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SSB-107201
Commerce

SENATE FILE SUCCESSOR
SB/HF 324
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON JENSEN)

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

A BILL FOR

1 An Act relating to certain franchise agreements and the rights
2 and responsibilities of the parties under such agreements.
3 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.

3 When used in this section, unless the context otherwise
4 requires:

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

9 b. "Business day" means a day other than a Saturday,
10 Sunday, or federal holiday.

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

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

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

17 (ii) Requires payment of a franchise fee to a franchisor
18 or its affiliate.

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

23 (b) A master franchise.

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

33 (3) "Franchise" also does not include any contract under
34 which a petroleum retailer or petroleum distributor is
35 authorized or permitted to occupy leased marketing premises,

1 which premises are to be employed in connection with the sale,
 2 consignment, or distribution of motor fuel under a trademark
 3 which is owned or controlled by a refiner which is regulated
 4 by the federal Petroleum Marketing Practices Act, 15 U.S.C. §
 5 2801 et seq. The term "refiner" means any person engaged in
 6 the refining of crude oil to produce motor fuel, and includes
 7 any affiliate of such person. "Franchise" also does not
 8 include a contract entered into by any person regulated under
 9 chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522, or 543B,
 10 or a contract establishing a franchise relationship with
 11 respect to the sale of construction equipment, lawn or garden
 12 equipment, or real estate.

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

16 (1) Payment of a reasonable service charge to the issuer
 17 of a credit card by an establishment accepting the credit
 18 card.

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

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

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

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

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

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

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

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

3 (2) A subfranchisee with regard to its relationship with a
4 subfranchisor.

5 f. "Franchisor" means a person who grants a franchise or
6 master franchise, or an affiliate of such a person.

7 Franchisor includes a subfranchisor with regard to its
8 relationship with a franchisee, unless stated otherwise in
9 this section.

10 g. "Marketing plan" means a plan or system concerning a
11 material aspect of conducting business. Indicia of a
12 marketing plan include any of the following:

13 (1) Price specification, special pricing systems, or
14 discount plans.

15 (2) Sales or display equipment or merchandising devices.

16 (3) Sales techniques.

17 (4) Promotional or advertising materials or cooperative
18 advertising.

19 (5) Training regarding the promotion, operation, or
20 management of the business.

21 (6) Operational, managerial, technical, or financial
22 guidelines or assistance.

23 h. "Master franchise" means an agreement by which a person
24 pays a franchisor for the right to sell or negotiate the sale
25 of franchises.

26 i. "Offer" or "offer to sell" means every attempt to offer
27 or to dispose of, or solicitation of an offer to buy, a
28 franchise or interest in a franchise for value.

29 j. "Person" means a person as defined in section 4.1,
30 subsection 20.

31 k. "Sale" or "sell" means every contract or agreement of
32 sale of, contract to sell or disposition of, a franchise or
33 interest in a franchise for value.

34 l. "Subfranchise" means an agreement by which a person
35 pays a franchisor for the right to sell or negotiate the sale

1 of franchises.

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

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

6 2. APPLICABILITY. Notwithstanding section 523H.2, this
7 section applies to a new or existing franchise that is
8 operated in this state and that is subject to an agreement
9 entered into on or after the effective date of this Act. For
10 purposes of this section, the franchise is operated in this
11 state only if the premises from which the franchise is
12 operated is physically located in this state. For purposes of
13 this section, a franchise including marketing rights in or to
14 this state, is deemed to be operated in this state only if the
15 franchisee's principal business office is physically located
16 in this state. This section does not apply to a franchise
17 solely because an agreement relating to the franchise provides
18 that the agreement is subject to or governed by the laws of
19 this state. The provisions of this section do not apply to
20 any existing or future contracts between Iowa franchisors and
21 franchisees who operate franchises located out of state.

22 3. JURISDICTION AND VENUE OF DISPUTES.

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

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

30 c. Venue for a civil action commenced under this chapter
31 shall be determined in accordance with chapter 616.

32 4. WAIVERS VOID. A condition, stipulation, or provision
33 requiring a franchisee to waive compliance with or relieving a
34 person of a duty or liability imposed by or a right provided
35 by this section or a rule or order under this section is void.

1 This subsection shall not affect the settlement of disputes,
2 claims, or civil lawsuits arising or brought pursuant to this
3 section.

4 5. TRANSFER OF FRANCHISE.

5 a. A franchisee may transfer the franchised business and
6 franchise to a transferee, provided that the transferee
7 satisfies the reasonable current qualifications of the
8 franchisor for new franchisees. For the purposes of this
9 subsection, a reasonable current qualification for a new
10 franchisee is a qualification based upon a legitimate business
11 reason. If the proposed transferee does not meet the
12 reasonable current qualifications of the franchisor, the
13 franchisor may refuse to permit the transfer, provided that
14 the refusal of the franchisor to consent to the transfer is
15 not arbitrary or capricious.

16 b. (1) A franchisee may transfer less than a controlling
17 interest in the franchise to an employee stock ownership plan,
18 or employee incentive plan provided that more than fifty
19 percent of the entire franchise is held by those who meet the
20 franchisor's reasonable current qualifications for
21 franchisees, and such transfer is approved by the franchisor.
22 Approval of such transfer shall not be unreasonably withheld.

23 (2) If pursuant to such a transfer less than fifty percent
24 of the entire franchise would be owned by persons who meet the
25 franchisor's reasonable current qualifications, the franchisor
26 may refuse to authorize the transfer, provided that
27 enforcement of the reasonable current qualifications is not
28 arbitrary or capricious.

29 (3) Participation by an employee in an employee stock
30 ownership plan or employee incentive plan established pursuant
31 to this subsection does not confer upon such employee any
32 right to access trade secrets protected under the franchise
33 agreement which access the employee would not otherwise have
34 if the employee did not participate in such plan.

35 c. A franchisor may require as a condition of a transfer

1 any of the following:

2 (1) That the transferee successfully complete a training
3 program.

