. Section 523H.5, subsection 1, Code Supplement
27 1995, is amended by striking the subsection and inserting in
28 lieu thereof the following:

29 1. A franchisor shall not refuse to permit a transfer of a
30 franchise, except for good cause. For purposes of this
31 section, "good cause" includes, but is not limited to, the
32 following:

33 a. The failure of the proposed transferee to satisfy at
34 the time of transfer the current qualifications of the
35 franchisor for new franchisees.

1 b. The failure of the transferor or proposed transferee to
2 cure a breach of any term of the franchise agreement.

3 Sec. 4. Section 523H.5, subsections 2, 3, 5, 6, and 7,
4 Code Supplement 1995, are amended to read as follows:

5 2. Except as otherwise provided in ~~this-section~~ subsection
6 12, a franchisor may exercise a right of first refusal
7 contained in a franchise agreement after receipt of a proposal
8 from the franchisee to transfer the franchise.

9 3. A franchisor may require as a condition of a transfer,
10 in addition to any other transfer requirements contained in
11 the franchise agreement, any of the following:

12 a. That the transferee successfully complete ~~a-reasonable~~
13 at the time of the transfer the franchisor's current training
14 program.

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

18 c. That the franchisee pay or make ~~provision-reasonably~~
19 provisions acceptable to the franchisor to pay any amount due
20 the franchisor or the franchisor's affiliate.

21 d. That the financial terms of the transfer comply at the
22 time of the transfer with the franchisor's current ~~financial~~
23 requirements for-franchisees regarding financial terms of a
24 transfer.

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

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

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

22 Sec. 5. Section 523H.5, subsection 4, Code Supplement
23 1995, is amended by striking the subsection.

24 Sec. 6. Section 523H.5, subsection 12, Code Supplement
25 1995, is amended by striking the subsection and inserting in
26 lieu thereof the following:

27 12. a. A franchisor shall not deny the surviving spouse
28 or a child or children of a deceased or permanently
29 incapacitated franchisee the opportunity to participate in the
30 ownership of the franchise under a valid franchise agreement
31 for a period of one year after the death or permanent
32 incapacity of the franchisee. During that time, the surviving
33 spouse or the child or children of the franchisee shall either
34 meet all of the qualifications which the franchisee was
35 subject to at the time of the death or permanent incapacity of

1 the franchisee, or sell, transfer, or assign the franchise to
2 a person who meets the franchisor's current qualifications for
3 a new franchisee. The rights granted pursuant to this
4 paragraph are subject to the surviving spouse or the child or
5 children of the franchisee maintaining all standards and
6 obligations of the franchise.

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

13 c. (1) A franchisor is prohibited from exercising a right
14 of first refusal with respect to a transfer of a franchise to
15 a surviving spouse or a child or children who is seeking to
16 qualify as a franchisee or who becomes qualified as a
17 franchisee pursuant to paragraph "a", or with respect to a
18 transfer of a franchise to an existing partner pursuant to
19 paragraph "b".

20 (2) This subsection does not prohibit a franchisor from
21 exercising the right of first refusal to purchase a franchise
22 pursuant to subsection 2, after receipt of a bona fide offer
23 to purchase the franchise by a proposed purchaser of the
24 franchise.

25 Sec. 7. Section 523H.5, subsection 13, Code Supplement
26 1995, is amended by striking the subsection.

27 Sec. 8. Section 523H.6, Code Supplement 1995, is amended
28 to read as follows:

29 523H.6 ENCROACHMENT.

30 1. If a franchisor develops, or grants to a franchisee the
31 right to develop, a new outlet or location which sells
32 essentially the same goods or services under the same
33 trademark, service mark, trade name, logotype, or other
34 commercial symbol as an existing franchisee and the new outlet
35 or location is in unreasonable proximity to the existing

1 franchisee's outlet or location and has an adverse effect on
2 the gross sales of the existing franchisee's outlet or
3 location, the existing adversely affected franchisee has a
4 cause of action for monetary damages in an amount calculated
5 pursuant to subsection 3, unless any of the following apply:

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

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

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

29 d. The franchisor has established both of the following:

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

35 (2) A reasonable formal procedure for awarding

1 compensation or other form of consideration to a franchisee to
2 offset all or a portion of the franchisee's lost profits
3 caused by the establishment of the new outlet or location.
4 The procedure shall be deemed reasonable if approved by a
5 majority of the franchisor's franchisees in the United States,
6 either individually or by a representative body. The
7 procedure shall involve, at the option of the franchisee
8 franchisor, one of the following:

9 (a) A panel with the authority to make a decision or award
10 in accordance with the formal procedure, comprised of an equal
11 number of members selected by the franchisee and the
12 franchisor, and one additional member to be selected
13 unanimously by the members selected by the franchisee and the
14 franchisor.

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

21 (c) Arbitration of any dispute before neutral arbitrators
22 with the authority to make a decision or award in accordance
23 with the formal procedure and pursuant to the rules of the
24 American arbitration association. The award of an arbitrator
25 pursuant to this subparagraph subdivision is subject to
26 judicial review pursuant to chapter 679A.

27 e. The existing franchisee has been granted reasonable
28 territorial rights and the new outlet or location does not
29 violate those territorial rights.

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

35 3. a. In establishing damages under a cause of action

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

10 (1) ~~Five~~ Ten percent.

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

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

18 4. Any cause of action brought under this section must be
19 filed within eighteen months of the opening of the new outlet
20 or location ~~or within three months after the completion of the~~
21 ~~procedure under subsection 17 paragraph "d" subparagraph (2)~~
22 ~~whichever is later.~~

23 ~~5. Upon petition by the franchisor or the franchisee, the~~
24 ~~district court may grant a permanent or preliminary injunction~~
25 ~~to prevent injury or threatened injury for a violation of this~~
26 ~~section or to preserve the status quo pending the outcome of~~
27 ~~the formal procedure under subsection 17 paragraph "d"~~
28 ~~subparagraph (2).~~

29 Sec. 9. Section 523H.7, Code Supplement 1995, is amended
30 to read as follows:

31 523H.7 TERMINATION.

32 1. Except as otherwise provided by this chapter, a
33 franchisor shall not terminate a franchise prior to the
34 expiration of its term except for good cause. For purposes of
35 this section, "good cause" is cause based upon a legitimate

1 business reason. "Good cause" includes, but is not limited
2 to, the failure of the franchisee to comply with any material
3 lawful requirement of the franchise agreement, provided that
4 the termination by the franchisor is not arbitrary or
5 capricious ~~when-compared-to-the-actions-of-the-franchisor-in~~
6 ~~other-similar-circumstances.~~ The burden of proof of showing
7 that action of the franchisor is arbitrary or capricious shall
8 rest with the franchisee.

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

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

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

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

33 c. The franchisee voluntarily abandons the franchise by
34 failing to operate the business for five consecutive business
35 days during which the franchisee is required to operate the

1 business under the terms of the franchise, or any shorter
2 period after which it is not unreasonable under the facts and
3 circumstances for the franchisor to conclude that the
4 franchisee does not intend to continue to operate the
5 franchise, unless the failure to operate is due to
6 circumstances beyond the control of the franchisee.

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

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

13 ~~f. After three material breaches of a franchise agreement~~
14 ~~occurring within a twelve-month period, for which the~~
15 ~~franchisee has been given notice and an opportunity to cure,~~
16 ~~the franchisor may terminate upon any subsequent material~~
17 ~~breach within the twelve-month period without providing an~~
18 ~~opportunity to cure, provided that the action is not arbitrary~~
19 ~~and capricious~~ The franchisee repeatedly fails to comply with
20 one or more material provisions of the franchise agreement,
21 whether or not the franchisee complies after receiving notice
22 of the failure to comply, provided that the termination by the
23 franchisor is not arbitrary or capricious.

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

27 h. The franchisee is convicted of a felony or any other
28 criminal misconduct which ~~materially~~ and is likely to
29 ~~adversely affects~~ affect the operation, maintenance, or
30 goodwill of the franchise in the relevant market.

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

33 Sec. 10. Section 523H.8, subsection 1, paragraph b, Code
34 Supplement 1995, is amended by adding the following new
35 subparagraph:

1 NEW SUBPARAGRAPH. (4) During the six-month period prior
2 to the expiration of the franchise agreement or any extension,
3 the franchisor permits the franchisee the opportunity to sell
4 the franchise, and all of the following apply:

5 (a) The purchaser meets, at the time of the sale, the
6 franchisor's current requirements for a franchisee.

7 (b) The franchisor agrees to offer the purchaser a full-
8 term franchise agreement, which reflects similar terms and
9 conditions to those offered to other franchisees at the time
10 of the sale.

