

FEB 24 1997

Place On Calendar

S-3/19/97 Commerce  
S-3/19/98 Amend/Do Pass W/  
S-3/24/98 Motion to R/c Vote by <sup>S 5289</sup> Gonzalez + Jensen

HOUSE FILE **334**  
BY COMMITTEE ON COMMERCE AND  
REGULATION.

S-4/1/98 Motion to R/c Withdrawn

(SUCCESSOR TO HSB 125)

Passed House, <sup>(p. 667)</sup> Date 3/18/97  
Vote: Ayes 62 Nays 36

Passed Senate, <sup>(p. 859)</sup> Date 3/24/94  
Vote: Ayes 50 Nays 0

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to certain franchise agreements by establishing a  
2 duty of good faith, providing for alternative dispute  
3 resolution, providing for venue and choice of law, and  
4 repealing existing franchise provisions.

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

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HF 334

1 Section 1. NEW SECTION. 537A.10 FRANCHISE AGREEMENTS.

2 1. DEFINITIONS. a. "Franchise" means an oral or written  
3 agreement, either expressed or implied, which provides all of  
4 the following:

5 (1) Grants the right to distribute goods or provide  
6 services under a marketing plan prescribed or suggested in  
7 substantial part by the franchisor.

8 (2) Requires payment of a franchise fee to a franchisor or  
9 its affiliate.

10 (3) Allows the franchise business to be substantially  
11 associated with a trademark, service mark, trade name,  
12 logotype, advertisement, or other commercial symbol of or  
13 designating the franchisor or its affiliate.

14 "Franchise" does not include any business that is operated  
15 under a lease or license on the premises of the lessor or  
16 licensor as long as such business is incidental to the  
17 business conducted by the lessor or licensor on such premises,  
18 including, without limitation, leased departments, licensed  
19 departments, and concessions, if the leased or licensed  
20 department operates only under the trademark, trade name,  
21 service mark, or other commercial symbol designating the  
22 lessor or licensor.

23 "Franchise" also does not include any contract under which  
24 a petroleum retailer or petroleum distributor is authorized or  
25 permitted to occupy leased marketing premises, which premises  
26 are to be employed in connection with the sale, consignment,  
27 or distribution of motor fuel under a trademark owned or  
28 controlled by a refiner regulated by the federal Petroleum  
29 Marketing Practices Act, 15 U.S.C. § 2801 et seq. "Refiner"  
30 means a person engaged in the refining of crude oil to produce  
31 motor fuel, and includes an affiliate of such person.

32 "Franchise" also does not include a contract entered into by  
33 any person regulated under chapter 123, 322, 322A, 322B, 322C,  
34 322D, 322F, 522, or 543B, or a contract establishing a  
35 franchise relationship with respect to the sale of

1 construction equipment, lawn or garden equipment, or real  
2 estate.

3 b. "Franchise agreement" means an agreement by which a  
4 franchisor grants a franchise to a franchisee.

5 c. "Franchise fee" means a direct or indirect payment to  
6 purchase or operate a franchise. Franchise fee does not  
7 include any of the following:

8 (1) Payment of a reasonable service charge to the issuer  
9 of a credit card by an establishment accepting the credit  
10 card.

11 (2) Payment to a trading stamp company by a person issuing  
12 trading stamps in connection with a retail sale.

13 (3) An agreement to purchase at a bona fide wholesale  
14 price a reasonable quantity of tangible goods for resale.

15 (4) The purchase or agreement to purchase, at a fair  
16 market value, any fixtures, equipment, leasehold improvements,  
17 real property, supplies, or other materials reasonably  
18 necessary to enter into or continue a business.

19 (5) Payments by a purchaser pursuant to a bona fide loan  
20 from a seller to the purchaser.

21 (6) Payment of rent which reflects payment for the  
22 economic value of leased real or personal property.

23 (7) The purchase or agreement to purchase promotional or  
24 demonstration supplies, materials, or equipment furnished at  
25 fair market value and not intended for resale.

26 d. "Franchisee" means a person to whom a franchise is  
27 granted.

28 e. "Franchisor" means a person who grants a franchise.

29 2. A franchise agreement shall be deemed to include an  
30 implied duty of good faith in performance and enforcement of  
31 the agreement. "Good faith" means honesty in fact and the  
32 observance of reasonable commercial standards of fair dealing  
33 in the trade. The exercise of rights and the performance of  
34 duties in the manner expressly authorized or contemplated by a  
35 franchise agreement is not a breach of this subsection.

1 3. A franchisor may establish a formal procedure for  
2 hearing and acting upon claims by a franchisee and for the  
3 referral of such claims to one of the following:

4 a. A neutral third-party mediator.

5 b. A neutral arbitrator for arbitration pursuant to the  
6 rules of the American arbitration association. The award of  
7 an arbitrator pursuant to this subsection is subject to  
8 judicial review pursuant to chapter 679A.

9 4. A provision in a franchise agreement that designates  
10 jurisdiction or venue for litigation in a forum outside of  
11 this state is void.

12 5. A condition, stipulation, or provision in a franchise  
13 agreement requiring the application of the law of another  
14 state is void.

15 Sec. 2. Chapter 523H, Code 1997, is repealed.

16 EXPLANATION

17 This bill repeals Code chapter 523H which governs certain  
18 franchise agreements and creates new Code section 537A.10  
19 which will govern the same types of franchise agreements.

20 The bill establishes the definition of key terms. The bill  
21 provides that each franchise agreement shall be deemed to  
22 include an implied duty of good faith, and defines "good  
23 faith" as meaning honesty in fact and the observance of  
24 reasonable commercial standards of fair dealing in the trade.  
25 The bill provides that a franchisor may establish a formal  
26 procedure for hearing and acting on franchisee claims  
27 including mediation and arbitration. The bill provides that a  
28 provision in a franchise agreement that designates  
29 jurisdiction or venue for litigation in a forum outside of  
30 this state is void, and that a condition, stipulation, or  
31 provision in a franchise agreement requiring the application  
32 of the law of another state is void.

33 Current Code chapter 523H is a general business franchise  
34 statute and governs those franchise agreements which are not  
35 governed by other more specific provisions and exempted under

1 the statute. Code Chapter 523H contains provisions relating  
2 to the transfer of a franchise, encroachment of a new  
3 franchise on an existing franchise, termination of a  
4 franchise, nonrenewal of a franchise, and other miscellaneous  
5 provisions.

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## HOUSE FILE 334

H-1165

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

4 "6. a. A franchisee may transfer the franchised  
5 business and franchise to a transferee, provided that  
6 the transferee satisfies the reasonable current  
7 qualifications of the franchisor for new franchisees.  
8 For the purposes of this subsection, a reasonable  
9 current qualification for a new franchisee is a  
10 qualification based upon a legitimate business reason.

11 If the proposed transferee does not meet the  
12 reasonable current qualifications of the franchisor,  
13 the franchisor may refuse to permit the transfer,  
14 provided that the refusal of the franchisor to consent  
15 to the transfer is not arbitrary or capricious.

16 b. Except as otherwise provided in this  
17 subsection, a franchisor may exercise a right of first  
18 refusal contained in a franchise agreement after  
19 receipt of a proposal from the franchisee to transfer  
20 the franchise.

21 c. A franchisor may require as a condition of a  
22 transfer any of the following:

23 (1) That the transferee successfully complete a  
24 reasonable training program.

25 (2) That a reasonable transfer fee be paid to  
26 reimburse the franchisor for the franchisor's  
27 reasonable and actual expenses directly attributable  
28 to the transfer.

29 (3) That the franchisee pay or make provision  
30 reasonably acceptable to the franchisor to pay any  
31 amount due the franchisor or the franchisor's  
32 affiliate.

33 (4) That the financial terms of the transfer  
34 comply at the time of the transfer with the  
35 franchisor's current financial requirements for  
36 franchisees.

37 d. A franchisee may transfer the franchisee's  
38 interest in the franchise, for the unexpired term of  
39 the franchise agreement, and a franchisor shall not  
40 require the franchisee or the transferee to enter into  
41 a new or different franchise agreement as a condition  
42 of the transfer.

43 e. A franchisee shall give the franchisor no less  
44 than sixty days' written notice of a transfer which is  
45 subject to the provisions of this subsection, and on  
46 request from the franchisor shall provide in writing  
47 the ownership interests of all persons holding or  
48 claiming an equitable or beneficial interest in the  
49 franchise subsequent to the transfer or the  
50 franchisee, as appropriate. A franchisee shall not

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1 circumvent the intended effect of a contractual  
2 provision governing the transfer of the franchise or  
3 an interest in the franchise by means of a management  
4 agreement, lease, profit-sharing agreement,  
5 conditional assignment, or other similar device.

6 f. A franchisor shall not transfer its interest in  
7 a franchise unless the franchisor makes reasonable  
8 provision for the performance of the franchisor's  
9 obligations under the franchise agreement by the  
10 transferee. For purposes of this paragraph,  
11 "reasonable provision" means that upon the transfer,  
12 the entity assuming the franchisor's obligations has  
13 the financial means to perform the franchisor's  
14 obligations in the ordinary course of business, but  
15 does not mean that the franchisor transferring the  
16 franchise is required to guarantee obligations of the  
17 underlying franchise agreement.