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

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

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

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

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

33 f. A transfer of less than a controlling interest in the
34 franchise to the franchisee's spouse or child or children
35 shall be permitted if following the transfer more than fifty

1 percent of the interest in the entire franchise is held by
2 those who meet the franchisor's reasonable current
3 qualifications. If following such a transfer fifty percent or
4 less of the interest in the franchise would be owned by
5 persons who meet the franchisor's reasonable current
6 qualifications, the franchisor may refuse to authorize the
7 transfer, provided that enforcement of the reasonable current
8 qualifications is not arbitrary or capricious.

9 g. A franchisor shall not deny the surviving spouse or a
10 child or children of a deceased or permanently disabled
11 franchisee the opportunity to participate in the ownership of
12 a franchise under a valid franchise agreement for a reasonable
13 period, which need not exceed one year, after the death or
14 disability of the franchisee. During such reasonable period,
15 the surviving spouse or the child or children of the
16 franchisee shall either meet all of the qualifications which
17 the franchisee was subject to at the time of the death or
18 disability of the franchisee, or sell, transfer, or assign the
19 franchise to a person who meets the franchisor's current
20 qualifications for a new franchisee. The rights granted
21 pursuant to this subsection are subject to the surviving
22 spouse or the child or children of the franchisee maintaining
23 all standards and obligations of the franchise.

24 h. Incorporation of a proprietorship franchise shall be
25 permitted upon sixty days' prior written notice to the
26 franchisor. Such incorporation does not prohibit a franchisor
27 from requiring a personal guaranty by the franchisee of
28 obligations related to the franchise, and the owners of the
29 corporation must meet the franchisor's reasonable current
30 qualifications for franchisees.

31 i. A transfer within an existing ownership group of a
32 franchise shall be permitted provided that the transferee
33 meets the franchisor's reasonable current qualifications for
34 franchisees, and written notice is submitted to the franchisor
35 sixty days prior to such a transfer. If less than fifty

1 percent of the franchise would be owned by persons who meet
2 the franchisor's reasonable current qualifications, the
3 franchisor may refuse to authorize the transfer, provided that
4 enforcement of the reasonable current qualifications is not
5 arbitrary or capricious.

6 6. ENCROACHMENT.

7 a. If a franchisor develops, or grants to a franchisee the
8 right to develop, a new outlet or location which sells
9 essentially the same goods or services under the same
10 trademark, service mark, trade name, logotype, or other
11 commercial symbol as an existing franchisee and the new outlet
12 or location is in unreasonable proximity to the existing
13 franchisee's outlet or location and has an adverse effect on
14 the gross sales of the existing franchisee's outlet or
15 location, the existing adversely affected franchisee has a
16 cause of action for monetary damages in an amount calculated
17 pursuant to paragraph "d", unless any of the following apply:

18 (1) The franchisor has first offered the new outlet or
19 location to the existing franchisee on the same basic terms
20 and conditions available to the other potential franchisee and
21 such existing franchisee meets the reasonable current
22 qualifications of the franchisor including any financial
23 requirements, or, if the new outlet or location is to be owned
24 by the franchisor, on the terms and conditions that would
25 ordinarily be offered to a franchisee for a similarly situated
26 outlet or location.

27 (2) The adverse impact on the existing franchisee's annual
28 gross sales, based on a comparison to the annual gross sales
29 from the existing outlet or location during the twelve-month
30 period immediately preceding the opening of the new outlet or
31 location, is determined to have been less than six percent
32 during the first twelve months of operation of the new outlet
33 or location.

34 (3) The existing franchisee, at the time the franchisor
35 develops, or grants to a franchisee the right to develop, a

1 new outlet or location, is not in compliance with the
2 franchisor's then current reasonable criteria for eligibility
3 for a new franchise, not including any financial requirements.

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

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

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

14 (b) A reasonable formal procedure for mediating a dispute
15 resulting in an award of compensation or other form of
16 consideration to a franchisee to offset all or a portion of
17 the franchisee's lost profits caused by the establishment of
18 the new outlet or location. The procedure shall involve a
19 neutral third-party mediator. The procedure shall be deemed
20 reasonable if approved by a majority of the franchisor's
21 franchisees in the United States.

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

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

31 d. (1) In establishing damages under a cause of action
32 brought pursuant to this subsection, the franchisee has the
33 burden of proving the amount of lost profits attributable to
34 the compensable sales. In any action brought under this
35 subsection, the damages payable shall be limited to no more

1 than three years of the proven lost profits. For purposes of
2 this paragraph, "compensable sales" means the annual gross
3 sales from the existing outlet or location during the twelve-
4 month period immediately preceding the opening of the new
5 outlet or location less both of the following:

6 (a) Six percent of the annual gross sales for that twelve-
7 month period immediately preceding the opening of the new
8 outlet or location.

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

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

16 e. Any cause of action brought under this subsection must
17 be filed within eighteen months of the opening of the new
18 outlet or location or within thirty days after the completion
19 of the procedure under paragraph "b", subparagraph (1),
20 whichever is later.

21 7. TERMINATION.

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

33 b. Prior to termination of a franchise for good cause, a
34 franchisor shall provide a franchisee with written notice
35 stating the basis for the proposed termination. After service

1 of written notice, the franchisee shall have a reasonable
2 period of time to cure the default, which in no event shall be
3 less than thirty days or more than ninety days. In the event
4 of nonpayment of moneys due under the franchise agreement, the
5 period to cure need not exceed thirty days.

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

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

12 (2) All or a substantial part of the assets of the
13 franchise or the business to which the franchisee relates are
14 assigned to or for the benefit of any creditor which is
15 subject to chapter 681. An assignment for the benefit of any
16 creditor pursuant to this subparagraph does not include the
17 granting of a security interest in the normal course of
18 business.

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

28 (4) The franchisor and franchisee agree in writing to
29 terminate the franchise.

30 (5) The franchisee knowingly makes any material
31 misrepresentations or knowingly omits to state any material
32 facts relating to the acquisition or ownership or operation of
33 the franchise business.

34 (6) The franchisee repeatedly fails to comply with one or
35 more material provisions of the franchise agreement, when the

1 enforcement of such material provisions is not arbitrary or
2 capricious, whether or not the franchisee complies after
3 receiving notice of the failure to comply.