11 (c) The purchaser agrees to meet the current requirements
12 for franchises at the time of the sale, including the
13 franchisor's current requirements relating to upgrading the
14 franchise.

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

17 523H.11 REPURCHASE OF ASSETS.

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

1 Sec. 12. Section 523H.12, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 523H.12 INDEPENDENT SOURCING.

5 1. A franchisor may offer franchises as a part of a
6 partially or fully developed turnkey business.

7 2. A franchisor may require that franchisees purchase from
8 the franchisor, or one or more suppliers selected by the
9 franchisor, either or both of the following:

10 a. Equipment, products, and services required to establish
11 or operate the franchise and that utilize or embody the
12 franchisor's trade secrets, specialized technology or
13 proprietary processes or ingredients or for which it is not
14 practical to issue specifications or standards.

15 b. Products purchased for resale by the franchisee, with
16 or without modification or value added by the franchisee, if
17 such products are among the principal products sold by the
18 franchisee and the sale of such products by the franchisor or
19 its affiliate to the franchisee is a major source of revenue
20 to the franchisor or its affiliate.

21 3. A franchisor shall permit its franchisees to obtain
22 other equipment, products, and services required to establish
23 or operate the franchise from sources chosen by the
24 franchisee, provided that the supplier first demonstrates to
25 the franchisor's reasonable satisfaction that the supplier
26 satisfies all of the following:

27 a. Meets the franchisor's specifications, standards, and
28 requirements regarding quality, variety, service, safety, and
29 health for the equipment, products, and services supplied and
30 the facilities used in the production and distribution of such
31 equipment, products, and services.

32 b. Has the capacity to meet franchisee supply
33 requirements.

34 c. Is financially sound and has a sound business
35 reputation.

1 d. Will supply equipment, products, or services to a
2 sufficient number of franchisees of the franchisor to enable
3 the franchisor to economically monitor compliance by the
4 supplier with the franchisor's specifications, standards, and
5 requirements.

6 e. Will comply with the franchisor's reporting
7 requirements.

8 Sec. 13. Section 523H.13, Code 1995, is amended to read as
9 follows:

10 523H.13 PRIVATE CIVIL ACTION.

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

16 EXPLANATION

17 This bill amends provisions of chapter 523H relating to
18 franchise agreements.

19 The definition of "franchise" in section 523H.1 is amended
20 to exclude a nonprofit organization operated on a cooperative
21 basis by and for independent retailers which offers goods and
22 services primarily to its member retailers on a wholesale
23 basis.

24 Section 523H.2 is amended to provide that the chapter
25 applies only to franchises operated in Iowa pursuant to an
26 agreement entered into on or after July 1, 1996.

27 Section 523H.5, which pertains to the transfer of a
28 franchise, is amended to provide that the franchisor may
29 require that requirements contained in a franchise agreement
30 be met prior to permitting the transfer, in addition to other
31 requirements identified in section 523H.5. The bill provides
32 that the transferee may be required to successfully complete
33 the franchisor's current training program rather than a
34 reasonable training program, pay the franchisor's reasonable
35 expenses attributable to the transfer rather than the

1 reasonable and actual expenses directly attributable to the
2 transfer, and comply with the franchisor's current
3 requirements regarding financial terms of the transfer rather
4 than the current financial requirements for franchisees. The
5 section requires that the franchisee provide a list of
6 ownership interests subsequent to the transfer. Currently,
7 the franchisor must request the list before the franchisee is
8 required to provide it to the franchisor. The section
9 provides that the franchisor may exercise a contractual right
10 of first refusal to prevent the automatic approval of a
11 transfer within the 60-day period after the franchisee submits
12 the request for consent to the transfer.

13 The right of a franchisee, under section 523H.5, subsection
14 4, to transfer the franchisee's interest in the franchise for
15 the unexpired term of the agreement, and not be subject to a
16 requirement that the transfer be conditioned upon the
17 franchisee or transferee entering into a new or different
18 franchise agreement, is repealed.

19 The bill also strikes a portion of 523H.5 which identifies
20 certain occurrences which are not to be considered transfers
21 requiring the consent of the franchisor, and inserts language
22 which provides that the franchisor is not to deny the
23 surviving spouse or heirs of a deceased or permanently
24 incapacitated franchisee the opportunity to participate in the
25 ownership of a franchise for one year after the death or
26 permanent incapacity of the franchisee, or deny the transfer
27 to an existing partner in the franchise previously approved as
28 a franchisee and who has remained active in the management of
29 the franchise. Section 523H.5 is also amended to prohibit a
30 franchisor from exercising a right of first refusal with
31 respect to a transfer of a franchise to a surviving spouse or
32 child who is seeking to qualify as a franchisee or who becomes
33 qualified as a franchisee, or with respect to a transfer to an
34 existing partner, but does not prohibit a franchisor from
35 exercising such right after receipt of a bona fide offer to

1 purchase the franchise by a proposed purchaser in those
2 circumstances.

3 Section 523H.6, relating to encroachment, is amended by
4 adding that, in addition to existing criteria for determining
5 whether a new outlet or location is encroaching on an existing
6 franchisee, the new outlet or location must be located in
7 unreasonable proximity to the existing franchisee's outlet or
8 location. The section is amended to increase the amount by
9 which the new outlet or location must impact the existing
10 franchisee's gross sales, before a compensable claim arises,
11 from 5 percent to 10 percent of gross sales. The procedure
12 for hearing and acting upon a claim is amended to specifically
13 provide that the panel comprised of members selected by the
14 franchisee and franchisor, and the neutral arbitrators who may
15 also be used to hear a claim, have the authority to make a
16 decision or award in accordance with the formal procedure for
17 hearing such claims. The section is amended to provide that
18 the choice of whether the panel, neutral third-party mediator,
19 or arbitration is to be used for awarding compensation is to
20 be made by the franchisor, rather than the franchisee, as
21 currently provided. The section is amended to provide that a
22 franchisee does not have a cause of action for monetary
23 damages if the franchisee has been granted reasonable
24 territorial rights which are not violated by the new outlet or
25 location. The section is amended to provide that a cause of
26 action under this section must be filed within 18 months of
27 the opening of the new outlet or location. Currently, a cause
28 of action may be filed within 18 months of the opening of the
29 new outlet or location, or within three months after the
30 completion of the formal procedure for awarding compensation
31 to a franchisee, whichever is later. The section is also
32 amended by striking the language permitting the franchisor or
33 franchisee to seek a permanent or preliminary injunction as a
34 result of a violation of the section or to preserve the status
35 quo pending the outcome of the formal procedure.

1 Section 523H.7 is amended by striking language that
2 requires a comparison of the franchisor's actions in
3 terminating a franchisee with the franchisor's actions in
4 other similar circumstances when determining if such actions
5 are arbitrary or capricious. The section is amended to
6 provide that a reasonable period of time to cure a default
7 need be no more than 10 days for nonpayment of moneys due
8 under the agreement or more than 30 days for noncompliance
9 with any other provision of the agreement. Currently the
10 period of time to cure a default is no more than 30 days for
11 nonpayment of moneys due under the agreement, and no less than
12 30 days or more than 90 days for any other default. The
13 section is also amended by striking language permitting
14 termination of the franchise by the franchisor in the event of
15 a fourth material breach after three material breaches of an
16 agreement within a 12-month period where the franchisee has
17 been given an opportunity to cure the initial three breaches,
18 and replacing that language with a provision permitting
19 termination if the franchisee repeatedly fails to comply with
20 one or more material provisions of the franchise agreement,
21 whether or not the franchisee cures the breach after notice.

22 Section 523H.8, relating to nonrenewal of a franchise, is
23 amended by adding an additional circumstance under which a
24 franchisor may refuse to renew a franchise if proper notice of
25 the nonrenewal is given. Currently, a franchisor cannot
26 refuse to renew unless notice of an intent not to renew must
27 be given to the franchisee at least six months prior to the
28 expiration date or any extension of the franchise agreement,
29 and at least one additional circumstance identified in this
30 section also exists. The additional circumstance provided by
31 the bill provides that the franchisor permits the franchisee
32 the opportunity to sell the franchise during the period prior
33 to expiration, and that the purchaser meets the franchisor's
34 current requirements for franchisees, the franchisor agrees to
35 offer a full-term franchise agreement, and the purchaser

1 agrees to meet the current requirements for franchisees.

2 Section 523H.11, relating to repurchase of assets, is
3 amended to provide that a franchisor may prohibit a franchisee
4 from engaging in a lawful business at any location upon
5 termination or nonrenewal of the franchise in compliance with
6 this chapter.