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

28 h. A franchisor shall not discriminate against a  
29 proposed transferee of a franchise on the basis of  
30 race, color, national origin, religion, sex, or  
31 disability.

32 i. A franchisor, as a condition to a transfer of a  
33 franchise, shall not obligate a franchisee to  
34 undertake obligations or relinquish any rights  
35 unrelated to the franchise proposed to be transferred,  
36 or to enter into a release of claims broader than a  
37 similar release of claims by the franchisor against  
38 the franchisee which is entered into by the  
39 franchisor.

40 j. A franchisor, after a transfer of a franchise,  
41 shall not seek to enforce any covenant of the  
42 transferred franchise against the transferor which  
43 prohibits the transferor from engaging in any lawful  
44 occupation or enterprise. However, this paragraph  
45 does not prohibit the franchisor from enforcing a  
46 contractual covenant against the transferor not to  
47 exploit the franchisor's trade secrets or intellectual  
48 property rights, unless otherwise agreed to by the  
49 parties.

50 k. For purposes of this subsection, "transfer"

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1 means any change in ownership or control of a  
2 franchise, franchised business, or a franchisee.

3 1. ~~The following occurrences shall not be~~  
4 ~~considered transfers requiring the consent of the~~  
5 ~~franchisor under a franchise agreement, and shall not~~  
6 ~~result in the imposition of any penalties or make~~  
7 ~~applicable any right of first refusal by the~~  
8 franchisor:

9 (1) The succession of ownership of a franchise  
10 upon the death or disability of a franchisee, or of an  
11 owner of a franchise, to the surviving spouse, heir,  
12 or a partner active in the management of the  
13 franchisee unless the successor fails to meet within  
14 one year the then current reasonable qualifications of  
15 the franchisor for franchisees and the enforcement of  
16 the reasonable current qualifications is not arbitrary  
17 or capricious.

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

22 (3) A transfer within an existing ownership group  
23 of a franchise provided that more than fifty percent  
24 of the franchise is held by persons who meet the  
25 franchisor's reasonable current qualifications for  
26 franchisees. If less than fifty percent of the  
27 franchise would be owned by persons who meet the  
28 franchisor's reasonable current qualifications, the  
29 franchisor may refuse to authorize the transfer,  
30 provided that enforcement of the reasonable current  
31 qualifications is not arbitrary or capricious.

32 (4) A transfer of less than a controlling interest  
33 in the franchise to the franchisee's spouse or child  
34 or children, provided that more than fifty percent of  
35 the entire franchise is held by those who meet the  
36 franchisor's reasonable current qualifications. If  
37 less than fifty percent of the franchise would be  
38 owned by persons who meet the franchisor's reasonable  
39 current qualifications, the franchisor may refuse to  
40 authorize the transfer, provided that enforcement of  
41 the reasonable current qualifications is not arbitrary  
42 or capricious.

43 (5) A transfer of less than a controlling interest  
44 in the franchise of an employee stock ownership plan,  
45 or employee incentive plan, provided that more than  
46 fifty percent of the entire franchise is held by those  
47 who meet the franchisor's reasonable current  
48 qualifications for franchisees. If less than fifty  
49 percent would be owned by persons who meet the  
50 franchisor's reasonable current qualifications, the

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1 franchisor may refuse to authorize the transfer,  
2 provided that enforcement of the reasonable current  
3 qualifications is not arbitrary or capricious.

4 (6) A grant or retention of a security interest in  
5 the franchised business or its assets, or an ownership  
6 interest in the franchisee, provided the security  
7 agreement establishes an obligation on the part of the  
8 secured party enforceable by the franchisor to give  
9 the franchisor notice of the secured party's intent to  
10 foreclose on the collateral simultaneously with notice  
11 to the franchisee, and a reasonable opportunity to  
12 redeem the interests of the secured party and recover  
13 the secured party's interest in the franchise or  
14 franchised business by paying the secured obligation.

15 m. A franchisor shall not interfere or attempt to  
16 interfere with any disposition of an interest in a  
17 franchise or franchised business as described in  
18 paragraph "l", subparagraphs (1) through (6).

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

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

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

45 (1) The franchisee or the business to which the  
46 franchise relates is declared bankrupt or judicially  
47 determined to be insolvent.

48 (2) All or a substantial part of the assets of the  
49 franchise or the business to which the franchisee  
50 relates are assigned to or for the benefit of any

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1 creditor which is subject to chapter 681. An  
2 assignment for the benefit of any creditor pursuant to  
3 this subparagraph does not include the granting of a  
4 security interest in the normal course of business.

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

15 (4) The franchisor and franchisee agree in writing  
16 to terminate the franchise.

17 (5) The franchisee knowingly makes any material  
18 misrepresentations or knowingly omits to state any  
19 material facts relating to the acquisition or  
20 ownership or operation of the franchise business.

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

29 (7) The franchised business or business premises  
30 of the franchisee are lawfully seized, taken over, or  
31 foreclosed by a government authority or official.

32 (8) The franchisee is convicted of a felony or any  
33 other criminal misconduct which materially and  
34 adversely affects the operation, maintenance, or  
35 goodwill of the franchise in the relevant market.

36 (9) The franchisee operates the franchised  
37 business in a manner that imminently endangers the  
38 public health and safety.

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

41 (1) The franchisee has been notified of the  
42 franchisor's intent not to renew at least six months  
43 prior to the expiration date or any extension of the  
44 franchise agreement.

45 (2) Any of the following circumstances exist:

46 (a) Good cause exists, provided that the refusal  
47 of the franchisor to renew is not arbitrary or  
48 capricious. For purposes of this subsection, "good  
49 cause" means cause based on a legitimate business  
50 reason.

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1 (b) The franchisor and franchisee agree not to  
2 renew the franchise.

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

11 b. As a condition of renewal of the franchise, a  
12 franchise agreement may require that the franchisee  
13 meet the then current requirements for franchises and  
14 that the franchisee execute a new agreement  
15 incorporating the then current terms and fees for new  
16 franchises.

17 9. A franchisor shall not restrict a franchisee  
18 from associating with other franchisees or from  
19 participating in a trade association, and shall not  
20 retaliate against a franchisee for engaging in these  
21 activities.

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

41 11. a. Except as provided in paragraph "b", a  
42 franchisor shall allow a franchisee to obtain  
43 equipment, fixtures, supplies, and services used in  
44 the establishment and operation of the franchised  
45 business from sources of the franchisee's choosing,  
46 provided that such goods and services meet standards  
47 as to their nature and quality promulgated by the  
48 franchisor.

49 b. Paragraph "a" does not apply to reasonable  
50 quantities of inventory goods or services, including

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1 display and sample items, that the franchisor requires  
2 the franchisee to obtain from the franchisor or its  
3 affiliate, but only if the goods or services are  
4 central to the franchised business and either are  
5 actually manufactured or produced by the franchisor or  
6 its affiliate, or incorporate a trade secret owned by  
7 the franchisor or its affiliate.

8 12. This section does not limit any liability that  
9 may exist under another statute or at common law.  
10 Prior law governs all actions based on facts occurring  
11 before July 1, 1997.

12 13. This section shall be liberally construed to  
13 effectuate its purposes.

14 14. If any provision or clause of this section or  
15 any application of this section to any person or  
16 circumstances is held invalid, such invalidity shall  
17 not affect other provisions or applications of the  
18 section which can be given effect without the invalid  
19 provision or application, and to this end the  
20 provisions of this section are declared to be  
21 severable."

By KREMER of Buchanan

H-1165 FILED MARCH 13, 1997

WITHDRAWN  
3-18-97 (P.666)

HOUSE FILE 334

H-1185

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

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

WITHDRAWN 3/18/97

By HEATON of Henry  
WEIGEL of Chickasaw

H-1185 FILED MARCH 17, 1997

## HOUSE FILE 334

H-1189

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

4 "6. a. A franchisee may transfer the franchised  
5 business and franchise to a transferee, provided that  
6 the transferee satisfies the reasonable current  
7 qualifications of the franchisor for new franchisees.  
8 For the purposes of this subsection, a reasonable  
9 current qualification for a new franchisee is a  
10 qualification based upon a legitimate business reason.

11 If the proposed transferee does not meet the  
12 reasonable current qualifications of the franchisor,  
13 the franchisor may refuse to permit the transfer,  
14 provided that the refusal of the franchisor to consent  
15 to the transfer is not arbitrary or capricious.

16 b. Except as otherwise provided in this  
17 subsection, a franchisor may exercise a right of first  
18 refusal contained in a franchise agreement after  
19 receipt of a proposal from the franchisee to transfer  
20 the franchise.

21 c. A franchisor may require as a condition of a  
22 transfer any of the following:

23 (1) That the transferee successfully complete a  
24 reasonable training program.