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

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

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

13 8. NONRENEWAL OF A FRANCHISE.

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

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

19 (2) Any of the following circumstances exist:

20 (a) Good cause exists, provided that the refusal of the
21 franchisor to renew is not arbitrary or capricious. For
22 purposes of this subsection, "good cause" means cause based on
23 a legitimate business reason.

24 (b) The franchisor and franchisee agree not to renew the
25 franchise.

26 (c) The franchisor completely withdraws from directly or
27 indirectly distributing its products or services in the
28 geographic market served by the franchisee, provided that upon
29 expiration of the franchise, the franchisor agrees not to seek
30 to enforce any covenant of the nonrenewed franchisee not to
31 compete with the franchisor or franchisees of the franchisor.

32 b. As a condition of renewal of the franchise, a franchise
33 agreement may require that the franchisee meet the then
34 current requirements for franchises and that the franchisee
35 execute a new agreement incorporating the then current terms

1 and fees for new franchises.

2 9. SOURCES OF GOODS OR SERVICES. A franchisor shall not
3 require that a franchisee purchase goods, supplies,
4 inventories, or services exclusively from the franchisor or
5 from a source or sources of supply specifically designated by
6 the franchisor where such goods, supplies, inventories, or
7 services of comparable quality are available from sources
8 other than those designated by the franchisor.

9 However, the publication by the franchisor of a list of
10 approved suppliers of goods, supplies, inventories, or
11 services, or the requirement that such goods, supplies,
12 inventories, or services comply with specifications and
13 standards prescribed by the franchisor, does not constitute
14 designation of a source. Additionally, the reasonable right
15 of a franchisor to disapprove a supplier does not constitute a
16 designation of source. This subsection does not apply to the
17 principal goods, supplies, inventories, or services
18 manufactured by the franchisor, or such goods, supplies,
19 inventories, or services entitled to protection as a trade
20 secret.

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

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

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

34 12. PRIVATE CIVIL ACTION. A person who violates a
35 provision of this section or order issued under this section

1 is liable for damages caused by the violation, including, but
2 not limited to, costs and reasonable attorneys' and experts'
3 fees, and subject to other appropriate relief including
4 injunctive and other equitable relief.

5 13. CHOICE OF LAW. A condition, stipulation, or provision
6 requiring the application of the law of another state in lieu
7 of this section is void.

8 14. CONSTRUCTION WITH OTHER LAW. This section does not
9 limit any liability that may exist under another statute or at
10 common law.

11 15. CONSTRUCTION. This section shall be liberally
12 construed to effectuate its purposes.

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

20 Sec. 2. NEW SECTION. 523H.2A APPLICABILITY --
21 LIMITATION.

22 1. Notwithstanding section 523H.2, this chapter does not
23 apply to a franchise agreement which is entered into on or
24 after July 1, 1999. A franchise agreement which is entered
25 into on or after July 1, 1999, shall be subject to section
26 537A.10.

27 2. This chapter shall govern all actions with respect to
28 a franchise agreement entered into prior to July 1, 1999, no
29 matter when the occurrence giving rise to such action occurs.

30 EXPLANATION

31 This bill creates new Code section 537A.10 relating to
32 franchise agreements. Code chapter 537A pertains to
33 contracts.

34 Subsection 1 of the new Code section establishes
35 definitions of key terms used in the section.

1 Subsection 2 provides for the section's applicability. The
2 section applies to a new or existing franchise that is
3 operated in this state and that is subject to an agreement
4 entered into on or after the effective date of the bill. The
5 section does not apply to any existing or future contracts
6 between Iowa franchisors and franchisees who operate
7 franchises located out of state. A corresponding provision is
8 added to Code chapter 523H stating that Code chapter 523H only
9 applies to franchise agreements entered into prior to July 1,
10 1999.

11 Subsection 3 provides for the jurisdiction and venue of
12 disputes and prohibits as unenforceable a provision in the
13 franchise agreement that attempts to restrict jurisdiction to
14 a forum outside of this state.

15 Subsection 4 provides that a provision requiring a
16 franchisee to waive compliance with or relieving a person of a
17 duty or liability imposed by or a right provided by this
18 section is void.

19 Subsection 5 establishes certain rights and restrictions
20 related to the transfer of a franchise.

21 Subsection 6 defines encroachment and establishes a
22 mechanism for the calculation of monetary damages associated
23 with the encroachment. The subsection provides that a
24 franchisee has a cause of action under the encroachment
25 provision unless the franchisor has first offered the new
26 outlet or location to the existing franchisee on the same
27 basic terms and conditions available to other potential
28 franchisees, unless the adverse impact on the existing
29 franchisee's annual gross sales is determined pursuant to a
30 statutory formula to have been less than 6 percent during the
31 first 12 months of operation of the new outlet or location,
32 unless the existing franchisee is not in compliance with the
33 franchisor's then current reasonable criteria for eligibility
34 for a new franchise, or unless the existing franchisee has
35 been granted reasonable territorial rights and the new outlet

1 or location does not violate those territorial rights. The
 2 subsection provides that the franchisor, with respect to
 3 encroachment claims, must establish a formal procedure for
 4 hearing and acting upon claims by an existing franchisee with
 5 regard to a decision by the franchisor to develop a new outlet
 6 or location prior to such development, and a reasonable formal
 7 procedure for mediating a dispute resulting in an award of
 8 compensation or other form of consideration to offset all or a
 9 portion of the franchisee's lost profits caused by the
 10 encroachment.

11 Subsection 7 relates to termination of a franchise and
 12 provides that a franchisor shall not terminate a franchise
 13 prior to the expiration of its term except for good cause.
 14 Prior to termination for good cause, the franchisor must
 15 provide the franchisee with written notice stating the basis
 16 for the proposed termination. After written notice, the
 17 franchisee shall have a reasonable time, generally between 30
 18 to 90 days, to cure the default resulting in the notice. The
 19 subsection sets forth certain instances where the franchisor
 20 may terminate the franchise upon written notice and without an
 21 opportunity to cure.