7 Section 523H.12, relating to independent sourcing, is
8 stricken and rewritten to provide that a franchisor may offer
9 a franchise as part of a turnkey business. The section
10 provides that the franchisor may require that franchisees
11 purchase equipment, products, and services utilizing the
12 franchisor's trade secrets, specialized technology or
13 proprietary processes or ingredients, and principal products
14 sold by the franchisee which are a major source of revenue to
15 the franchisor, from the franchisor or its affiliate. A
16 franchisor is to permit a franchisee to obtain other
17 equipment, products, and services from other suppliers who
18 meet certain requirements identified in the section.

19 Section 523H.13, regarding private civil actions, is
20 amended to strike language providing for the recovery of costs
21 and reasonable attorneys' and experts' fees from a party
22 liable for damages as the result of a violation of this
23 chapter.

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HOUSE FILE 2235

H-5249

1 Amend House File 2235 as follows:
2 1. Page 8, by striking lines 13 through 19 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. In the event of nonpayment of moneys due
9 under the franchise agreement, the period to cure need
10 not exceed thirty days."

By HOLVECK of Polk

H-5249 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5250

1 Amend House File 2235 as follows:
2 1. Page 10, by inserting after line 14 the
3 following:
4 "Sec. ____ . Section 523H.8, Code Supplement 1995,
5 is amended by adding the following new subsection:
6 NEW SUBSECTION. 3. A franchisor shall not refuse
7 to renew a franchise if the refusal is for the purpose
8 of converting the franchisee's business into an
9 operation that will be owned directly or indirectly by
10 the franchisor."

11 2. By renumbering as necessary.

By HOLVECK of Polk

H-5250 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5247

1 Amend House File 2235 as follows:
2 1. Page 8, by striking lines 1 through 6 and
3 inserting the following: "business reason. "Good
4 cause" includes the failure of the franchisee to
5 comply with any material lawful requirement of the
6 franchise agreement, provided that the termination by
7 the franchisor is not arbitrary or capricious when
8 compared to the actions of the franchisor in other
9 similar circumstances. The burden of proof showing".

By HOLVECK of Polk

H-5247 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5248

1 Amend House File 2235 as follows:
2 1. Page 8, lines 2 and 3, by striking the words
3 "material lawful" and inserting the following:
4 material-lawful essential and reasonable".

By HOLVECK of Polk

H-5248 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5251

1 Amend House File 2235 as follows:
2 1. Page 10, by inserting after line 14 the
3 following:
4 "Sec. ____ . NEW SECTION. 523H.10A UNFAIR AND
5 DECEPTIVE ACTS.
6 In connection with the grant of a franchise,
7 subsequent performance and termination, it is unlawful
8 for the franchisor to engage in any unfair or
9 deceptive act or practice including, but not limited
10 to, the following:
11 1. Employing a device, scheme, or artifice to
12 defraud.
13 2. Making an untrue statement of material fact or
14 omitting to state a material fact necessary in order
15 to make the statements made, in the light of the
16 circumstances under which they are made, not
17 misleading.
18 3. Engaging in an act, practice, or course of
19 business which operates or would operate as a fraud,
20 deceit, forfeiture, or unconscionable conduct.
21 4. Omitting to state a material fact or make or
22 cause to be made an untrue statement of a material
23 fact in any registration or prospectus required under
24 federal or state law or regulation and presented to a
25 prospective franchisee.
26 5. Making a false or misleading statement of
27 material fact or omitting to state a material fact in
28 a registration application required to be stated or
29 necessary to make a required statement not misleading.
30 6. Employing illegal or deceptive activities in
31 the operation of the franchisor's enterprise or method
32 of business."
33 2. By renumbering as necessary.
By HOLVECK of Polk

H-5251 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5252

1 Amend House File 2235 as follows:
2 1. Page 12, by inserting after line 7 the
3 following:
4 "Sec. ____ . NEW SECTION. 523H.12A INSURANCE
5 AGENTS.
6 The termination and nonrenewal protections of
7 sections 523H.7 and 523H.8 also apply to insurance
8 agents located in this state. The remedies provided
9 in section 523H.13 are applicable to violations of
10 this section."
11 2. By renumbering as necessary.
By HOLVECK of Polk

H-5252 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5253

1 Amend House File 2235 as follows:

2 1. Page 12, by inserting after line 15 the
3 following:

4 "Sec. ____ . NEW SECTION. 523H.13A DAMAGES
5 RECOVERABLE.

6 Damages recoverable pursuant to the provisions of
7 this chapter include, but are not limited to, the
8 following:

9 1. A fractional portion of the franchisee's
10 tangible assets, both real and personal, in this state
11 used with respect to the terminated or nonrenewed
12 franchise, including but not limited to, sales outlets
13 and facilities, offices, warehouses, trucks and the
14 furnishing, equipment, and accessories therein. The
15 numerator of the fraction shall consist of the
16 franchisee's gross sales, in the most recently
17 completed fiscal year, within this state attributable
18 to the terminated or nonrenewed franchise, and the
19 denominator of the fraction shall consist of the
20 franchisor's total gross sales, in the most recently
21 completed fiscal year, in this state.

22 2. Loss of goodwill.

23 3. Loss of profits, which loss shall be presumed
24 to be no less than five times the profit obtained by
25 the franchised distributor, by virtue of the
26 terminated franchise, in the most recently completed
27 fiscal year.

28 4. All other damages allowed under the law of this
29 state.

30 5. Reasonable attorney fees and expenses incurred
31 in the action or actions brought pursuant to this
32 chapter."

33 2. By renumbering as necessary.

By HOLVECK of Polk

H-5253 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5287

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 5, line 43, by striking the words
4 "material lawful" and inserting the following:
5 "~~material-lawful~~ essential and reasonable".

By HOLVECK of Polk

H-5287 FILED MARCH 11, 1996

HOUSE FILE 2235

H-5288

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 6, by inserting after line 47 the
4 following:

5 "Sec. ____ . Section 523H.8, Code Supplement 1995,
6 is amended by adding the following new subsection:
7 NEW SUBSECTION. 3. A franchisor shall not refuse
8 to renew a franchise if the refusal is for the purpose
9 of converting the franchisee's business into an
10 operation that will be owned directly or indirectly by
11 the franchisor."

12 2. By renumbering as necessary.

By HOLVECK of Polk

H-5288 FILED MARCH 11, 1996

HOUSE FILE 2235

H-5260

1 Amend House File 2235 as follows:

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

4 "Section 1. Section 523H.5, subsections 3, 4, 5,
5 and 7, Code Supplement 1995, are amended to read as
6 follows:

7 3. A franchisor may require as a condition of a
8 transfer any of the following:

9 a. That the transferee successfully complete a
10 reasonable at the time of the transfer the
11 franchisor's current training program required of new
12 franchisees.

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

17 c. That the franchisee pay or make ~~provision~~
18 reasonably provisions acceptable to the franchisor to
19 pay any amount due the franchisor or the franchisor's
20 affiliate.

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

24 4. A If a franchisee may-transfer transfers the
25 franchisee's interest in the franchise, for the
26 unexpired term of the franchise agreement, and a
27 franchisor shall not require the franchisee or the
28 transferee to enter into a new or different franchise
29 agreement as a condition of the transfer.

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

43 7. A transfer by a franchisee is deemed to be
44 approved sixty days after the franchisee submits the
45 request for consent to the transfer unless the
46 franchisor withholds consent to the transfer as
47 evidenced in writing, specifying the reason or reasons
48 for withholding the consent, or the franchisor
49 exercises a contractual right of first refusal. The
50 written notice must be delivered to the franchisee

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1 prior to the expiration of the sixty-day period. Any
2 such notice is privileged and is not actionable based
3 upon a claim of defamation.

4 Sec. 2. Section 523H.5, subsection 12, unnumbered
5 paragraph 1, Code Supplement 1995, is amended to read
6 as follows:

7 The following occurrences shall not be considered
8 transfers requiring the consent of the franchisor
9 under a franchise agreement, and shall not result in
10 the imposition of any penalties or make applicable any
11 right of first refusal by the franchisor, provided
12 that the franchisor, except with respect to succession
13 of ownership of a franchise upon the death or
14 disability of a franchisee under paragraph "a", is
15 given at least sixty-days advance written notice of
16 any of the following occurrences:

17 Sec. 3. Section 523H.5, subsection 12, paragraphs
18 a and f, Code Supplement 1995, are amended to read as
19 follows:

20 a. The succession of ownership of a franchise upon
21 the death or disability of a franchisee, or of an
22 owner of a franchise, to the surviving spouse, ~~heir~~
23 child or children, or a partner active in the
24 management of the franchisee franchise unless the
25 successor fails to meet within one year the then
26 current reasonable qualifications of the franchisor
27 for franchisees and the enforcement of the reasonable
28 current qualifications is not arbitrary or capricious,
29 provided that the surviving spouse, child or children,
30 or partner is responsible for maintaining all of the
31 standards and obligations under the franchise
32 agreement during the one-year period preceding
33 qualification as a franchisee.