25 (2) That a reasonable transfer fee be paid to  
26 reimburse the franchisor for the franchisor's  
27 reasonable and actual expenses directly attributable  
28 to the transfer.

29 (3) That the franchisee pay or make provision  
30 reasonably acceptable to the franchisor to pay any  
31 amount due the franchisor or the franchisor's  
32 affiliate.

33 (4) That the financial terms of the transfer  
34 comply at the time of the transfer with the  
35 franchisor's current financial requirements for  
36 franchisees.

37 d. A franchisee may transfer the franchisee's  
38 interest in the franchise, for the unexpired term of  
39 the franchise agreement, and a franchisor shall not  
40 require the franchisee or the transferee to enter into  
41 a new or different franchise agreement as a condition  
42 of the transfer.

43 e. A franchisee shall give the franchisor no less  
44 than sixty days' written notice of a transfer which is  
45 subject to the provisions of this subsection, and on  
46 request from the franchisor shall provide in writing  
47 the ownership interests of all persons holding or  
48 claiming an equitable or beneficial interest in the  
49 franchise subsequent to the transfer or the  
50 franchisee, as appropriate. A franchisee shall not

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1 circumvent the intended effect of a contractual  
2 provision governing the transfer of the franchise or  
3 an interest in the franchise by means of a management  
4 agreement, lease, profit-sharing agreement,  
5 conditional assignment, or other similar device.

6 f. A franchisor shall not transfer its interest in  
7 a franchise unless the franchisor makes reasonable  
8 provision for the performance of the franchisor's  
9 obligations under the franchise agreement by the  
10 transferee. For purposes of this paragraph,  
11 "reasonable provision" means that upon the transfer,  
12 the entity assuming the franchisor's obligations has  
13 the financial means to perform the franchisor's  
14 obligations in the ordinary course of business, but  
15 does not mean that the franchisor transferring the  
16 franchise is required to guarantee obligations of the  
17 underlying franchise agreement.

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

28 h. A franchisor shall not discriminate against a  
29 proposed transferee of a franchise on the basis of  
30 race, color, national origin, religion, sex, or  
31 disability.

32 i. A franchisor, as a condition to a transfer of a  
33 franchise, shall not obligate a franchisee to  
34 undertake obligations or relinquish any rights  
35 unrelated to the franchise proposed to be transferred,  
36 or to enter into a release of claims broader than a  
37 similar release of claims by the franchisor against  
38 the franchisee which is entered into by the  
39 franchisor.

40 j. A franchisor, after a transfer of a franchise,  
41 shall not seek to enforce any covenant of the  
42 transferred franchise against the transferor which  
43 prohibits the transferor from engaging in any lawful  
44 occupation or enterprise. However, this paragraph  
45 does not prohibit the franchisor from enforcing a  
46 contractual covenant against the transferor not to  
47 exploit the franchisor's trade secrets or intellectual  
48 property rights, unless otherwise agreed to by the  
49 parties.

50 k. For purposes of this subsection, "transfer"

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Page 3

1 means any change in ownership or control of a  
2 franchise, franchised business, or a franchisee.

3 1. The following occurrences shall not be  
4 considered transfers requiring the consent of the  
5 franchisor under a franchise agreement, and shall not  
6 result in the imposition of any penalties or make  
7 applicable any right of first refusal by the  
8 franchisor:

9 (1) The succession of ownership of a franchise  
10 upon the death or disability of a franchisee, or of an  
11 owner of a franchise, to the surviving spouse, heir,  
12 or a partner active in the management of the  
13 franchisee unless the successor fails to meet within  
14 one year the then current reasonable qualifications of  
15 the franchisor for franchisees and the enforcement of  
16 the reasonable current qualifications is not arbitrary  
17 or capricious.

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

22 (3) A transfer within an existing ownership group  
23 of a franchise provided that more than fifty percent  
24 of the franchise is held by persons who meet the  
25 franchisor's reasonable current qualifications for  
26 franchisees. If less than fifty percent of the  
27 franchise would be owned by persons who meet the  
28 franchisor's reasonable current qualifications, the  
29 franchisor may refuse to authorize the transfer,  
30 provided that enforcement of the reasonable current  
31 qualifications is not arbitrary or capricious.

32 (4) A transfer of less than a controlling interest  
33 in the franchise to the franchisee's spouse or child  
34 or children, provided that more than fifty percent of  
35 the entire franchise is held by those who meet the  
36 franchisor's reasonable current qualifications. If  
37 less than fifty percent of the franchise would be  
38 owned by persons who meet the franchisor's reasonable  
39 current qualifications, the franchisor may refuse to  
40 authorize the transfer, provided that enforcement of  
41 the reasonable current qualifications is not arbitrary  
42 or capricious.

43 (5) A transfer of less than a controlling interest  
44 in the franchise of an employee stock ownership plan,  
45 or employee incentive plan, provided that more than  
46 fifty percent of the entire franchise is held by those  
47 who meet the franchisor's reasonable current  
48 qualifications for franchisees. If less than fifty  
49 percent would be owned by persons who meet the  
50 franchisor's reasonable current qualifications, the

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1 franchisor may refuse to authorize the transfer,  
2 provided that enforcement of the reasonable current  
3 qualifications is not arbitrary or capricious.  
4 (6) A grant or retention of a security interest in  
5 the franchised business or its assets, or an ownership  
6 interest in the franchisee, provided the security  
7 agreement establishes an obligation on the part of the  
8 secured party enforceable by the franchisor to give  
9 the franchisor notice of the secured party's intent to  
10 foreclose on the collateral simultaneously with notice  
11 to the franchisee, and a reasonable opportunity to  
12 redeem the interests of the secured party and recover  
13 the secured party's interest in the franchise or  
14 franchised business by paying the secured obligation.  
15 m. A franchisor shall not interfere or attempt to  
16 interfere with any disposition of an interest in a  
17 franchise or franchised business as described in  
18 paragraph "l", subparagraphs (1) through (6)."

By WEIGEL of Chickasaw  
GARMAN of Story

H-1189 FILED MARCH 17, 1997

*Loat 3/18/97*  
*(p. 654)*



## HOUSE FILE 334

H-1190

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

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

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

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

30 (1) The franchisee or the business to which the  
31 franchise relates is declared bankrupt or judicially  
32 determined to be insolvent.

33 (2) All or a substantial part of the assets of the  
34 franchise or the business to which the franchisee  
35 relates are assigned to or for the benefit of any  
36 creditor which is subject to chapter 681. An  
37 assignment for the benefit of any creditor pursuant to  
38 this subparagraph does not include the granting of a  
39 security interest in the normal course of business.

40 (3) The franchisee voluntarily abandons the  
41 franchise by failing to operate the business for five  
42 consecutive business days during which the franchisee  
43 is required to operate the business under the terms of  
44 the franchise, or any shorter period after which it is  
45 not unreasonable under the facts and circumstances for  
46 the franchisor to conclude that the franchisee does  
47 not intend to continue to operate the franchise,  
48 unless the failure to operate is due to circumstances  
49 beyond the control of the franchisee.

50 (4) The franchisor and franchisee agree in writing

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1 to terminate the franchise.

2 (5) The franchisee knowingly makes any material  
3 misrepresentations or knowingly omits to state any  
4 material facts relating to the acquisition or  
5 ownership or operation of the franchise business.

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

14 (7) The franchised business or business premises  
15 of the franchisee are lawfully seized, taken over, or  
16 foreclosed by a government authority or official.

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

21 (9) The franchisee operates the franchised  
22 business in a manner that imminently endangers the  
23 public health and safety."

By WEIGEL of Chickasaw

H-1190 FILED MARCH 17, 1997

*Host 3/18/97 (p. 665)*

HOUSE FILE 334

H-1191

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

4 "6. This section does not limit any liability that  
5 may exist under another statute or at common law.  
6 Prior law governs all actions based on facts occurring  
7 before July 1, 1997."

By HEATON of Henry  
WEIGEL of Chickasaw

H-1191 FILED MARCH 17, 1997

*WITHDRAWN 3/18/97 (p. 667)*

HOUSE FILE 334

H-1192

1 Amend House File 334 as follows:

2 1. By striking page 1, line 1, through page 3,  
3 line 14.

4 2. Title page, by striking lines 1 through 3 and  
5 inserting the following: "An Act".

6 3. By renumbering as necessary.

By HEATON of Henry

H-1192 FILED MARCH 17, 1997

WITHDRAWN

*3-18-97*

*(p. 647)*

## HOUSE FILE 334

H-1193

1 Amend House File 334 as follows:

2 1. By striking page 1, line 1, through page 3,  
3 line 14 and inserting the following:

4 "Section 1. NEW SECTION. 523J.1 SHORT TITLE.

5 This chapter may be cited as the "Iowa Franchise  
6 Law".

7 Sec. 2. NEW SECTION. 523J.2 DEFINITIONS.

8 As used in this chapter, unless the context  
9 otherwise requires:

10 1. "Community of interest" means a continuing  
11 financial interest between the franchisor and  
12 franchisee in either the operation of a franchised  
13 business or the marketing of goods or services related  
14 to a franchised business.