22 Subsection 8 pertains to the nonrenewal of a franchise.
 23 The subsection provides that the franchisor must not refuse to
 24 renew a franchise unless the franchisee has been notified of
 25 the franchisor's intent not to renew at least six months prior
 26 to the expiration date or any extension of the franchise
 27 agreement, along with the existence of one of several
 28 circumstances set forth in the subsection.

29 Subsection 9 provides that a franchisor shall not require
 30 that a franchisee purchase goods, supplies, inventories, or
 31 services exclusively from the franchisor or from a source or
 32 sources of supply specifically designated by the franchisor
 33 where such goods, supplies, inventories, or services of
 34 comparable quality are available from sources other than those
 35 designated by the franchisor. The subsection does not apply

1 to the principal goods, supplies, inventories, or services
2 manufactured by the franchisor, or such goods, supplies,
3 inventories, or services entitled to protection as a trade
4 secret.

5 Subsection 10 provides that a franchisor shall not restrict
6 a franchisee from associating with other franchisees.

7 Subsection 11 imposes a duty of good faith on the parties
8 in the performance and enforcement of the franchise agreement.

9 Subsection 12 provides a private civil cause of action. A
10 person who violates a provision of the section is liable for
11 damages caused by the violation including, but not limited to,
12 costs and reasonable attorneys and experts fees, as well as
13 other appropriate relief including injunctive and other
14 equitable relief.

15 Subsection 13 provides that a condition, stipulation, or
16 provision requiring the application of the law of another
17 state in lieu of this section is void.

18 Subsection 14 provides that the section does not limit any
19 liability that may exist under another statute or at common
20 law.

21 Subsection 15 provides that the section is to be liberally
22 construed to effectuate its purpose.

23 Subsection 16 provides that if any provision or clause of
24 the section is held invalid, the invalidity shall not affect
25 other provisions that can be given effect without the invalid
26 provision.

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REPRINTED

4/3/00 Motion to R/C by Drake
4/3/00 Motion to R/C by Grondal
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SENATE FILE 324
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1072.1)

Passed Senate, Date ^(p.130) 3-23-99 Passed House, Date ^(p.837) 3/20/00
Vote: Ayes 47 Nays 0 Vote: Ayes 71 Nays 28
Approved 4-14-00
Re Passed 4-3-00
vote 44-5

A BILL FOR

1 An Act relating to certain franchise agreements and the rights
2 and responsibilities of the parties under such agreements.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 324

S-3116

1 Amend Senate File 324 as follows:
2 1. Page 10, by striking lines 29 and 30 and
3 inserting the following: "franchisor is not arbitrary
4 or capricious. The".

By MICHAEL E. GRONSTAL

S-3116 FILED MARCH 23, 1999

ADOPTED

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SF 324

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

2 1. DEFINITIONS.

3 When used in this section, unless the context otherwise
4 requires:

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

9 b. "Business day" means a day other than a Saturday,
10 Sunday, or federal holiday.

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

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

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

17 (ii) Requires payment of a franchise fee to a franchisor
18 or its affiliate.

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

23 (b) A master franchise.

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

33 (3) "Franchise" also does not include any contract under
34 which a petroleum retailer or petroleum distributor is
35 authorized or permitted to occupy leased marketing premises,

1 which premises are to be employed in connection with the sale,
2 consignment, or distribution of motor fuel under a trademark
3 which is owned or controlled by a refiner which is regulated
4 by the federal Petroleum Marketing Practices Act, 15 U.S.C. §
5 2801 et seq. The term "refiner" means any person engaged in
6 the refining of crude oil to produce motor fuel, and includes
7 any affiliate of such person. "Franchise" also does not
8 include a contract entered into by any person regulated under
9 chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522, or 543B,
10 or a contract establishing a franchise relationship with
11 respect to the sale of construction equipment, lawn or garden
12 equipment, or real estate.

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

16 (1) Payment of a reasonable service charge to the issuer
17 of a credit card by an establishment accepting the credit
18 card.

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

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

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

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

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

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

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

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

3 (2) A subfranchisee with regard to its relationship with a
4 subfranchisor.

5 f. "Franchisor" means a person who grants a franchise or
6 master franchise, or an affiliate of such a person.

7 Franchisor includes a subfranchisor with regard to its
8 relationship with a franchisee, unless stated otherwise in
9 this section.

10 g. "Marketing plan" means a plan or system concerning a
11 material aspect of conducting business. Indicia of a
12 marketing plan include any of the following:

13 (1) Price specification, special pricing systems, or
14 discount plans.

15 (2) Sales or display equipment or merchandising devices.

16 (3) Sales techniques.

17 (4) Promotional or advertising materials or cooperative
18 advertising.

19 (5) Training regarding the promotion, operation, or
20 management of the business.

21 (6) Operational, managerial, technical, or financial
22 guidelines or assistance.

23 h. "Master franchise" means an agreement by which a person
24 pays a franchisor for the right to sell or negotiate the sale
25 of franchises.

26 i. "Offer" or "offer to sell" means every attempt to offer
27 or to dispose of, or solicitation of an offer to buy, a
28 franchise or interest in a franchise for value.

29 j. "Person" means a person as defined in section 4.1,
30 subsection 20.

31 k. "Sale" or "sell" means every contract or agreement of
32 sale of, contract to sell or disposition of, a franchise or
33 interest in a franchise for value.

34 l. "Subfranchise" means an agreement by which a person
35 pays a franchisor for the right to sell or negotiate the sale

1 of franchises.

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

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

6 2. APPLICABILITY. Notwithstanding section 523H.2, this
7 section applies to a new or existing franchise that is
8 operated in this state and that is subject to an agreement
9 entered into on or after the effective date of this Act. For
10 purposes of this section, the franchise is operated in this
11 state only if the premises from which the franchise is
12 operated is physically located in this state. For purposes of
13 this section, a franchise including marketing rights in or to
14 this state, is deemed to be operated in this state only if the
15 franchisee's principal business office is physically located
16 in this state. This section does not apply to a franchise
17 solely because an agreement relating to the franchise provides
18 that the agreement is subject to or governed by the laws of
19 this state. The provisions of this section do not apply to
20 any existing or future contracts between Iowa franchisors and
21 franchisees who operate franchises located out of state.