34 f. A grant or retention of a security interest in
35 the assets of the franchised business ~~or-its-assets,~~
36 ~~or-an-ownership-interest-in-the-franchisee~~
37 specifically excluding all rights under the franchise
38 agreement, provided the security agreement establishes
39 an obligation on the part of the secured party
40 enforceable by the franchisor to give the franchisor
41 notice of the secured party's intent to foreclose on
42 the collateral simultaneously with notice to the
43 franchisee, and a reasonable opportunity to redeem the
44 interests of the secured party and recover the secured
45 party's interest in the franchise-or assets of the
46 franchised business by paying the secured obligation.

47 Sec. 4. Section 523H.5, subsection 12, paragraph
48 e, Code Supplement 1995, is amended by striking the
49 paragraph.

50 Sec. 5. Section 523H.5, subsection 13, Code

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1 Supplement 1995, is amended to read as follows:

2 13. A franchisor shall not interfere or attempt to
3 interfere with any disposition of an interest in a
4 franchise or franchised business as described in
5 subsection 12, paragraphs "a" through "f", provided
6 that the franchisor may prohibit any disposition of
7 any interest, directly or indirectly, to a competitor
8 of the franchisor or a competitor of any of the
9 franchisor's franchisees.

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

12 523H.6 ENCROACHMENT.

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

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

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

42 c. The existing franchisee, at the time the
43 franchisor develops, or grants to a franchisee the
44 right to develop, a new outlet or location, is not in
45 compliance with the franchisor's then current
46 reasonable criteria for eligibility for a new
47 franchise. A franchisee determined to be ineligible
48 pursuant to this paragraph shall be afforded the
49 opportunity to seek compensation pursuant to the
50 formal procedure established under paragraph "d",

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1 subparagraph (2). Such procedure shall be the
2 franchisee's exclusive remedy.

3 d. The franchisor has established both of the
4 following:

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

11 (2) A reasonable formal procedure for awarding
12 compensation or other form of consideration to a
13 franchisee to offset all or a portion of the
14 franchisee's lost profits caused by the establishment
15 of the new outlet or location. The procedure shall be
16 deemed reasonable if approved by a majority of the
17 franchisor's franchisees in the United States, either
18 individually or by a representative body. The
19 procedure shall involve, ~~at the option of the~~
20 ~~franchisee,~~ least one of the following:

21 (a) A panel with the authority to make a decision
22 or award in accordance with the formal procedure,
23 comprised of an equal number of members selected by
24 the franchisee and the franchisor, and one additional
25 member to be selected unanimously by the members
26 selected by the franchisee and the franchisor.

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

34 (c) Arbitration of any dispute before neutral
35 arbitrators with the authority to make a decision or
36 award in accordance with the formal procedure and
37 pursuant to the rules of the American arbitration
38 association. The award of an arbitrator pursuant to
39 this subparagraph subdivision is subject to judicial
40 review pursuant to chapter 679A.

41 e. The existing franchisee has been granted
42 reasonable territorial rights and the new outlet or
43 location does not violate those territorial rights.

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

49 3. a. In establishing damages under a cause of
50 action brought pursuant to this section, the

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

11 (1) Five Ten percent.

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

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

19 4. Any cause of action brought under this section
20 must be filed within eighteen months of the opening of
21 the new outlet or location ~~or within three months~~
22 ~~after the completion of the procedure under subsection~~
23 ~~17 paragraph "d", subparagraph (2), whichever is~~
24 ~~later.~~ An application to vacate the award of an
25 arbitrator under subsection 1, paragraph "d",
26 subparagraph (2), subparagraph subdivision (c), shall
27 be filed as provided in section 679A.12.

28 ~~5. Upon petition by the franchisor or the~~
29 ~~franchisee, the district court may grant a permanent~~
30 ~~or preliminary injunction to prevent injury or~~
31 ~~threatened injury for a violation of this section or~~
32 ~~to preserve the status quo pending the outcome of the~~
33 ~~formal procedure under subsection 17 paragraph "d",~~
34 ~~subparagraph (2).~~

35 Sec. 7. Section 523H.7, subsections 1 and 3, Code
36 Supplement 1995, are amended to read as follows:

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

50 3. Notwithstanding subsection 2, a franchisor may

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1 terminate a franchisee upon written notice and without
2 an opportunity to cure if any of the following apply:

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

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

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

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

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

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

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

40 h. The franchisee is convicted of a felony or any
41 ~~other~~ criminal misconduct which ~~materially-and is~~
42 likely to adversely affects affect the operation,
43 maintenance, or goodwill of the franchise in the
44 relevant market.

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

48 Sec. 8. Section 523H.11, Code Supplement 1995, is
49 amended to read as follows:

50 523H.11 REPURCHASE OF ASSETS.

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1 A franchisor shall not prohibit a franchisee from,
2 or enforce a prohibition against a franchisee,
3 engaging in any lawful business at any location after
4 a termination or refusal to renew by a franchisor,
5 other than a termination for good cause as provided in
6 section 523H.7 or refusal to renew by a franchisor for
7 good cause as provided in section 523H.8, unless it is
8 one which relies on a substantially similar marketing
9 program as the terminated or nonrenewed franchise or
10 unless the franchisor offers in writing no later than
11 ten business days before expiration of the franchise
12 to purchase the assets of the franchised business for
13 its fair market value as a going concern. The value
14 of the assets shall not include the goodwill of the
15 business attributable to the trademark licensed to the
16 franchisee in the franchise agreement. The offer may
17 be conditioned upon the ascertainment of a fair market
18 value by an impartial appraiser. This section does
19 not apply to assets of the franchised business which
20 the franchisee did not purchase from the franchisor,
21 or the agent of the franchisor.

22 Sec. 9. Section 523H.12, Code 1995, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 523H.12 INDEPENDENT SOURCING.

26 1. A franchisor may offer franchises as a part of
27 a partially or fully developed turnkey business.

28 2. A franchisor may require that franchisees
29 purchase from the franchisor, or one or more suppliers
30 selected by the franchisor, either or both of the
31 following:

32 a. Equipment, products, and services required to
33 establish or operate the franchise and that utilize or
34 embody the franchisor's trade secrets, specialized
35 technology or proprietary processes or ingredients or
36 for which it is not practical to issue specifications
37 or standards.

38 b. Products purchased for resale by the
39 franchisee, with or without modification or value
40 added by the franchisee, if such products are among
41 the principal products sold by the franchisee.

42 3. A franchisor shall permit its franchisees to
43 obtain other equipment, products, and services
44 required to establish or operate the franchise from
45 sources chosen by the franchisee, provided that the
46 supplier first demonstrates to the franchisor's
47 reasonable satisfaction that the supplier satisfies
48 all of the following:

49 a. Meets the franchisor's specifications,
50 standards, and requirements regarding quality,

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- 1 variety, service, safety, and health for the
 2 equipment, products, and services supplied and the
 3 facilities used in the production and distribution of
 4 such equipment, products, and services.
 5 b. Has the capacity to meet franchisee supply
 6 requirements.
 7 c. Is financially sound and has a sound business
 8 reputation.
 9 d. Will supply equipment, products, or services to
 10 a sufficient number of franchisees of the franchisor
 11 to enable the franchisor to economically monitor
 12 compliance by the supplier with the franchisor's
 13 specifications, standards, and requirements.
 14 e. Will comply with the franchisor's reporting
 15 requirements.

16 Sec. 10. Section 523H.13, Code 1995, is amended to
 17 read as follows:

18 523H.13 PRIVATE CIVIL ACTION.

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

By DINKLA of Guthrie

H-5260 FILED MARCH 7, 1996

HOUSE FILE 2235

H-5148

- 1 Amend House File 2235 as follows:
 2 1. Page 3, by striking lines 22 and 23.
 3 2. By striking page 3, line 24, through page 4,
 4 line 24.
 5 3. Page 4, line 27, by inserting after the figure
 6 "523H.6," the following: "subsection 1,".
 7 4. Page 4, by striking line 29.
 8 5. Page 6, lines 7 and 8, by striking the words
 9 "franchisee franchisor" and inserting the following:
 10 "franchisee".
 11 6. By striking page 6, line 30, through page 7,
 12 line 28.
 13 7. Page 8, by striking lines 5 and 6 and
 14 inserting the following: "capricious when compared to
 15 the actions of the franchisor in other similar
 16 circumstances. The burden of proof of showing".
 17 8. Page 10, by striking lines 15 through 35.
 18 9. Page 12, by striking lines 8 through 15.
 19 10. By renumbering as necessary.