15 2. "Franchisee" means a person who is granted a  
16 franchise for a business located in this state.

17 3. "Franchise" means a contract or agreement,  
18 either expressed or implied, whether oral or written,  
19 between two or more persons, by which a person is  
20 granted the right to sell or distribute goods or  
21 services, or use a trade name, trademark, service  
22 mark, logotype, advertising, or other commercial  
23 symbol, in which there is a community of interest in  
24 the business of offering, selling, or distributing  
25 goods or services at wholesale, retail, by lease,  
26 agreement, or otherwise.

27 4. "Good cause" means either of the following:

28 a. The failure by a franchisee to comply  
29 substantially with essential and reasonable  
30 requirements imposed upon the franchisee by the  
31 franchisor, or sought to be imposed by the franchisor,  
32 which requirements are not discriminatory as compared  
33 with requirements imposed on other similarly situated  
34 franchisees either by their terms or in the manner of  
35 their enforcement.

36 b. Bad faith by the franchisee in carrying out the  
37 terms of the franchise.

38 5. "Franchisor" means a person who grants a  
39 franchise.

40 6. "Person" means person as defined in section  
41 4.1.

42 Sec. 3. NEW SECTION. 523J.3 PURPOSE -- RULES OF  
43 CONSTRUCTION -- VARIATION BY CONTRACT.

44 1. This chapter shall be liberally construed and  
45 applied to promote its underlying remedial purposes  
46 and policies.

47 2. The underlying purposes and policies of this  
48 chapter are as follows:

49 a. To promote the compelling interest of the  
50 public in fair business relations between franchisees

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1 and franchisors, and in the continuation of franchises  
2 on a fair basis.

3 b. To protect franchisees against unfair treatment  
4 by franchisors, who inherently have superior economic  
5 power and superior bargaining power in the negotiation  
6 of franchises.

7 c. To provide franchisees with rights and remedies  
8 in addition to those existing by contract or common  
9 law.

10 d. To govern all franchise agreements, including  
11 any renewals of or amendments to such agreements, to  
12 the full extent consistent with the constitutions of  
13 this state and the United States.

14 3. This application of this chapter shall not be  
15 varied by contract or agreement. Any contract or  
16 agreement purporting to do so is void and  
17 unenforceable to that extent only.

18 Sec. 4. NEW SECTION. 523J.4 CANCELLATION AND  
19 ALTERATION OF A FRANCHISE.

20 A franchisor, directly or through any officer,  
21 agent, or employee, shall not terminate, cancel, fail  
22 to renew, or substantially change the competitive  
23 circumstances of a franchise without good cause. The  
24 burden of proving good cause is on the franchisor.

25 Sec. 5. NEW SECTION. 523J.5 NOTICE OF  
26 TERMINATION OR CHANGE IN FRANCHISE.

27 Except as otherwise provided in this section, a  
28 franchisor shall provide a franchisee at least ninety  
29 days' prior written notice of termination,  
30 cancellation, nonrenewal, or substantial change in  
31 competitive circumstances. The notice shall state all  
32 the reasons for termination, cancellation, nonrenewal,  
33 or substantial change in competitive circumstances and  
34 shall provide that the franchisee has sixty days in  
35 which to rectify any claimed deficiency. If the  
36 deficiency is rectified within sixty days the  
37 termination, cancellation, nonrenewal, or substantial  
38 change in competitive circumstances is void. The  
39 notice provisions of this section shall not apply if  
40 the reason for termination, cancellation, or  
41 nonrenewal is insolvency, the occurrence of an  
42 assignment for the benefit of creditors, or  
43 bankruptcy. If the reason for termination,  
44 cancellation, nonrenewal, or substantial change in  
45 competitive circumstances is nonpayment of sums due  
46 under the franchise, the franchisee is entitled to  
47 written notice of such default, and has ten days in  
48 which to remedy such default from the date of delivery  
49 or posting of such notice.

50 Sec. 6. NEW SECTION. 523J.6 REPURCHASE OF

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## 1 INVENTORIES.

2 If a franchise is terminated, cancelled, or not  
3 renewed by the franchisor, the franchisor, at the  
4 option of the franchisee, shall repurchase all  
5 inventories sold by the franchisor to the franchisee  
6 for resale under the franchise agreement at the fair  
7 wholesale market value. This section applies only to  
8 merchandise with a name, trademark, label, or other  
9 mark on it which identifies the franchisor.

10 Sec. 7. NEW SECTION. 523J.7 APPLICATION TO  
11 ARBITRATION AGREEMENTS.

12 This chapter does not apply to provisions for the  
13 binding arbitration of disputes contained in a  
14 franchise agreement if the criteria for determining  
15 whether good cause exists for a termination,  
16 cancellation, nonrenewal, or substantial change of  
17 competitive circumstances, and the relief provided  
18 under such provisions is no less than that provided  
19 for in this chapter.

20 Sec. 8. NEW SECTION. 523J.8 ACTION FOR DAMAGES  
21 AND INJUNCTIVE RELIEF.

22 A franchisee may bring an action against a  
23 franchisor who violates this chapter in any court of  
24 competent jurisdiction for damages sustained by the  
25 franchisee as a consequence of the franchisor's  
26 violation. Damages sought and awarded may include  
27 actual costs of the action and reasonable attorney  
28 fees. The franchisee may also be granted injunctive  
29 relief against unlawful termination, cancellation,  
30 nonrenewal, or substantial change of competitive  
31 circumstances.

32 Sec. 9. NEW SECTION. 523J.9 TEMPORARY  
33 INJUNCTIONS.

34 In an action brought by a franchisee against a  
35 franchisor under this chapter, a violation of this  
36 chapter by the franchisor is deemed to be an  
37 irreparable injury to the franchisee for purposes of  
38 determining if a temporary injunction should be  
39 issued.

40 Sec. 10. NEW SECTION. 523J.10 ENCROACHMENT.

41 1. If a franchisor develops, or grants to a  
42 franchisee the right to develop, a new outlet or  
43 location which sells essentially the same goods or  
44 services under the same trademark, service mark, trade  
45 name, logotype, or other commercial symbol as an  
46 existing franchisee and the new outlet or location has  
47 an adverse effect on the gross sales of the existing  
48 franchisee's outlet or location, the existing  
49 adversely affected franchisee has a cause of action  
50 for monetary damages in an amount calculated pursuant

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1 to subsection 3, unless any of the following apply:

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

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

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

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

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

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

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

49 (b) A neutral third-party mediator or an  
50 arbitrator with the authority to make a decision or

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1 award in accordance with the formal procedure. The  
2 procedure shall be deemed reasonable if approved by a  
3 majority of the franchisor's franchisees in the United  
4 States, either individually or by an elected  
5 representative body.

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

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

16 3. a. In establishing damages under a cause of  
17 action brought pursuant to this section, the  
18 franchisee has the burden of proving the amount of  
19 lost profits attributable to the compensable sales.  
20 In any action brought under this section, the damages  
21 payable shall be limited to no more than three years  
22 of the proven lost profits. For purposes of this  
23 subsection, "compensable sales" means the annual gross  
24 sales from the existing outlet or location during the  
25 twelve-month period immediately preceding the opening  
26 of the new outlet or location less both of the  
27 following:

28 (1) Five percent.

29 (2) The actual gross sales from the operation of  
30 the existing outlet or location for the twelve-month  
31 period immediately following the opening of the new  
32 outlet or location.

33 b. Compensable sales shall exclude any amount  
34 attributable to factors other than the opening and  
35 operation of the new outlet or location.

36 4. Any cause of action brought under this section  
37 must be filed within eighteen months of the opening of  
38 the new outlet or location or within three months  
39 after the completion of the procedure under subsection  
40 1, paragraph "d", subparagraph (2), whichever is  
41 later.

42 5. Upon petition by the franchisor or the  
43 franchisee, the district court may grant a permanent  
44 or preliminary injunction to prevent injury or  
45 threatened injury for a violation of this section or  
46 to preserve the status quo pending the outcome of the  
47 formal procedure under subsection 1, paragraph "d",  
48 subparagraph (2)."

49 2. Title page, by striking lines 1 through 3 and  
50 inserting the following: "An Act relating to certain

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1 franchise and franchise agreements by establishing  
2 rights and duties of a franchisor and franchisee,  
3 and".

4 3. By renumbering as necessary.

By HEATON of Henry

H-1193 FILED MARCH 17, 1997

WITHDRAWN 3-18-97 (P.647)

HOUSE FILE 334

H-1194

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

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

By HEATON of Henry

H-1194 FILED MARCH 17, 1997

WITHDRAWN  
3/18/97

HOUSE FILE 334

H-1195

1 Amend House File 334 as follows:

2 1. Page 3, by inserting after line 14 the  
3 following:

4 "6. a. Except as provided in paragraph "b", a  
5 franchisor shall allow a franchisee to obtain  
6 equipment, fixtures, supplies, and services used in  
7 the establishment and operation of the franchised  
8 business from sources of the franchisee's choosing,  
9 provided that such goods and services meet standards  
10 as to their nature and quality promulgated by the  
11 franchisor.