22 3. JURISDICTION AND VENUE OF DISPUTES.

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

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

30 c. Venue for a civil action commenced under this chapter
31 shall be determined in accordance with chapter 616.

32 4. WAIVERS VOID. A condition, stipulation, or provision
33 requiring a franchisee to waive compliance with or relieving a
34 person of a duty or liability imposed by or a right provided
35 by this section or a rule or order under this section is void.

1 This subsection shall not affect the settlement of disputes,
2 claims, or civil lawsuits arising or brought pursuant to this
3 section.

4 5. TRANSFER OF FRANCHISE.

5 a. A franchisee may transfer the franchised business and
6 franchise to a transferee, provided that the transferee
7 satisfies the reasonable current qualifications of the
8 franchisor for new franchisees. For the purposes of this
9 subsection, a reasonable current qualification for a new
10 franchisee is a qualification based upon a legitimate business
11 reason. If the proposed transferee does not meet the
12 reasonable current qualifications of the franchisor, the
13 franchisor may refuse to permit the transfer, provided that
14 the refusal of the franchisor to consent to the transfer is
15 not arbitrary or capricious.

16 b. (1) A franchisee may transfer less than a controlling
17 interest in the franchise to an employee stock ownership plan,
18 or employee incentive plan provided that more than fifty
19 percent of the entire franchise is held by those who meet the
20 franchisor's reasonable current qualifications for
21 franchisees, and such transfer is approved by the franchisor.
22 Approval of such transfer shall not be unreasonably withheld.

23 (2) If pursuant to such a transfer less than fifty percent
24 of the entire franchise would be owned by persons who meet the
25 franchisor's reasonable current qualifications, the franchisor
26 may refuse to authorize the transfer, provided that
27 enforcement of the reasonable current qualifications is not
28 arbitrary or capricious.

29 (3) Participation by an employee in an employee stock
30 ownership plan or employee incentive plan established pursuant
31 to this subsection does not confer upon such employee any
32 right to access trade secrets protected under the franchise
33 agreement which access the employee would not otherwise have
34 if the employee did not participate in such plan.

35 c. A franchisor may require as a condition of a transfer

1 any of the following:

2 (1) That the transferee successfully complete a training
3 program.

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

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

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

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

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

33 f. A transfer of less than a controlling interest in the
34 franchise to the franchisee's spouse or child or children
35 shall be permitted if following the transfer more than fifty

1 percent of the interest in the entire franchise is held by
2 those who meet the franchisor's reasonable current
3 qualifications. If following such a transfer fifty percent or
4 less of the interest in the franchise would be owned by
5 persons who meet the franchisor's reasonable current
6 qualifications, the franchisor may refuse to authorize the
7 transfer, provided that enforcement of the reasonable current
8 qualifications is not arbitrary or capricious.

9 g. A franchisor shall not deny the surviving spouse or a
10 child or children of a deceased or permanently disabled
11 franchisee the opportunity to participate in the ownership of
12 a franchise under a valid franchise agreement for a reasonable
13 period, which need not exceed one year, after the death or
14 disability of the franchisee. During such reasonable period,
15 the surviving spouse or the child or children of the
16 franchisee shall either meet all of the qualifications which
17 the franchisee was subject to at the time of the death or
18 disability of the franchisee, or sell, transfer, or assign the
19 franchise to a person who meets the franchisor's current
20 qualifications for a new franchisee. The rights granted
21 pursuant to this subsection are subject to the surviving
22 spouse or the child or children of the franchisee maintaining
23 all standards and obligations of the franchise.

24 h. Incorporation of a proprietorship franchise shall be
25 permitted upon sixty days' prior written notice to the
26 franchisor. Such incorporation does not prohibit a franchisor
27 from requiring a personal guaranty by the franchisee of
28 obligations related to the franchise, and the owners of the
29 corporation must meet the franchisor's reasonable current
30 qualifications for franchisees.

31 i. A transfer within an existing ownership group of a
32 franchise shall be permitted provided that the transferee
33 meets the franchisor's reasonable current qualifications for
34 franchisees, and written notice is submitted to the franchisor
35 sixty days prior to such a transfer. If less than fifty

1 percent of the franchise would be owned by persons who meet
2 the franchisor's reasonable current qualifications, the
3 franchisor may refuse to authorize the transfer, provided that
4 enforcement of the reasonable current qualifications is not
5 arbitrary or capricious.

6 6. ENCROACHMENT.

7 a. If a franchisor develops, or grants to a franchisee the
8 right to develop, a new outlet or location which sells
9 essentially the same goods or services under the same
10 trademark, service mark, trade name, logotype, or other
11 commercial symbol as an existing franchisee and the new outlet
12 or location is in unreasonable proximity to the existing
13 franchisee's outlet or location and has an adverse effect on
14 the gross sales of the existing franchisee's outlet or
15 location, the existing adversely affected franchisee has a
16 cause of action for monetary damages in an amount calculated
17 pursuant to paragraph "d", unless any of the following apply:

18 (1) The franchisor has first offered the new outlet or
19 location to the existing franchisee on the same basic terms
20 and conditions available to the other potential franchisee and
21 such existing franchisee meets the reasonable current
22 qualifications of the franchisor including any financial
23 requirements, or, if the new outlet or location is to be owned
24 by the franchisor, on the terms and conditions that would
25 ordinarily be offered to a franchisee for a similarly situated
26 outlet or location.

27 (2) The adverse impact on the existing franchisee's annual
28 gross sales, based on a comparison to the annual gross sales
29 from the existing outlet or location during the twelve-month
30 period immediately preceding the opening of the new outlet or
31 location, is determined to have been less than six percent
32 during the first twelve months of operation of the new outlet
33 or location.

34 (3) The existing franchisee, at the time the franchisor
35 develops, or grants to a franchisee the right to develop, a

1 new outlet or location, is not in compliance with the
2 franchisor's then current reasonable criteria for eligibility
3 for a new franchise, not including any financial requirements.