By KREMER of Buchanan

H-5148 FILED MARCH 4, 1996

HOUSE FILE 2235

H-5289

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 6, by inserting after line 47 the
4 following:

5 "Sec. ____ . NEW SECTION. 523H.10A UNFAIR AND
6 DECEPTIVE ACTS.

7 In connection with the grant of a franchise, or
8 subsequent performance and termination, it is unlawful
9 for the franchisor to engage in any unfair or
10 deceptive act or practice including, but not limited
11 to, the following:

12 1. Employing a device, scheme, or artifice to
13 defraud.

14 2. Making an untrue statement of material fact or
15 omitting to state a material fact necessary in order
16 to make the statements made, in the light of the
17 circumstances under which they are made, not
18 misleading.

19 3. Engaging in an act, practice, or course of
20 business which operates or would operate as a fraud,
21 deceit, forfeiture, or unconscionable conduct.

22 4. Omitting to state a material fact or make or
23 cause to be made an untrue statement of a material
24 fact in any registration or prospectus required under
25 federal or state law or regulation and presented to a
26 prospective franchisee.

27 5. Making a false or misleading statement of
28 material fact or omitting to state a material fact in
29 a registration application required to be stated or
30 necessary to make a required statement not misleading.

31 6. Employing illegal or deceptive activities in
32 the operation of the franchisor's enterprise or method
33 of business."

34 2. By renumbering as necessary.

By HOLVECK of Polk

H-5289 FILED MARCH 11, 1996

HOUSE FILE 2235

H-5290

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 8, by inserting after line 15 the
4 following:

5 "Sec. ____ . NEW SECTION. 523H.12A INSURANCE
6 AGENTS.

7 The termination and nonrenewal protections of
8 sections 523H.7 and 523H.8 also apply to insurance
9 agents located in this state. The remedies provided
10 in section 523H.13 are applicable to violations of
11 this section."

12 2. By renumbering as necessary.

By HOLVECK of Polk

H-5290 FILED MARCH 11, 1996

HOUSE FILE 2235

H-5291

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 8, by striking line 24 and inserting the
4 following: "including injunctive and other equitable
5 relief.

6 Sec. ____ . NEW SECTION. 523H.13A DAMAGES
7 RECOVERABLE.

8 Damages recoverable pursuant to the provisions of
9 this chapter include, but are not limited to, the
10 following:

11 1. A fractional portion of the franchisee's
12 tangible assets, both real and personal, in this state
13 used with respect to the terminated or nonrenewed
14 franchise, including but not limited to, sales outlets
15 and facilities, offices, warehouses, trucks and the
16 furnishing, equipment, and accessories therein. The
17 numerator of the fraction shall consist of the
18 franchisee's gross sales, in the most recently
19 completed fiscal year, within this state attributable
20 to the terminated or nonrenewed franchise, and the
21 denominator of the fraction shall consist of the
22 franchisor's total gross sales, in the most recently
23 completed fiscal year, in this state.

24 2. Loss of goodwill.

25 3. Loss of profits, which loss shall be presumed
26 to be no less than five times the profit obtained by
27 the franchised distributor, by virtue of the
28 terminated franchise, in the most recently completed
29 fiscal year.

30 4. All other damages allowed under the law of this
31 state.

32 5. Reasonable attorney fees and expenses incurred
33 in the action or actions brought pursuant to this
34 chapter."

35 2. By renumbering as necessary.

By HOLVECK of Polk

H-5291 FILED MARCH 11, 1996

HOUSE FILE 2235

H-5304

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. By striking page 1, line 4, through page 3,
4 line 9, and inserting the following:

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

7 523H.5 TRANSFER OF FRANCHISE.

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

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

27 3. A franchisor may require as a condition of a
28 transfer any of the following:

29 a. That the transferee successfully complete a
30 reasonable training program.

31 b. That a reasonable transfer fee be paid to
32 reimburse the franchisor for the franchisor's
33 reasonable and actual expenses directly attributable
34 to the transfer.

35 c. That the franchisee pay or make provision
36 reasonably acceptable to the franchisor to pay any
37 amount due the franchisor or the franchisor's
38 affiliate.

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

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

48 5. A franchisee may transfer the franchisee's
49 interest in the franchise, for the unexpired term of
50 the franchise agreement, and a franchisor shall not

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1 require the franchisee or the transferee to enter into
2 a new or different franchise agreement as a condition
3 of the transfer.

4 ~~5-~~ 6. A franchisee shall give the franchisor no
5 less than sixty days' written notice of a transfer
6 which is subject to the provisions of this section,
7 and on request from the franchisor shall provide in
8 writing the ownership interests of all persons holding
9 or claiming an equitable or beneficial interest in the
10 franchise subsequent to the transfer or the
11 franchisee, as appropriate. A franchisee shall not
12 circumvent the intended effect of a contractual
13 provision governing the transfer of the franchise or
14 an interest in the franchise by means of a management
15 agreement, lease, profit-sharing agreement,
16 conditional assignment, or other similar device.

17 ~~6-~~ 7. A franchisor shall not transfer its interest
18 in a franchise unless the franchisor makes reasonable
19 provision for the performance of the franchisor's
20 obligations under the franchise agreement by the
21 transferee. ~~For purposes of this subsection,~~
22 ~~"reasonable provision" means that upon the transfer,~~
23 ~~the entity assuming the franchisor's obligations has~~
24 ~~the financial means to perform the franchisor's~~
25 ~~obligations in the ordinary course of business, but~~
26 ~~does not mean that the franchisor transferring the~~
27 ~~franchise is required to guarantee obligations of the~~
28 ~~underlying franchise agreement.~~ A franchisor shall
29 provide the franchisee notice of a proposed transfer
30 of the franchisor's interest in the franchise at the
31 time the disclosure is required of the franchisor
32 under applicable securities laws, if interests in the
33 franchisor are publicly traded, or if not publicly
34 traded, at the time such disclosure would be required
35 if the interests in the franchisor were publicly
36 traded.

37 ~~7-~~ 8. A transfer by a franchisee is deemed to be
38 approved sixty days after the franchisee submits the
39 request for consent to the transfer unless the
40 franchisor withholds consent to the transfer as
41 evidenced in writing, specifying the reason or reasons
42 for withholding the consent. The written notice must
43 be delivered to the franchisee prior to the expiration
44 of the sixty-day period. Any such notice is
45 privileged and is not actionable based upon a claim of
46 defamation.

47 ~~8-~~ 9. A franchisor shall not discriminate against
48 a proposed transferee of a franchise on the basis of
49 race, color, national origin, religion, sex, or
50 disability.

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1 ~~9-~~ 10. A franchisor, as a condition to a transfer
2 of a franchise, shall not obligate a franchisee to
3 undertake obligations or relinquish any rights
4 unrelated to the franchise proposed to be transferred,
5 or to enter into a release of claims broader than a
6 similar release of claims by the franchisor against
7 the franchisee which is entered into by the
8 franchisor.

9 ~~10-~~ 11. A franchisor, after a transfer of a
10 franchise, shall not seek to enforce any covenant of
11 the transferred franchise against the transferor which
12 prohibits the transferor from engaging in any lawful
13 occupation or enterprise. However, this subsection
14 does not prohibit the franchisor from enforcing a
15 contractual covenant against the transferor not to
16 exploit the franchisor's trade secrets or intellectual
17 property rights, unless otherwise agreed to by the
18 parties.

19 ~~11-~~ 12. For purposes of this section, "transfer"
20 means any change in ownership or control of a
21 franchise, franchised business, or a franchisee.

22 ~~12-~~ 13. The following occurrences shall not be
23 considered transfers requiring the consent of the
24 franchisor under a franchise agreement, and shall not
25 result in the imposition of any penalties or make
26 applicable any right of first refusal by the
27 franchisor:

28 a. The succession of ownership of a franchise upon
29 the death or disability of a franchisee, or of an
30 owner of a franchise, to the surviving franchisee's
31 spouse, heir child or children, or a partner active-in-
32 the-management of the franchisee unless the successor
33 fails to meet within-one-year the then current
34 reasonable qualifications of the franchisor for
35 franchisees and the enforcement of the reasonable
36 current qualifications is not arbitrary or capricious
37 when compared to actions of the franchisor in other
38 similar circumstances.