12 b. Paragraph "a" does not apply to reasonable  
13 quantities of inventory goods or services, including  
14 display and sample items, that the franchisor requires  
15 the franchisee to obtain from the franchisor or its  
16 affiliate, but only if the goods or services are  
17 central to the franchised business and either are  
18 actually manufactured or produced by the franchisor or  
19 its affiliate, or incorporate a trade secret owned by  
20 the franchisor or its affiliate."

By HEATON of Henry

H-1195 FILED MARCH 17, 1997

WITHDRAWN

3/18/97



## HOUSE FILE 334

H-1207

- 1 Amend House File 334 as follows:  
2 1. Page 1, by inserting before line 1 the  
3 following:  
4 "Section 1. Section 523H.1, Code 1997, is amended  
5 by adding the following new subsection:  
6 NEW SUBSECTION. 2A. "Food establishment" means  
7 food establishment, as defined by section 137A.1, or  
8 food service establishment, as defined by section  
9 137B.2, including outlets and carry-out stores.  
10 Sec. \_\_\_\_ . Section 523H.1, subsection 3, paragraph  
11 a, Code 1997, is amended to read as follows:  
12 a. "Franchise" means either of the following:  
13 (1) An oral or written agreement with respect to a  
14 food establishment, either express or implied, which  
15 provides all of the following:  
16 (a) ~~Grants the right to distribute-goods-or~~  
17 ~~provide-services operate a food establishment~~ under a  
18 marketing plan prescribed or suggested in substantial  
19 part by the franchisor.  
20 (b) Requires payment of a franchise fee to a  
21 franchisor or its affiliate.  
22 (c) Allows the franchise food establishment  
23 business to be substantially associated with a  
24 trademark, service mark, trade name, logotype,  
25 advertisement, or other commercial symbol of or  
26 designating the franchisor or its affiliate.  
27 (2) A master food establishment franchise.  
28 Sec. \_\_\_\_ . Section 523H.1, subsection 3, paragraph  
29 c, Code 1997, is amended by striking the paragraph."  
30 2. Page 1, by inserting after line 13 the  
31 following: "'Franchise" does not include a food  
32 establishment franchise subject to chapter 523H."  
33 3. Page 3, by striking line 15.  
34 4. Title page, by striking line 4 and inserting  
35 the following: "providing for the regulation of  
36 certain food franchise establishments."  
37 5. By renumbering as necessary.

By RICHARDSON of Warren

H-1207 FILED MARCH 17, 1997

*Lost 3/18/97 (p.666)*

H-1186

- 1 Amend House File 334 as follows:  
 2 1. Page 3, by inserting after line 14 the  
 3 following:  
 4 "6. This section shall be liberally construed to  
 5 effectuate its purposes."

By HEATON of Henry

H-1186 FILED MARCH 17, 1997

WITHDRAWN 3/18/97

HOUSE FILE 334

H-1187

- 1 Amend House File 334 as follows:  
 2 1. Page 3, by inserting after line 14 the  
 3 following:  
 4 "6. a. A franchisor shall not refuse to renew a  
 5 franchise unless both of the following apply:  
 6 (1) The franchisee has been notified of the  
 7 franchisor's intent not to renew at least six months  
 8 prior to the expiration date or any extension of the  
 9 franchise agreement.  
 10 (2) Any of the following circumstances exist:  
 11 (a) Good cause exists, provided that the refusal  
 12 of the franchisor to renew is not arbitrary or  
 13 capricious. For purposes of this subsection, "good  
 14 cause" means cause based on a legitimate business  
 15 reason.  
 16 (b) The franchisor and franchisee agree not to  
 17 renew the franchise.  
 18 (c) The franchisor completely withdraws from  
 19 directly or indirectly distributing its products or  
 20 services in the geographic market served by the  
 21 franchisee, provided that upon expiration of the  
 22 franchise, the franchisor agrees not to seek to  
 23 enforce any covenant of the nonrenewed franchisee not  
 24 to compete with the franchisor or franchisees of the  
 25 franchisor.  
 26 b. As a condition of renewal of the franchise, a  
 27 franchise agreement may require that the franchisee  
 28 meet the then current requirements for franchises and  
 29 that the franchisee execute a new agreement  
 30 incorporating the then current terms and fees for new  
 31 franchises."

By WEIGEL of Chickasaw

H-1187 FILED MARCH 17, 1997

WITHDRAWN 3/18/97 (p. 666)

HOUSE FILE 334

H-1188

- 1 Amend House File 334 as follows:  
 2 1. Page 3, by inserting after line 14 the  
 3 following:  
 4 "6. A franchisor shall not restrict a franchisee  
 5 from associating with other franchisees or from  
 6 participating in a trade association, and shall not  
 7 retaliate against a franchisee for engaging in these  
 8 activities."

By WEIGEL of Chickasaw

H-1188 FILED MARCH 17, 1997

WITHDRAWN

3/18/97

## HOUSE FILE 334

H-1209

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

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- 1 (1) Payment of a reasonable service charge to the  
2 issuer of a credit card by an establishment accepting  
3 the credit card.
- 4 (2) Payment to a trading stamp company by a person  
5 issuing trading stamps in connection with a retail  
6 sale.
- 7 (3) An agreement to purchase at a bona fide  
8 wholesale price a reasonable quantity of tangible  
9 goods for resale.
- 10 (4) The purchase or agreement to purchase, at a  
11 fair market value, any fixtures, equipment, leasehold  
12 improvements, real property, supplies, or other  
13 materials reasonably necessary to enter into or  
14 continue a business.
- 15 (5) Payments by a purchaser pursuant to a bona  
16 fide loan from a seller to the purchaser.
- 17 (6) Payment of rent which reflects payment for the  
18 economic value of leased real or personal property.
- 19 (7) The purchase or agreement to purchase  
20 promotional or demonstration supplies, materials, or  
21 equipment furnished at fair market value and not  
22 intended for resale.
- 23 d. "Franchisee" means a person to whom a franchise  
24 is granted.
- 25 e. "Franchisor" means a person who grants a  
26 franchise.
- 27 2. A franchise agreement shall be deemed to  
28 include an implied duty of good faith in performance  
29 and enforcement of the agreement. "Good faith" means  
30 honesty in fact and the observance of reasonable  
31 commercial standards of fair dealing in the trade.  
32 The exercise of rights and the performance of duties  
33 in the manner expressly authorized or contemplated by  
34 a franchise agreement is not a breach of this  
35 subsection.
- 36 3. A franchisor shall establish a formal procedure  
37 for hearing and acting upon claims by a franchisee and  
38 for the referral of such claims to one of the  
39 following:
- 40 a. A neutral arbitrator for arbitration pursuant  
41 to the rules of the American arbitration association.  
42 The award of an arbitrator pursuant to this subsection  
43 is subject to judicial review pursuant to chapter  
44 679A.
- 45 b. A neutral third-party mediator.
- 46 c. Another dispute resolution mechanism as agreed  
47 to by the franchisor and franchisee.
- 48 4. A provision in a franchise agreement that  
49 designates jurisdiction or venue for litigation in a  
50 forum outside of this state is void.

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1 5. A condition, stipulation, or provision in a  
2 franchise agreement requiring the application of the  
3 law of another state is void.

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

5 2. Title page, line 2, by striking the words

6 "providing for" and inserting the following:

7 "requiring".

By METCALF of Polk  
CHAPMAN of Linn

H-1209 FILED MARCH 17, 1997

WITHDRAWN

3-18-97

(P. 647)

S-5289

1 Amend House File 334, as passed by the House, as  
2 follows:

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

5 "Section 1. NEW SECTION. 537A.10 FRANCHISE  
6 AGREEMENTS.

7 1. DEFINITIONS.

8 When used in this section, unless the context  
9 otherwise requires:

10 a. "Affiliate" means a person controlling,  
11 controlled by, or under common control with another  
12 person, every officer or director of such a person,  
13 and every person occupying a similar status or  
14 performing similar functions.

15 b. "Business day" means a day other than a  
16 Saturday, Sunday, or federal holiday.

17 c. (1) "Franchise" means either of the following:

18 (a) An oral or written agreement, either express  
19 or implied, which provides all of the following:

20 (i) Grants the right to distribute goods or  
21 provide services under a marketing plan prescribed or  
22 suggested in substantial part by the franchisor.

23 (ii) Requires payment of a franchise fee to a  
24 franchisor or its affiliate.

25 (iii) Allows the franchise business to be  
26 substantially associated with a trademark, service  
27 mark, trade name, logotype, advertisement, or other  
28 commercial symbol of or designating the franchisor or  
29 its affiliate.

30 (b) A master franchise.