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

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

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

14 (b) A reasonable formal procedure for mediating a dispute
15 resulting in an award of compensation or other form of
16 consideration to a franchisee to offset all or a portion of
17 the franchisee's lost profits caused by the establishment of
18 the new outlet or location. The procedure shall involve a
19 neutral third-party mediator. The procedure shall be deemed
20 reasonable if approved by a majority of the franchisor's
21 franchisees in the United States.

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

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

31 d. (1) In establishing damages under a cause of action
32 brought pursuant to this subsection, the franchisee has the
33 burden of proving the amount of lost profits attributable to
34 the compensable sales. In any action brought under this
35 subsection, the damages payable shall be limited to no more

1 than three years of the proven lost profits. For purposes of
2 this paragraph, "compensable sales" means the annual gross
3 sales from the existing outlet or location during the twelve-
4 month period immediately preceding the opening of the new
5 outlet or location less both of the following:

6 (a) Six percent of the annual gross sales for that twelve-
7 month period immediately preceding the opening of the new
8 outlet or location.

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

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

16 e. Any cause of action brought under this subsection must
17 be filed within eighteen months of the opening of the new
18 outlet or location or within thirty days after the completion
19 of the procedure under paragraph "b", subparagraph (1),
20 whichever is later.

21 7. TERMINATION.

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

33 b. Prior to termination of a franchise for good cause, a
34 franchisor shall provide a franchisee with written notice
35 stating the basis for the proposed termination. After service

1 of written notice, the franchisee shall have a reasonable
2 period of time to cure the default, which in no event shall be
3 less than thirty days or more than ninety days. In the event
4 of nonpayment of moneys due under the franchise agreement, the
5 period to cure need not exceed thirty days.

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

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

12 (2) All or a substantial part of the assets of the
13 franchise or the business to which the franchisee relates are
14 assigned to or for the benefit of any creditor which is
15 subject to chapter 681. An assignment for the benefit of any
16 creditor pursuant to this subparagraph does not include the
17 granting of a security interest in the normal course of
18 business.

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

28 (4) The franchisor and franchisee agree in writing to
29 terminate the franchise.

30 (5) The franchisee knowingly makes any material
31 misrepresentations or knowingly omits to state any material
32 facts relating to the acquisition or ownership or operation of
33 the franchise business.

34 (6) The franchisee repeatedly fails to comply with one or
35 more material provisions of the franchise agreement, when the

1 enforcement of such material provisions is not arbitrary or
2 capricious, whether or not the franchisee complies after
3 receiving notice of the failure to comply.

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

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

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

13 8. NONRENEWAL OF A FRANCHISE.

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

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

19 (2) Any of the following circumstances exist:

20 (a) Good cause exists, provided that the refusal of the
21 franchisor to renew is not arbitrary or capricious. For
22 purposes of this subsection, "good cause" means cause based on
23 a legitimate business reason.

24 (b) The franchisor and franchisee agree not to renew the
25 franchise.

26 (c) The franchisor completely withdraws from directly or
27 indirectly distributing its products or services in the
28 geographic market served by the franchisee, provided that upon
29 expiration of the franchise, the franchisor agrees not to seek
30 to enforce any covenant of the nonrenewed franchisee not to
31 compete with the franchisor or franchisees of the franchisor.

32 b. As a condition of renewal of the franchise, a franchise
33 agreement may require that the franchisee meet the then
34 current requirements for franchises and that the franchisee
35 execute a new agreement incorporating the then current terms

1 and fees for new franchises.

2 9. SOURCES OF GOODS OR SERVICES. A franchisor shall not
3 require that a franchisee purchase goods, supplies,
4 inventories, or services exclusively from the franchisor or
5 from a source or sources of supply specifically designated by
6 the franchisor where such goods, supplies, inventories, or
7 services of comparable quality are available from sources
8 other than those designated by the franchisor.

9 However, the publication by the franchisor of a list of
10 approved suppliers of goods, supplies, inventories, or
11 services, or the requirement that such goods, supplies,
12 inventories, or services comply with specifications and
13 standards prescribed by the franchisor, does not constitute
14 designation of a source. Additionally, the reasonable right
15 of a franchisor to disapprove a supplier does not constitute a
16 designation of source. This subsection does not apply to the
17 principal goods, supplies, inventories, or services
18 manufactured by the franchisor, or such goods, supplies,
19 inventories, or services entitled to protection as a trade
20 secret.

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

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

31 The duty of good faith is imposed in situations including,
32 but not limited to, where the franchisor opens a new outlet or
33 location that has an adverse impact on an existing franchisee.

34 12. PRIVATE CIVIL ACTION. A person who violates a
35 provision of this section or order issued under this section

1 is liable for damages caused by the violation, including, but
2 not limited to, costs and reasonable attorneys' and experts'
3 fees, and subject to other appropriate relief including
4 injunctive and other equitable relief.

5 13. CHOICE OF LAW. A condition, stipulation, or provision
6 requiring the application of the law of another state in lieu
7 of this section is void.

8 14. CONSTRUCTION WITH OTHER LAW. This section does not
9 limit any liability that may exist under another statute or at
10 common law.

11 15. CONSTRUCTION. This section shall be liberally
12 construed to effectuate its purposes.

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

20 Sec. 2. NEW SECTION. 523H.2A APPLICABILITY --
21 LIMITATION.

22 1. Notwithstanding section 523H.2, this chapter does not
23 apply to a franchise agreement which is entered into on or
24 after July 1, 1999. A franchise agreement which is entered
25 into on or after July 1, 1999, shall be subject to section
26 537A.10.

27 2. This chapter shall govern all actions with respect to a
28 franchise agreement entered into prior to July 1, 1999, no
29 matter when the occurrence giving rise to such action occurs.

30 EXPLANATION

31 This bill creates new Code section 537A.10 relating to
32 franchise agreements. Code chapter 537A pertains to
33 contracts.

34 Subsection 1 of the new Code section establishes
35 definitions of key terms used in the section.

1 Subsection 2 provides for the section's applicability. The
2 section applies to a new or existing franchise that is
3 operated in this state and that is subject to an agreement
4 entered into on or after the effective date of the bill. The
5 section does not apply to any existing or future contracts
6 between Iowa franchisors and franchisees who operate
7 franchises located out of state. A corresponding provision is
8 added to Code chapter 523H stating that Code chapter 523H only
9 applies to franchise agreements entered into prior to July 1,
10 1999.