39 b. The succession of a spouse, child, partner, or
40 other owner as operating manager upon the death or
41 disability of the operating manager, unless the
42 successor fails to meet the then current reasonable
43 qualifications of the franchisor for an operating
44 manager, and 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 c. Incorporation of a proprietorship franchisee,
49 provided that such incorporation does not prohibit a
50 franchisor from requiring a personal guaranty by the

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1 franchisee of obligations related to the franchise.
2 ~~e.~~ d. A transfer within an existing ownership
3 group of a franchise provided that more than fifty
4 percent of the franchise is held by persons who meet
5 the franchisor's reasonable current qualifications for
6 franchisees. If less than fifty percent of the
7 franchise would be owned by persons who meet the
8 franchisor's reasonable current qualifications, the
9 franchisor may refuse to authorize the transfer,
10 provided that enforcement of the reasonable current
11 qualifications is not arbitrary or capricious when
12 compared to actions of the franchisor in other similar
13 circumstances.

14 ~~d.~~ e. A transfer of less than a controlling
15 interest in the franchise to the franchisee's spouse
16 or child or children, provided that more than fifty
17 percent of the entire franchise is held by those who
18 meet the franchisor's reasonable current
19 qualifications. If less than fifty percent of the
20 franchise would be owned by persons who meet the
21 franchisor's reasonable current qualifications, the
22 franchisor may refuse to authorize the transfer,
23 provided that enforcement of the reasonable current
24 qualifications is not arbitrary or capricious when
25 compared to actions of the franchisor in other similar
26 circumstances.

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

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

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- 1 secured obligation.
- 2 ~~13~~ 14. A franchisor shall not interfere or
- 3 attempt to interfere with any disposition of an
- 4 interest in a franchise or franchised business as
- 5 described in subsection ~~12~~ 13, paragraphs "a" through
- 6 "f" "g".
- 7 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-5304 FILED MARCH 12, 1996

HOUSE FILE 2235

H-5305

- 1 Amend the amendment, H-5260, to House File 2235 as
- 2 follows:
- 3 1. Page 2, lines 22 and 23, by striking the words
- 4 "heir child or children" and inserting the following:
- 5 "heir".
- 6 2. Page 2, line 29, by striking the words "child
- 7 or children" and inserting the following: "heir".

By WEIGEL of Chickasaw

H-5305 FILED MARCH 12, 1996

Adopted 3-13-96 (R 696)

HOUSE FILE 2235

H-5306

- 1 Amend the amendment, H-5260, to House File 2235 as
- 2 follows:
- 3 1. Page 2, by striking lines 30 through 33 and
- 4 inserting the following: "or partner cures any new
- 5 breach of the agreement cited during the one-year
- 6 period."

By WEIGEL of Chickasaw

H-5306 FILED MARCH 12, 1996

HOUSE FILE 2235

H-5309

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. Page 1, line 19, by striking the words "any
4 amount" and inserting the following: "any-amount all
5 accounts".

A 6 2. Page 1, line 20, by inserting after the word
7 "affiliate" the following: "acquired in the regular
8 course of business".

B 9 3. Page 2, by striking lines 47 through 49.

10 4. Page 3, line 39, by striking the words "five
11 ten" and inserting the following: "five".

C 12 5. Page 5, line 11, by striking the words "Five
13 Ten" and inserting the following: "Five".

14 6. Page 5, by striking lines 35 through 49 and
15 inserting the following:

D 16 "Sec. ____ Section 523H.7, subsection 3, Code
17 Supplement 1995, is amended to read as follows:"

E 18 7. Page 8, by striking lines 16 through 24.

19 8. Renumber as necessary.

By KREMER of Buchanan

H-5309 FILED MARCH 12, 1996

(P.695) A. adapted 3-13-96
B.
C.
D.
E.

HOUSE FILE 2235

H-5307

1 Amend the amendment, H-5260, to House File 2235 as
2 follows:

3 1. By striking page 5, line 35, through page 6,
4 line 47, and inserting the following:

5 "Sec. ____ . Section 523H.7, Code Supplement 1995,
6 is amended to read as follows:

7 523H.7 TERMINATION.

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

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

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

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

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

44 c. b. The franchisee voluntarily abandons the
45 franchise by failing to operate the business for five
46 consecutive business days during which the franchisee
47 is required to operate the business under the terms of
48 the franchise, or any shorter period after which it is
49 not unreasonable under the facts and circumstances for
50 the franchisor to conclude that the franchisee does

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1 not intend to continue to operate the franchise,
2 unless the failure to operate is due to circumstances
3 beyond the control of the franchisee.

4 ~~d. c.~~ The franchisor and franchisee agree in
5 writing to terminate the franchise.

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

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

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

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

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

31 ~~i. h.~~ The franchisee operates the franchised
32 business in a manner that imminently endangers the
33 public health and safety."

34 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-5307 FILED MARCH 12, 1996

HOUSE FILE 2235

H-5382

- 1 Amend the amendment, H-5260, to House File 2235 as
- 2 follows:
- 3 1. By striking page 5, line 35, through page 6,
- 4 line 47.
- 5 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-5382 FILED MARCH 13, 1996

HOUSE FILE 2235

H-5383

- 1 Amend the amendment, H-5260, to House File 2235 as
- 2 follows:
- 3 1. By striking page 1, line 4, through page 3,
- 4 line 10, and inserting the following:
- 5 "Section 1. Section 523H.6, Code Supplement 1995,
- 6 is".
- 7 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-5383 FILED MARCH 13, 1996

HOUSE FILE 2235

H-5444

- 1 Amend the amendment, H-5260, to House File 2235 as
- 2 follows:
- 3 1. Page 2, line 33, by inserting after the word
- 4 "franchisee." the following: "Notwithstanding the
- 5 requirement that the surviving spouse, child or
- 6 children, or partner is responsible for maintaining
- 7 all of the standards and obligations under the
- 8 franchise agreement during the one-year period
- 9 preceding qualification as a franchisee, the
- 10 franchisor shall not impose any penalties or have a
- 11 right of first refusal as the result of the breach of
- 12 any standard or obligation which exists on the date of
- 13 the death or disability of the franchisee."

By WEIGEL of Chickasaw

H-5444 FILED MARCH 18, 1996

DINKLA, Chair

METCALF

RENKEN

WEIGEL

HOLUECK

Succeeded By
SF/HF 2235

HSB 542

COMMERCE - REGULATION

HOUSE FILE _____

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 the definition of a franchise, and
3 applicability, transfer, encroachment, termination,
4 nonrenewal, repurchase of assets, independent sourcing, and
5 enforcement.

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

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1 Section 1. Section 523H.1, subsection 3, Code 1995, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. d. "Franchise" also does not include a
4 nonprofit organization operated on a cooperative basis by and
5 for independent retailers which offers goods and services
6 primarily to its member retailers on a wholesale basis.

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

9 523H.2 APPLICABILITY.

10 This chapter applies only to a ~~new-or-existing~~ franchise
11 that is operated ~~in-the-state-of-Iowa~~ within this state
12 pursuant to a franchise agreement entered into on or after
13 July 1, 1996. For purposes of this chapter, the franchise is
14 operated in this state only if the premises from which the
15 franchise is operated is physically located in this state.
16 For purposes of this chapter, a franchise including marketing
17 rights in or to this state, is deemed to be operated in this
18 state only if the franchisee's principal business office is
19 physically located in this state. This chapter does not apply
20 to a franchise solely because an agreement relating to the
21 franchise provides that the agreement is subject to or
22 governed by the laws of this state. The provisions of this
23 chapter do not apply to any existing or future contracts
24 between Iowa franchisors and franchisees who operate
25 franchises located out of state.

26 Sec. 3. Section 523H.5, subsection 1, Code Supplement
27 1995, is amended by striking the subsection and inserting in
28 lieu thereof the following:

29 1. A franchisor shall not refuse to permit a transfer of a
30 franchise, except for good cause. For purposes of this
31 section, "good cause" includes, but is not limited to, the
32 following:

33 a. The failure of the proposed transferee to satisfy at
34 the time of transfer the current qualifications of the
35 franchisor for new franchisees.

1 b. The failure of the transferor or proposed transferee to
2 cure a breach of any term of the franchise agreement.

3 Sec. 4. Section 523H.5, subsections 2, 3, 5, 6, and 7,
4 Code Supplement 1995, are amended to read as follows:

5 2. Except as otherwise provided in ~~this section~~ subsection
6 12, a franchisor may exercise a right of first refusal
7 contained in a franchise agreement after receipt of a proposal
8 from the franchisee to transfer the franchise.