31 (2) "Franchise" does not include any business that  
32 is operated under a lease or license on the premises  
33 of the lessor or licensor as long as such business is  
34 incidental to the business conducted by the lessor or  
35 licensor on such premises, including, without  
36 limitation, leased departments, licensed departments,  
37 and concessions and the leased or licensed department  
38 operates only under the trademark, trade name, service  
39 mark, or other commercial symbol designating the  
40 lessor or licensor.

41 (3) "Franchise" also does not include any contract  
42 under which a petroleum retailer or petroleum  
43 distributor is authorized or permitted to occupy  
44 leased marketing premises, which premises are to be  
45 employed in connection with the sale, consignment, or  
46 distribution of motor fuel under a trademark which is  
47 owned or controlled by a refiner which is regulated by  
48 the federal Petroleum Marketing Practices Act, 15  
49 U.S.C. § 2801 et seq. The term "refiner" means any  
50 person engaged in the refining of crude oil to produce

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1 motor fuel, and includes any affiliate of such person.  
2 "Franchise" also does not include a contract entered  
3 into by any person regulated under chapter 123, 322,  
4 322A, 322B, 322C, 322D, 322F, 522, or 543B, or a  
5 contract establishing a franchise relationship with  
6 respect to the sale of construction equipment, lawn or  
7 garden equipment, or real estate.

8 d. "Franchise fee" means a direct or indirect  
9 payment to purchase or operate a franchise. Franchise  
10 fee does not include any of the following:

11 (1) Payment of a reasonable service charge to the  
12 issuer of a credit card by an establishment accepting  
13 the credit card.

14 (2) Payment to a trading stamp company by a person  
15 issuing trading stamps in connection with a retail  
16 sale.

17 (3) An agreement to purchase at a bona fide  
18 wholesale price a reasonable quantity of tangible  
19 goods for resale.

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

25 (5) Payments by a purchaser pursuant to a bona  
26 fide loan from a seller to the purchaser.

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

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

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

35 (1) A subfranchisor with regard to its  
36 relationship with a franchisor.

37 (2) A subfranchisee with regard to its  
38 relationship with a subfranchisor.

39 f. "Franchisor" means a person who grants a  
40 franchise or master franchise, or an affiliate of such  
41 a person. Franchisor includes a subfranchisor with  
42 regard to its relationship with a franchisee, unless  
43 stated otherwise in this section.

44 g. "Marketing plan" means a plan or system  
45 concerning a material aspect of conducting business.  
46 Indicia of a marketing plan include any of the  
47 following:

48 (1) Price specification, special pricing systems,  
49 or discount plans.

50 (2) Sales or display equipment or merchandising

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- 1 devices.
- 2 (3) Sales techniques.
- 3 (4) Promotional or advertising materials or  
4 cooperative advertising.
- 5 (5) Training regarding the promotion, operation,  
6 or management of the business.
- 7 (6) Operational, managerial, technical, or  
8 financial guidelines or assistance.
- 9 h. "Master franchise" means an agreement by which  
10 a person pays a franchisor for the right to sell or  
11 negotiate the sale of franchises.
- 12 i. "Offer" or "offer to sell" means every attempt  
13 to offer or to dispose of, or solicitation of an offer  
14 to buy, a franchise or interest in a franchise for  
15 value.
- 16 j. "Person" means a person as defined in section  
17 4.1, subsection 20.
- 18 k. "Sale" or "sell" means every contract or  
19 agreement of sale of, contract to sell or disposition  
20 of, a franchise or interest in a franchise for value.
- 21 l. "Subfranchise" means an agreement by which a  
22 person pays a franchisor for the right to sell or  
23 negotiate the sale of franchises.
- 24 m. "Subfranchisee" means a person who is granted a  
25 franchise from a subfranchisor.
- 26 n. "Subfranchisor" means a person who is granted a  
27 master franchise.
- 28 2. APPLICABILITY. This section applies to a new  
29 or existing franchise that is operated in the state of  
30 Iowa. For purposes of this section, the franchise is  
31 operated in this state only if the premises from which  
32 the franchise is operated is physically located in  
33 this state. For purposes of this section, a franchise  
34 including marketing rights in or to this state, is  
35 deemed to be operated in this state only if the  
36 franchisee's principal business office is physically  
37 located in this state. This section does not apply to  
38 a franchise solely because an agreement relating to  
39 the franchise provides that the agreement is subject  
40 to or governed by the laws of this state. The  
41 provisions of this section do not apply to any  
42 existing or future contracts between Iowa franchisors  
43 and franchisees who operate franchises located out of  
44 state.
- 45 3. JURISDICTION OF DISPUTES.
- 46 a. A provision in a franchise agreement  
47 restricting jurisdiction to a forum outside this state  
48 is void with respect to a claim otherwise enforceable  
49 under this section.
- 50 b. A civil action or proceeding arising out of a

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1 franchise may be commenced wherever jurisdiction over  
2 the parties or subject matter exists, even if the  
3 agreement limits actions or proceedings to a  
4 designated jurisdiction.

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

13 5. TRANSFER OF FRANCHISE.

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

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

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

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

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

50 (1) That the transferee successfully complete a

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1 training program.

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

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

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

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

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

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

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

50 (2) Incorporation of a proprietorship franchisee,

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1 provided that such incorporation does not prohibit a  
2 franchisor from requiring a personal guaranty by the  
3 franchisee of obligations related to the franchise.

4 (3) A transfer within an existing ownership group  
5 of a franchise provided that more than fifty percent  
6 of the franchise is held by persons who meet the  
7 franchisor's reasonable current qualifications for  
8 franchisees. If less than fifty percent of the  
9 franchise would be owned by persons who meet the  
10 franchisor's reasonable current qualifications, the  
11 franchisor may refuse to authorize the transfer,  
12 provided that enforcement of the reasonable current  
13 qualifications is not arbitrary or capricious.

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

25 6. ENCROACHMENT.

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

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

47 (2) The adverse impact on the existing  
48 franchisee's annual gross sales, based on a comparison  
49 to the annual gross sales from the existing outlet or  
50 location during the twelve-month period immediately

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1 preceding the opening of the new outlet or location,  
2 is determined to have been less than six percent  
3 during the first twelve months of operation of the new  
4 outlet or location.

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

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

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

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

23 (b) A reasonable formal procedure for mediating  
24 compensation or other form of consideration to a  
25 franchisee to offset all or a portion of the  
26 franchisee's lost profits caused by the establishment  
27 of the new outlet or location. The procedure shall  
28 involve a neutral third-party mediator. The procedure  
29 shall be deemed reasonable if approved by a majority  
30 of the franchisor's franchisees in the United States.

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

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

41 d. (1) In establishing damages under a cause of  
42 action brought pursuant to this subsection, the  
43 franchisee has the burden of proving the amount of  
44 lost profits attributable to the compensable sales.  
45 In any action brought under this subsection, the  
46 damages payable shall be limited to no more than three  
47 years of the proven lost profits. For purposes of  
48 this paragraph, "compensable sales" means the annual  
49 gross sales from the existing outlet or location  
50 during the twelve-month period immediately preceding

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1 the opening of the new outlet or location less both of  
2 the following:

3 (a) Six percent.

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

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

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

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

23 7. TERMINATION.

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

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

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

50 (1) The franchisee or the business to which the

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1 franchise relates is declared bankrupt or judicially  
2 determined to be insolvent.

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

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

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

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

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

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

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

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

#### 44 8. NONRENEWAL OF A FRANCHISE.

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

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

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1 (2) Any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

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

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1 1998.

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

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

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

By COMMITTEE ON COMMERCE

JOHN W. JENSEN, Chairperson

S-5289 FILED MARCH 19, 1998

*adopted  
3/24/98  
(P. 859)*



SENATE AMENDMENT TO HOUSE FILE 334

H-8979

1 Amend House File 334, as passed by the House, as  
2 follows:

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

5 "Section 1. NEW SECTION. 537A.10 FRANCHISE  
6 AGREEMENTS.

7 1. DEFINITIONS.

8 When used in this section, unless the context  
9 otherwise requires:

10 a. "Affiliate" means a person controlling,  
11 controlled by, or under common control with another  
12 person, every officer or director of such a person,  
13 and every person occupying a similar status or  
14 performing similar functions.

15 b. "Business day" means a day other than a  
16 Saturday, Sunday, or federal holiday.

17 c. (1) "Franchise" means either of the following:

18 (a) An oral or written agreement, either express  
19 or implied, which provides all of the following:

20 (i) Grants the right to distribute goods or  
21 provide services under a marketing plan prescribed or  
22 suggested in substantial part by the franchisor.

23 (ii) Requires payment of a franchise fee to a  
24 franchisor or its affiliate.

25 (iii) Allows the franchise business to be  
26 substantially associated with a trademark, service  
27 mark, trade name, logotype, advertisement, or other  
28 commercial symbol of or designating the franchisor or  
29 its affiliate.

30 (b) A master franchise.