11 Subsection 3 provides for the jurisdiction and venue of
12 disputes and prohibits as unenforceable a provision in the
13 franchise agreement that attempts to restrict jurisdiction to
14 a forum outside of this state.

15 Subsection 4 provides that a provision requiring a
16 franchisee to waive compliance with or relieving a person of a
17 duty or liability imposed by or a right provided by this
18 section is void.

19 Subsection 5 establishes certain rights and restrictions
20 related to the transfer of a franchise.

21 Subsection 6 defines encroachment and establishes a
22 mechanism for the calculation of monetary damages associated
23 with the encroachment. The subsection provides that a
24 franchisee has a cause of action under the encroachment
25 provision unless the franchisor has first offered the new
26 outlet or location to the existing franchisee on the same
27 basic terms and conditions available to other potential
28 franchisees, unless the adverse impact on the existing
29 franchisee's annual gross sales is determined pursuant to a
30 statutory formula to have been less than 6 percent during the
31 first 12 months of operation of the new outlet or location,
32 unless the existing franchisee is not in compliance with the
33 franchisor's then current reasonable criteria for eligibility
34 for a new franchise, or unless the existing franchisee has
35 been granted reasonable territorial rights and the new outlet

1 or location does not violate those territorial rights. The
2 subsection provides that the franchisor, with respect to
3 encroachment claims, must establish a formal procedure for
4 hearing and acting upon claims by an existing franchisee with
5 regard to a decision by the franchisor to develop a new outlet
6 or location prior to such development, and a reasonable formal
7 procedure for mediating a dispute resulting in an award of
8 compensation or other form of consideration to offset all or a
9 portion of the franchisee's lost profits caused by the
10 encroachment.

11 Subsection 7 relates to termination of a franchise and
12 provides that a franchisor shall not terminate a franchise
13 prior to the expiration of its term except for good cause.
14 Prior to termination for good cause, the franchisor must
15 provide the franchisee with written notice stating the basis
16 for the proposed termination. After written notice, the
17 franchisee shall have a reasonable time, generally between 30
18 to 90 days, to cure the default resulting in the notice. The
19 subsection sets forth certain instances where the franchisor
20 may terminate the franchise upon written notice and without an
21 opportunity to cure.

22 Subsection 8 pertains to the nonrenewal of a franchise.
23 The subsection provides that the franchisor must not refuse to
24 renew a franchise unless the franchisee has been notified of
25 the franchisor's intent not to renew at least six months prior
26 to the expiration date or any extension of the franchise
27 agreement, along with the existence of one of several
28 circumstances set forth in the subsection.

29 Subsection 9 provides that a franchisor shall not require
30 that a franchisee purchase goods, supplies, inventories, or
31 services exclusively from the franchisor or from a source or
32 sources of supply specifically designated by the franchisor
33 where such goods, supplies, inventories, or services of
34 comparable quality are available from sources other than those
35 designated by the franchisor. The subsection does not apply

1 to the principal goods, supplies, inventories, or services
2 manufactured by the franchisor, or such goods, supplies,
3 inventories, or services entitled to protection as a trade
4 secret.

5 Subsection 10 provides that a franchisor shall not restrict
6 a franchisee from associating with other franchisees.

7 Subsection 11 imposes a duty of good faith on the parties
8 in the performance and enforcement of the franchise agreement.

9 Subsection 12 provides a private civil cause of action. A
10 person who violates a provision of the section is liable for
11 damages caused by the violation including, but not limited to,
12 costs and reasonable attorneys' and experts' fees, as well as
13 other appropriate relief including injunctive and other
14 equitable relief.

15 Subsection 13 provides that a condition, stipulation, or
16 provision requiring the application of the law of another
17 state in lieu of this section is void.

18 Subsection 14 provides that the section does not limit any
19 liability that may exist under another statute or at common
20 law.

21 Subsection 15 provides that the section is to be liberally
22 construed to effectuate its purpose.

23 Subsection 16 provides that if any provision or clause of
24 the section is held invalid, the invalidity shall not affect
25 other provisions that can be given effect without the invalid
26 provision.

27 New Code section 523H.2A provides that Code chapter 523H
28 does not apply to a franchise agreement which is entered into
29 on or after July 1, 1999. The new Code section provides that
30 Code chapter 523H governs all actions with respect to a
31 franchise agreement entered into prior to July 1, 1999, no
32 matter when the occurrence giving rise to the action occurs.

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H- 3/24/99 Commerce + Reg
H. 3/31/99 Amend/Do Pass

W/H-1335
H- Amend/Do Pass W/H-802
H. motions to R/c by Jager + Metcalf

SENATE FILE 324
BY COMMITTEE ON COMMERCE
H. 3/21/00 Motion to R/c by Metcalf lost
All other motions out of order
(SUCCESSOR TO SSB 1072.1)

(AS AMENDED AND PASSED BY THE SENATE MARCH 23, 1999)
- New Language by the Senate
B. 4-3-00 Motion to R/c by Drake
S-4/3/00 Motion to R/c by Gerrish
S-4/10/00 Motion TO R/c Withdrawn

(P. 967) Passed Senate, Date 4-3-00 (P. 837) Passed House, Date 3/20/00
Vote: Ayes 44 Nays 5 Vote: Ayes 71 Nays 28
Approved 4-14-00

A BILL FOR

1 An Act relating to certain franchise agreements and the rights
2 and responsibilities of the parties under such agreements.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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5
6

S.F. 324

SENATE FILE 324

H-1335

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 13, by striking lines 30 through 32.

By COMMITTEE ON COMMERCE
AND REGULATION
METCALF of Polk, Chairperson

H-1335 FILED MARCH 31, 1999

Lost 4/21/99 (P. 1580)

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

2 1. DEFINITIONS.

3 When used in this section, unless the context otherwise
4 requires:

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

9 b. "Business day" means a day other than a Saturday,
10 Sunday, or federal holiday.

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

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

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

17 (ii) Requires payment of a franchise fee to a franchisor
18 or its affiliate.