9 3. A franchisor may require as a condition of a transfer,
10 in addition to any other transfer requirements contained in
11 the franchise agreement, any of the following:

12 a. That the transferee successfully complete ~~a reasonable~~
13 at the time of the transfer the franchisor's current training
14 program.

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

18 c. That the franchisee pay or make ~~provision-reasonably~~
19 provisions acceptable to the franchisor to pay any amount due
20 the franchisor or the franchisor's affiliate.

21 d. That the financial terms of the transfer comply at the
22 time of the transfer with the franchisor's current ~~financial~~
23 requirements for-franchisees regarding financial terms of a
24 transfer.

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

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

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

22 Sec. 5. Section 523H.5, subsection 4, Code Supplement
23 1995, is amended by striking the subsection.

24 Sec. 6. Section 523H.5, subsection 12, Code Supplement
25 1995, is amended by striking the subsection and inserting in
26 lieu thereof the following:

27 12. a. A franchisor shall not deny the surviving spouse
28 or a child or children of a deceased or permanently
29 incapacitated franchisee the opportunity to participate in the
30 ownership of the franchise under a valid franchise agreement
31 for a period of one year after the death or permanent
32 incapacity of the franchisee. During that time, the surviving
33 spouse or the child or children of the franchisee shall either
34 meet all of the qualifications which the franchisee was
35 subject to at the time of the death or permanent incapacity of

1 the franchisee, or sell, transfer, or assign the franchise to
2 a person who meets the franchisor's current qualifications for
3 a new franchisee. The rights granted pursuant to this
4 paragraph are subject to the surviving spouse or the child or
5 children of the franchisee maintaining all standards and
6 obligations of the franchise.

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

13 c. (1) A franchisor is prohibited from exercising a right
14 of first refusal with respect to a transfer of a franchise to
15 a surviving spouse or a child or children who is seeking to
16 qualify as a franchisee or who becomes qualified as a
17 franchisee pursuant to paragraph "a", or with respect to a
18 transfer of a franchise to an existing partner pursuant to
19 paragraph "b".

20 (2) This subsection does not prohibit a franchisor from
21 exercising the right of first refusal to purchase a franchise
22 pursuant to subsection 2, after receipt of a bona fide offer
23 to purchase the franchise by a proposed purchaser of the
24 franchise.

25 Sec. 7. Section 523H.5, subsection 13, Code Supplement
26 1995, is amended by striking the subsection.

27 Sec. 8. Section 523H.6, Code Supplement 1995, is amended
28 to read as follows:

29 523H.6 ENCROACHMENT.

30 1. If a franchisor develops, or grants to a franchisee the
31 right to develop, a new outlet or location which sells
32 essentially the same goods or services under the same
33 trademark, service mark, trade name, logotype, or other
34 commercial symbol as an existing franchisee and the new outlet
35 or location is in unreasonable proximity to the existing

1 franchisee's outlet or location and has an adverse effect on
2 the gross sales of the existing franchisee's outlet or
3 location, the existing adversely affected franchisee has a
4 cause of action for monetary damages in an amount calculated
5 pursuant to subsection 3, unless any of the following apply:

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

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

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

29 d. The franchisor has established both of the following:

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

35 (2) A reasonable formal procedure for awarding

1 compensation or other form of consideration to a franchisee to
2 offset all or a portion of the franchisee's lost profits
3 caused by the establishment of the new outlet or location.

4 The procedure shall be deemed reasonable if approved by a
5 majority of the franchisor's franchisees in the United States,
6 either individually or by a representative body. The
7 procedure shall involve, at the option of the franchisee
8 franchisor, one of the following:

9 (a) A panel with the authority to make a decision or award
10 in accordance with the formal procedure, comprised of an equal
11 number of members selected by the franchisee and the
12 franchisor, and one additional member to be selected
13 unanimously by the members selected by the franchisee and the
14 franchisor.

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

21 (c) Arbitration of any dispute before neutral arbitrators
22 with the authority to make a decision or award in accordance
23 with the formal procedure and pursuant to the rules of the
24 American arbitration association. The award of an arbitrator
25 pursuant to this subparagraph subdivision is subject to
26 judicial review pursuant to chapter 679A.

27 e. The existing franchisee has been granted reasonable
28 territorial rights and the new outlet or location does not
29 violate those territorial rights.

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

35 3. a. In establishing damages under a cause of action

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

10 (1) Five Ten percent.

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

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

18 4. Any cause of action brought under this section must be
19 filed within eighteen months of the opening of the new outlet
20 or location ~~or within three months after the completion of the~~
21 ~~procedure under subsection 17 paragraph "d" subparagraph (2)~~
22 ~~whichever is later.~~

23 ~~5. Upon petition by the franchisor or the franchisee, the~~
24 ~~district court may grant a permanent or preliminary injunction~~
25 ~~to prevent injury or threatened injury for a violation of this~~
26 ~~section or to preserve the status quo pending the outcome of~~
27 ~~the formal procedure under subsection 17 paragraph "d"~~
28 ~~subparagraph (2).~~

29 Sec. 9. Section 523H.7, Code Supplement 1995, is amended
30 to read as follows:

31 523H.7 TERMINATION.

32 1. Except as otherwise provided by this chapter, a
33 franchisor shall not terminate a franchise prior to the
34 expiration of its term except for good cause. For purposes of
35 this section, "good cause" is cause based upon a legitimate

1 business reason. "Good cause" includes, but is not limited
2 to, the failure of the franchisee to comply with any material
3 lawful requirement of the franchise agreement, provided that
4 the termination by the franchisor is not arbitrary or
5 capricious ~~when-compared-to-the-actions-of-the-franchisor-in~~
6 ~~other-similar-circumstances.~~ The burden of proof of showing
7 that action of the franchisor is arbitrary or capricious shall
8 rest with the franchisee.

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

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

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

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

33 c. The franchisee voluntarily abandons the franchise by
34 failing to operate the business for five consecutive business
35 days during which the franchisee is required to operate the

1 business under the terms of the franchise, or any shorter
2 period after which it is not unreasonable under the facts and
3 circumstances for the franchisor to conclude that the
4 franchisee does not intend to continue to operate the
5 franchise, unless the failure to operate is due to
6 circumstances beyond the control of the franchisee.

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

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

13 ~~f. After three material breaches of a franchise agreement~~
14 ~~occurring within a twelve month period, for which the~~
15 ~~franchisee has been given notice and an opportunity to cure,~~
16 ~~the franchisor may terminate upon any subsequent material~~
17 ~~breach within the twelve month period without providing an~~
18 ~~opportunity to cure, provided that the action is not arbitrary~~
19 ~~and capricious~~ The franchisee repeatedly fails to comply with
20 one or more material provisions of the franchise agreement,
21 whether or not the franchisee complies after receiving notice
22 of the failure to comply, provided that the termination by the
23 franchisor is not arbitrary or capricious.

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

27 h. The franchisee is convicted of a felony or any other
28 criminal misconduct which ~~materially and~~ is likely to
29 ~~adversely affects~~ affect the operation, maintenance, or
30 goodwill of the franchise in the relevant market.

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

33 Sec. 10. Section 523H.8, subsection 1, paragraph b, Code
34 Supplement 1995, is amended by adding the following new
35 subparagraph:

1 NEW SUBPARAGRAPH. (4) During the six-month period prior
2 to the expiration of the franchise agreement or any extension,
3 the franchisor permits the franchisee the opportunity to sell
4 the franchise, and all of the following apply:

5 (a) The purchaser meets, at the time of the sale, the
6 franchisor's current requirements for a franchisee.

7 (b) The franchisor agrees to offer the purchaser a full-
8 term franchise agreement, which reflects similar terms and
9 conditions to those offered to other franchisees at the time
10 of the sale.

11 (c) The purchaser agrees to meet the current requirements
12 for franchises at the time of the sale, including the
13 franchisor's current requirements relating to upgrading the
14 franchise.

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

17 523H.11 REPURCHASE OF ASSETS.

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

1 Sec. 12. Section 523H.12, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 523H.12 INDEPENDENT SOURCING.

5 1. A franchisor may offer franchises as a part of a
6 partially or fully developed turnkey business.

7 2. A franchisor may require that franchisees purchase from
8 the franchisor, or one or more suppliers selected by the
9 franchisor, either or both of the following:

10 a. Equipment, products, and services required to establish
11 or operate the franchise and that utilize or embody the
12 franchisor's trade secrets, specialized technology or
13 proprietary processes or ingredients or for which it is not
14 practical to issue specifications or standards.