31 (2) "Franchise" does not include any business that  
32 is operated under a lease or license on the premises  
33 of the lessor or licensor as long as such business is  
34 incidental to the business conducted by the lessor or  
35 licensor on such premises, including, without  
36 limitation, leased departments, licensed departments,  
37 and concessions and the leased or licensed department  
38 operates only under the trademark, trade name, service  
39 mark, or other commercial symbol designating the  
40 lessor or licensor.

41 (3) "Franchise" also does not include any contract  
42 under which a petroleum retailer or petroleum  
43 distributor is authorized or permitted to occupy  
44 leased marketing premises, which premises are to be  
45 employed in connection with the sale, consignment, or  
46 distribution of motor fuel under a trademark which is  
47 owned or controlled by a refiner which is regulated by  
48 the federal Petroleum Marketing Practices Act, 15  
49 U.S.C. § 2801 et seq. The term "refiner" means any  
50 person engaged in the refining of crude oil to produce

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1 motor fuel, and includes any affiliate of such person.  
2 "Franchise" also does not include a contract entered  
3 into by any person regulated under chapter 123, 322,  
4 322A, 322B, 322C, 322D, 322F, 522, or 543B, or a  
5 contract establishing a franchise relationship with  
6 respect to the sale of construction equipment, lawn or  
7 garden equipment, or real estate.

8 d. "Franchise fee" means a direct or indirect  
9 payment to purchase or operate a franchise. Franchise  
10 fee does not include any of the following:

11 (1) Payment of a reasonable service charge to the  
12 issuer of a credit card by an establishment accepting  
13 the credit card.

14 (2) Payment to a trading stamp company by a person  
15 issuing trading stamps in connection with a retail  
16 sale.

17 (3) An agreement to purchase at a bona fide  
18 wholesale price a reasonable quantity of tangible  
19 goods for resale.

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

25 (5) Payments by a purchaser pursuant to a bona  
26 fide loan from a seller to the purchaser.

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

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

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

35 (1) A subfranchisor with regard to its  
36 relationship with a franchisor.

37 (2) A subfranchisee with regard to its  
38 relationship with a subfranchisor.

39 f. "Franchisor" means a person who grants a  
40 franchise or master franchise, or an affiliate of such  
41 a person. Franchisor includes a subfranchisor with  
42 regard to its relationship with a franchisee, unless  
43 stated otherwise in this section.

44 g. "Marketing plan" means a plan or system  
45 concerning a material aspect of conducting business.  
46 Indicia of a marketing plan include any of the  
47 following:

48 (1) Price specification, special pricing systems,  
49 or discount plans.

50 (2) Sales or display equipment or merchandising

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- 1 devices.
- 2 (3) Sales techniques.
- 3 (4) Promotional or advertising materials or  
4 cooperative advertising.
- 5 (5) Training regarding the promotion, operation,  
6 or management of the business.
- 7 (6) Operational, managerial, technical, or  
8 financial guidelines or assistance.
- 9 h. "Master franchise" means an agreement by which  
10 a person pays a franchisor for the right to sell or  
11 negotiate the sale of franchises.
- 12 i. "Offer" or "offer to sell" means every attempt  
13 to offer or to dispose of, or solicitation of an offer  
14 to buy, a franchise or interest in a franchise for  
15 value.
- 16 j. "Person" means a person as defined in section  
17 4.1, subsection 20.
- 18 k. "Sale" or "sell" means every contract or  
19 agreement of sale of, contract to sell or disposition  
20 of, a franchise or interest in a franchise for value.
- 21 l. "Subfranchise" means an agreement by which a  
22 person pays a franchisor for the right to sell or  
23 negotiate the sale of franchises.
- 24 m. "Subfranchisee" means a person who is granted a  
25 franchise from a subfranchisor.
- 26 n. "Subfranchisor" means a person who is granted a  
27 master franchise.
- 28 2. APPLICABILITY. This section applies to a new  
29 or existing franchise that is operated in the state of  
30 Iowa. For purposes of this section, the franchise is  
31 operated in this state only if the premises from which  
32 the franchise is operated is physically located in  
33 this state. For purposes of this section, a franchise  
34 including marketing rights in or to this state, is  
35 deemed to be operated in this state only if the  
36 franchisee's principal business office is physically  
37 located in this state. This section does not apply to  
38 a franchise solely because an agreement relating to  
39 the franchise provides that the agreement is subject  
40 to or governed by the laws of this state. The  
41 provisions of this section do not apply to any  
42 existing or future contracts between Iowa franchisors  
43 and franchisees who operate franchises located out of  
44 state.
- 45 3. JURISDICTION OF DISPUTES.
- 46 a. A provision in a franchise agreement  
47 restricting jurisdiction to a forum outside this state  
48 is void with respect to a claim otherwise enforceable  
49 under this section.
- 50 b. A civil action or proceeding arising out of a

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1 franchise may be commenced wherever jurisdiction over  
2 the parties or subject matter exists, even if the  
3 agreement limits actions or proceedings to a  
4 designated jurisdiction.

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

13 5. TRANSFER OF FRANCHISE.

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

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

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

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

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

50 (1) That the transferee successfully complete a

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1 training program.

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

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

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

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

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

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

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

50 (2) Incorporation of a proprietorship franchisee,

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1 provided that such incorporation does not prohibit a  
2 franchisor from requiring a personal guaranty by the  
3 franchisee of obligations related to the franchise.

4 (3) A transfer within an existing ownership group  
5 of a franchise provided that more than fifty percent  
6 of the franchise is held by persons who meet the  
7 franchisor's reasonable current qualifications for  
8 franchisees. If less than fifty percent of the  
9 franchise would be owned by persons who meet the  
10 franchisor's reasonable current qualifications, the  
11 franchisor may refuse to authorize the transfer,  
12 provided that enforcement of the reasonable current  
13 qualifications is not arbitrary or capricious.

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

25 6. ENCROACHMENT.

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

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

47 (2) The adverse impact on the existing  
48 franchisee's annual gross sales, based on a comparison  
49 to the annual gross sales from the existing outlet or  
50 location during the twelve-month period immediately

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1 preceding the opening of the new outlet or location,  
2 is determined to have been less than six percent  
3 during the first twelve months of operation of the new  
4 outlet or location.

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

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

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

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

23 (b) A reasonable formal procedure for mediating  
24 compensation or other form of consideration to a  
25 franchisee to offset all or a portion of the  
26 franchisee's lost profits caused by the establishment  
27 of the new outlet or location. The procedure shall  
28 involve a neutral third-party mediator. The procedure  
29 shall be deemed reasonable if approved by a majority  
30 of the franchisor's franchisees in the United States.

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

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

41 d. (1) In establishing damages under a cause of  
42 action brought pursuant to this subsection, the  
43 franchisee has the burden of proving the amount of  
44 lost profits attributable to the compensable sales.  
45 In any action brought under this subsection, the  
46 damages payable shall be limited to no more than three  
47 years of the proven lost profits. For purposes of  
48 this paragraph, "compensable sales" means the annual  
49 gross sales from the existing outlet or location  
50 during the twelve-month period immediately preceding

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1 the opening of the new outlet or location less both of  
2 the following:

3 (a) Six percent.

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

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

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

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

23 7. TERMINATION.

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

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

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

50 (1) The franchisee or the business to which the

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1 franchise relates is declared bankrupt or judicially  
2 determined to be insolvent.

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

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

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

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

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

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

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

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

#### 44 8. NONRENEWAL OF A FRANCHISE.

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

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

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1 (2) Any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

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

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1 1998.

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

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

12 Sec. 2. Chapter 523H, Code 1997, is repealed."  
RECEIVED FROM THE SENATE

**H-8979 FILED APRIL 7, 1998**

## HOUSE FILE 334

H-1211

1 Amend the amendment, H-1209, to House File 334, as  
2 follows:

3 1. Page 1, line 4, by striking the word and  
4 figure "Section 1." and inserting the following:

5 "Section 1. Section 523H.1, Code 1997, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 2A. "Food establishment" means  
8 food establishment, as defined by section 137A.1, or  
9 food service establishment, as defined by section  
10 137B.2, including outlets and carry-out stores.

11 Sec. \_\_\_\_\_. Section 523H.1, subsection 3, paragraph  
12 a, Code 1997, is amended to read as follows:

13 a. "Franchise" means either of the following:

14 (1) An oral or written agreement with respect to a  
15 food establishment, either express or implied, which  
16 provides all of the following:

17 (a) Grants the right to ~~distribute goods or~~  
18 ~~provide services~~ operate a food establishment under a  
19 marketing plan prescribed or suggested in substantial  
20 part by the franchisor.

21 (b) Requires payment of a franchise fee to a  
22 franchisor or its affiliate.

23 (c) Allows the franchise food establishment  
24 business to be substantially associated with a  
25 trademark, service mark, trade name, logotype,  
26 advertisement, or other commercial symbol of or  
27 designating the franchisor or its affiliate.

28 (2) A master food establishment franchise.