15 b. Products purchased for resale by the franchisee, with
16 or without modification or value added by the franchisee, if
17 such products are among the principal products sold by the
18 franchisee and the sale of such products by the franchisor or
19 its affiliate to the franchisee is a major source of revenue
20 to the franchisor or its affiliate.

21 3. A franchisor shall permit its franchisees to obtain
22 other equipment, products, and services required to establish
23 or operate the franchise from sources chosen by the
24 franchisee, provided that the supplier first demonstrates to
25 the franchisor's reasonable satisfaction that the supplier
26 satisfies all of the following:

27 a. Meets the franchisor's specifications, standards, and
28 requirements regarding quality, variety, service, safety, and
29 health for the equipment, products, and services supplied and
30 the facilities used in the production and distribution of such
31 equipment, products, and services.

32 b. Has the capacity to meet franchisee supply
33 requirements.

34 c. Is financially sound and has a sound business
35 reputation.

1 d. Will supply equipment, products, or services to a
2 sufficient number of franchisees of the franchisor to enable
3 the franchisor to economically monitor compliance by the
4 supplier with the franchisor's specifications, standards, and
5 requirements.

6 e. Will comply with the franchisor's reporting
7 requirements.

8 Sec. 13. Section 523H.13, Code 1995, is amended to read as
9 follows:

10 523H.13 PRIVATE CIVIL ACTION.

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

16 EXPLANATION

17 This bill amends provisions of chapter 523H relating to
18 franchise agreements.

19 The definition of "franchise" in section 523H.1 is amended
20 to exclude a nonprofit organization operated on a cooperative
21 basis by and for independent retailers which offers goods and
22 services primarily to its member retailers on a wholesale
23 basis.

24 Section 523H.2 is amended to provide that the chapter
25 applies only to franchises operated in Iowa pursuant to an
26 agreement entered into on or after July 1, 1996.

27 Section 523H.5, which pertains to the transfer of a
28 franchise, is amended to provide that the franchisor may
29 require that requirements contained in a franchise agreement
30 be met prior to permitting the transfer, in addition to other
31 requirements identified in section 523H.5. The bill provides
32 that the transferee may be required to successfully complete
33 the franchisor's current training program rather than a
34 reasonable training program, pay the franchisor's reasonable
35 expenses attributable to the transfer rather than the

1 reasonable and actual expenses directly attributable to the
2 transfer, and comply with the franchisor's current
3 requirements regarding financial terms of the transfer rather
4 than the current financial requirements for franchisees. The
5 section requires that the franchisee provide a list of
6 ownership interests subsequent to the transfer. Currently,
7 the franchisor must request the list before the franchisee is
8 required to provide it to the franchisor. The section
9 provides that the franchisor may exercise a contractual right
10 of first refusal to prevent the automatic approval of a
11 transfer within the 60-day period after the franchisee submits
12 the request for consent to the transfer.

13 The right of a franchisee, under section 523H.5, subsection
14 4, to transfer the franchisee's interest in the franchise for
15 the unexpired term of the agreement, and not be subject to a
16 requirement that the transfer be conditioned upon the
17 franchisee or transferee entering into a new or different
18 franchise agreement, is repealed.

19 The bill also strikes a portion of 523H.5 which identifies
20 certain occurrences which are not to be considered transfers
21 requiring the consent of the franchisor, and inserts language
22 which provides that the franchisor is not to deny the
23 surviving spouse or heirs of a deceased or permanently
24 incapacitated franchisee the opportunity to participate in the
25 ownership of a franchise for one year after the death or
26 permanent incapacity of the franchisee, or deny the transfer
27 to an existing partner in the franchise previously approved as
28 a franchisee and who has remained active in the management of
29 the franchise. Section 523H.5 is also amended to prohibit a
30 franchisor from exercising a right of first refusal with
31 respect to a transfer of a franchise to a surviving spouse or
32 child who is seeking to qualify as a franchisee or who becomes
33 qualified as a franchisee, or with respect to a transfer to an
34 existing partner, but does not prohibit a franchisor from
35 exercising such right after receipt of a bona fide offer to

1 purchase the franchise by a proposed purchaser in those
2 circumstances.

3 Section 523H.6, relating to encroachment, is amended by
4 adding that, in addition to existing criteria for determining
5 whether a new outlet or location is encroaching on an existing
6 franchisee, the new outlet or location must be located in
7 unreasonable proximity to the existing franchisee's outlet or
8 location. The section is amended to increase the amount by
9 which the new outlet or location must impact the existing
10 franchisee's gross sales, before a compensable claim arises,
11 from 5 percent to 10 percent of gross sales. The procedure
12 for hearing and acting upon a claim is amended to specifically
13 provide that the panel comprised of members selected by the
14 franchisee and franchisor, and the neutral arbitrators who may
15 also be used to hear a claim, have the authority to make a
16 decision or award in accordance with the formal procedure for
17 hearing such claims. The section is amended to provide that
18 the choice of whether the panel, neutral third-party mediator,
19 or arbitration is to be used for awarding compensation is to
20 be made by the franchisor, rather than the franchisee, as
21 currently provided. The section is amended to provide that a
22 franchisee does not have a cause of action for monetary
23 damages if the franchisee has been granted reasonable
24 territorial rights which are not violated by the new outlet or
25 location. The section is amended to provide that a cause of
26 action under this section must be filed within 18 months of
27 the opening of the new outlet or location. Currently, a cause
28 of action may be filed within 18 months of the opening of the
29 new outlet or location, or within three months after the
30 completion of the formal procedure for awarding compensation
31 to a franchisee, whichever is later. The section is also
32 amended by striking the language permitting the franchisor or
33 franchisee to seek a permanent or preliminary injunction as a
34 result of a violation of the section or to preserve the status
35 quo pending the outcome of the formal procedure.

1 Section 523H.7 is amended by striking language that
2 requires a comparison of the franchisor's actions in
3 terminating a franchisee with the franchisor's actions in
4 other similar circumstances when determining if such actions
5 are arbitrary or capricious. The section is amended to
6 provide that a reasonable period of time to cure a default
7 need be no more than 10 days for nonpayment of moneys due
8 under the agreement or more than 30 days for noncompliance
9 with any other provision of the agreement. Currently the
10 period of time to cure a default is no more than 30 days for
11 nonpayment of moneys due under the agreement, and no less than
12 30 days or more than 90 days for any other default. The
13 section is also amended by striking language permitting
14 termination of the franchise by the franchisor in the event of
15 a fourth material breach after three material breaches of an
16 agreement within a 12-month period where the franchisee has
17 been given an opportunity to cure the initial three breaches,
18 and replacing that language with a provision permitting
19 termination if the franchisee repeatedly fails to comply with
20 one or more material provisions of the franchise agreement,
21 whether or not the franchisee cures the breach after notice.

22 Section 523H.8, relating to nonrenewal of a franchise, is
23 amended by adding an additional circumstance under which a
24 franchisor may refuse to renew a franchise if proper notice of
25 the nonrenewal is given. Currently, a franchisor cannot
26 refuse to renew unless notice of an intent not to renew must
27 be given to the franchisee at least six months prior to the
28 expiration date or any extension of the franchise agreement,
29 and at least one additional circumstance identified in this
30 section also exists. The additional circumstance provided by
31 the bill provides that the franchisor permits the franchisee
32 the opportunity to sell the franchise during the period prior
33 to expiration, and that the purchaser meets the franchisor's
34 current requirements for franchisees, the franchisor agrees to
35 offer a full-term franchise agreement, and the purchaser

1 agrees to meet the current requirements for franchisees.

2 Section 523H.11, relating to repurchase of assets, is
3 amended to provide that a franchisor may prohibit a franchisee
4 from engaging in a lawful business at any location upon
5 termination or nonrenewal of the franchise in compliance with
6 this chapter.

7 Section 523H.12, relating to independent sourcing, is
8 stricken and rewritten to provide that a franchisor may offer
9 a franchise as part of a turnkey business. The section
10 provides that the franchisor may require that franchisees
11 purchase equipment, products, and services utilizing the
12 franchisor's trade secrets, specialized technology or
13 proprietary processes or ingredients, and principal products
14 sold by the franchisee which are a major source of revenue to
15 the franchisor, from the franchisor or its affiliate. A
16 franchisor is to permit a franchisee to obtain other
17 equipment, products, and services from other suppliers who
18 meet certain requirements identified in the section.

19 Section 523H.13, regarding private civil actions, is
20 amended to strike language providing for the recovery of costs
21 and reasonable attorneys' and expert fees from a party liable
22 for damages as the result of a violation of this chapter.

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