29 Sec. \_\_\_\_\_. Section 523H.1, subsection 3, paragraph  
30 c, Code 1997, is amended by striking the paragraph.

31 Sec. \_\_\_\_\_."

32 2. Page 1, by inserting after line 18 the  
33 following:

34 ""Franchise" does not include a food establishment  
35 franchise subject to chapter 523H."

36 3. Page 3, by striking line 4.

37 4. Page 3, lines 5 and 6, by striking the words  
38 and figure "line 2, by striking the words "providing  
39 for"" and inserting the following: "by striking lines  
40 3 and 4".

41 5. Page 3, line 7, by striking the word

42 ""requiring"" and inserting the following:

43 ""resolution, and providing for venue and choice of  
44 law"."

45 6. By renumbering as necessary.

By RICHARDSON of Warren

H-1211 FILED MARCH 18, 1997

OUT OF ORDER

## HOUSE FILE 334

H-1221

1 Amend the amendment, H-1165, to House File 334 as  
2 follows:  
3 1. Page 4, line 18, by striking the figure "(6)."  
4 and inserting the following: "(6)."  
5 2. Page 4, by inserting after line 18 the  
6 following:  
7 "\_\_\_\_. Page 3, by inserting after line 14 the  
8 following:""  
9 3. Page 5, line 38, by striking the word  
10 "safety." and inserting the following: "safety."  
11 4. Page 5, by inserting after line 38 the  
12 following:  
13 "\_\_\_\_. Page 3, by inserting after line 14 the  
14 following:""  
15 5. Page 6, line 16, by striking the word  
16 "franchises." and inserting the following:  
17 "franchises."  
18 6. Page 6, by inserting after line 16 the  
19 following:  
20 "\_\_\_\_. Page 3, by inserting after line 14 the  
21 following:""  
22 7. Page 6, line 21, by striking the word  
23 "activities." and inserting the following:  
24 "activities."  
25 8. Page 6, by inserting after line 21 the  
26 following:  
27 "\_\_\_\_. Page 3, by inserting after line 14 the  
28 following:""  
29 9. Page 6, line 40, by striking the word  
30 "franchisor." and inserting the following:  
31 "franchisor."  
32 10. Page 6, by inserting after line 40 the  
33 following:  
34 "\_\_\_\_. Page 3, by inserting after line 14 the  
35 following:""  
36 11. Page 7, line 7, by striking the word  
37 "affiliate." and inserting the following:  
38 "affiliate."  
39 12. Page 7, by inserting after line 7 the  
40 following:  
41 "\_\_\_\_. Page 3, by inserting after line 14 the  
42 following:""  
43 13. Page 7, line 11, by striking the figure  
44 "1997." and inserting the following: "1997."  
45 14. Page 7, by inserting after line 11 the  
46 following:  
47 "\_\_\_\_. Page 3, by inserting after line 14 the  
48 following:""  
49 15. Page 7, line 13, by striking the word  
50 "purposes." and inserting the following: "purposes."

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Page 2

- 1 16. Page 7, by inserting after line 13 the
- 2 following:
- 3 " ". Page 3, by inserting after line 14 the
- 4 following: ""
- 5 17. By renumbering as necessary.

By KREMER of Buchanan

H-1221 FILED MARCH 18, 1997

WITHDRAWN

3-18-97

(P659)

Metcalf chair

DINKLA

Jan Fossen

Chapman

Holbeck

HSB 125

COMMERCE AND REGULATION

Introduced By

HOUSE FILE

(HF) 334

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 establishing a  
2 duty of good faith, providing for alternative dispute  
3 resolution, providing for venue and choice of law, and  
4 repealing existing franchise provisions.

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

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1 Section 1. NEW SECTION. 537A.10 FRANCHISE AGREEMENTS.

2 1. DEFINITIONS. a. "Franchise" means an oral or written  
3 agreement, either expressed or implied, which provides all of  
4 the following:

5 (1) Grants the right to distribute goods or provide  
6 services under a marketing plan prescribed or suggested in  
7 substantial part by the franchisor.

8 (2) Requires payment of a franchise fee to a franchisor or  
9 its affiliate.

10 (3) Allows the franchise business to be substantially  
11 associated with a trademark, service mark, trade name,  
12 logotype, advertisement, or other commercial symbol of or  
13 designating the franchisor or its affiliate.

14 "Franchise" does not include any business that is operated  
15 under a lease or license on the premises of the lessor or  
16 licensor as long as such business is incidental to the  
17 business conducted by the lessor or licensor on such premises,  
18 including, without limitation, leased departments, licensed  
19 departments, and concessions, if the leased or licensed  
20 department operates only under the trademark, trade name,  
21 service mark, or other commercial symbol designating the  
22 lessor or licensor.

23 "Franchise" also does not include any contract under which  
24 a petroleum retailer or petroleum distributor is authorized or  
25 permitted to occupy leased marketing premises, which premises  
26 are to be employed in connection with the sale, consignment,  
27 or distribution of motor fuel under a trademark owned or  
28 controlled by a refiner regulated by the federal Petroleum  
29 Marketing Practices Act, 15 U.S.C. § 2801 et seq. "Refiner"  
30 means a person engaged in the refining of crude oil to produce  
31 motor fuel, and includes an affiliate of such person.

32 "Franchise" also does not include a contract entered into by  
33 any person regulated under chapter 123, 322, 322A, 322B, 322C,  
34 322D, 322F, 522, or 543B, or a contract establishing a  
35 franchise relationship with respect to the sale of



1 construction equipment, lawn or garden equipment, or real  
2 estate.

3 b. "Franchise agreement" means an agreement by which a  
4 franchisor grants a franchise to a franchisee.

5 c. "Franchise fee" means a direct or indirect payment to  
6 purchase or operate a franchise. Franchise fee does not  
7 include any of the following:

8 (1) Payment of a reasonable service charge to the issuer  
9 of a credit card by an establishment accepting the credit  
10 card.

11 (2) Payment to a trading stamp company by a person issuing  
12 trading stamps in connection with a retail sale.

13 (3) An agreement to purchase at a bona fide wholesale  
14 price a reasonable quantity of tangible goods for resale.

15 (4) The purchase or agreement to purchase, at a fair  
16 market value, any fixtures, equipment, leasehold improvements,  
17 real property, supplies, or other materials reasonably  
18 necessary to enter into or continue a business.

19 (5) Payments by a purchaser pursuant to a bona fide loan  
20 from a seller to the purchaser.

21 (6) Payment of rent which reflects payment for the  
22 economic value of leased real or personal property.

23 (7) The purchase or agreement to purchase promotional or  
24 demonstration supplies, materials, or equipment furnished at  
25 fair market value and not intended for resale.

26 d. "Franchisee" means a person to whom a franchise is  
27 granted.

28 e. "Franchisor" means a person who grants a franchise.

29 2. A franchise agreement shall be deemed to include an  
30 implied duty of good faith in performance and enforcement of  
31 the agreement. "Good faith" means honesty in fact and the  
32 observance of reasonable commercial standards of fair dealing  
33 in the trade. The exercise of rights and the performance of  
34 duties in the manner expressly authorized or contemplated by a  
35 franchise agreement is not a breach of this subsection.

1 3. A franchisor may establish a formal procedure for  
2 hearing and acting upon claims by a franchisee and for the  
3 referral of such claims to one of the following:

4 a. A neutral third-party mediator.

5 b. A neutral arbitrator for arbitration pursuant to the  
6 rules of the American arbitration association. The award of  
7 an arbitrator pursuant to this subsection is subject to  
8 judicial review pursuant to chapter 679A.

9 4. A provision in a franchise agreement that designates  
10 jurisdiction or venue for litigation in a forum outside of  
11 this state is void.

12 5. A condition, stipulation, or provision in a franchise  
13 agreement requiring the application of the law of another  
14 state is void.

15 Sec. 2. Chapter 523H, Code 1997, is repealed.

16 EXPLANATION

17 This bill repeals Code chapter 523H which governs certain  
18 franchise agreements and creates new Code section 537A.10  
19 which will govern the same types of franchise agreements.

20 The bill establishes the definition of key terms. The bill  
21 provides that each franchise agreement shall be deemed to  
22 include an implied duty of good faith, and defines "good  
23 faith" as meaning honesty in fact and the observance of  
24 reasonable commercial standards of fair dealing in the trade.  
25 The bill provides that a franchisor may establish a formal  
26 procedure for hearing and acting on franchisee claims  
27 including mediation and arbitration. The bill provides that a  
28 provision in a franchise agreement that designates  
29 jurisdiction or venue for litigation in a forum outside of  
30 this state is void, and that a condition, stipulation, or  
31 provision in a franchise agreement requiring the application  
32 of the law of another state is void.

33 Current Code chapter 523H is a general business franchise  
34 statute and governs those franchise agreements which are not  
35 governed by other more specific provisions and exempted under

1 the statute. Code Chapter 523H contains provisions relating  
2 to the transfer of a franchise, encroachment of a new  
3 franchise on an existing franchise, termination of a  
4 franchise, nonrenewal of a franchise, and other miscellaneous  
5 provisions.

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