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

23 (b) A master franchise.

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

33 (3) "Franchise" also does not include any contract under
34 which a petroleum retailer or petroleum distributor is
35 authorized or permitted to occupy leased marketing premises,

1 which premises are to be employed in connection with the sale,
2 consignment, or distribution of motor fuel under a trademark
3 which is owned or controlled by a refiner which is regulated
4 by the federal Petroleum Marketing Practices Act, 15 U.S.C. §
5 2801 et seq. The term "refiner" means any person engaged in
6 the refining of crude oil to produce motor fuel, and includes
7 any affiliate of such person. "Franchise" also does not
8 include a contract entered into by any person regulated under
9 chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522, or 543B,
10 or a contract establishing a franchise relationship with
11 respect to the sale of construction equipment, lawn or garden
12 equipment, or real estate.

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

16 (1) Payment of a reasonable service charge to the issuer
17 of a credit card by an establishment accepting the credit
18 card.

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

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

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

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

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

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

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

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

3 (2) A subfranchisee with regard to its relationship with a
4 subfranchisor.

5 f. "Franchisor" means a person who grants a franchise or
6 master franchise, or an affiliate of such a person.

7 Franchisor includes a subfranchisor with regard to its
8 relationship with a franchisee, unless stated otherwise in
9 this section.

10 g. "Marketing plan" means a plan or system concerning a
11 material aspect of conducting business. Indicia of a
12 marketing plan include any of the following:

13 (1) Price specification, special pricing systems, or
14 discount plans.

15 (2) Sales or display equipment or merchandising devices.

16 (3) Sales techniques.

17 (4) Promotional or advertising materials or cooperative
18 advertising.

19 (5) Training regarding the promotion, operation, or
20 management of the business.

21 (6) Operational, managerial, technical, or financial
22 guidelines or assistance.

23 h. "Master franchise" means an agreement by which a person
24 pays a franchisor for the right to sell or negotiate the sale
25 of franchises.

26 i. "Offer" or "offer to sell" means every attempt to offer
27 or to dispose of, or solicitation of an offer to buy, a
28 franchise or interest in a franchise for value.

29 j. "Person" means a person as defined in section 4.1,
30 subsection 20.

31 k. "Sale" or "sell" means every contract or agreement of
32 sale of, contract to sell or disposition of, a franchise or
33 interest in a franchise for value.

34 l. "Subfranchise" means an agreement by which a person
35 pays a franchisor for the right to sell or negotiate the sale

1 of franchises.

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

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

6 2. APPLICABILITY. Notwithstanding section 523H.2, this
7 section applies to a new or existing franchise that is
8 operated in this state and that is subject to an agreement
9 entered into on or after the effective date of this Act. For
10 purposes of this section, the franchise is operated in this
11 state only if the premises from which the franchise is
12 operated is physically located in this state. For purposes of
13 this section, a franchise including marketing rights in or to
14 this state, is deemed to be operated in this state only if the
15 franchisee's principal business office is physically located
16 in this state. This section does not apply to a franchise
17 solely because an agreement relating to the franchise provides
18 that the agreement is subject to or governed by the laws of
19 this state. The provisions of this section do not apply to
20 any existing or future contracts between Iowa franchisors and
21 franchisees who operate franchises located out of state.

22 3. JURISDICTION AND VENUE OF DISPUTES.

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

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

30 c. Venue for a civil action commenced under this chapter
31 shall be determined in accordance with chapter 616.

32 4. WAIVERS VOID. A condition, stipulation, or provision
33 requiring a franchisee to waive compliance with or relieving a
34 person of a duty or liability imposed by or a right provided
35 by this section or a rule or order under this section is void.

1 This subsection shall not affect the settlement of disputes,
2 claims, or civil lawsuits arising or brought pursuant to this
3 section.

4 5. TRANSFER OF FRANCHISE.

5 a. A franchisee may transfer the franchised business and
6 franchise to a transferee, provided that the transferee
7 satisfies the reasonable current qualifications of the
8 franchisor for new franchisees. For the purposes of this
9 subsection, a reasonable current qualification for a new
10 franchisee is a qualification based upon a legitimate business
11 reason. If the proposed transferee does not meet the
12 reasonable current qualifications of the franchisor, the
13 franchisor may refuse to permit the transfer, provided that
14 the refusal of the franchisor to consent to the transfer is
15 not arbitrary or capricious.

16 b. (1) A franchisee may transfer less than a controlling
17 interest in the franchise to an employee stock ownership plan,
18 or employee incentive plan provided that more than fifty
19 percent of the entire franchise is held by those who meet the
20 franchisor's reasonable current qualifications for
21 franchisees, and such transfer is approved by the franchisor.
22 Approval of such transfer shall not be unreasonably withheld.

23 (2) If pursuant to such a transfer less than fifty percent
24 of the entire franchise would be owned by persons who meet the
25 franchisor's reasonable current qualifications, the franchisor
26 may refuse to authorize the transfer, provided that
27 enforcement of the reasonable current qualifications is not
28 arbitrary or capricious.

29 (3) Participation by an employee in an employee stock
30 ownership plan or employee incentive plan established pursuant
31 to this subsection does not confer upon such employee any
32 right to access trade secrets protected under the franchise
33 agreement which access the employee would not otherwise have
34 if the employee did not participate in such plan.

35 c. A franchisor may require as a condition of a transfer

1 any of the following:

2 (1) That the transferee successfully complete a training
3 program.

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

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

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

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

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

33 f. A transfer of less than a controlling interest in the
34 franchise to the franchisee's spouse or child or children
35 shall be permitted if following the transfer more than fifty

1 percent of the interest in the entire franchise is held by
2 those who meet the franchisor's reasonable current
3 qualifications. If following such a transfer fifty percent or
4 less of the interest in the franchise would be owned by
5 persons who meet the franchisor's reasonable current
6 qualifications, the franchisor may refuse to authorize the
7 transfer, provided that enforcement of the reasonable current
8 qualifications is not arbitrary or capricious.

9 g. A franchisor shall not deny the surviving spouse or a
10 child or children of a deceased or permanently disabled
11 franchisee the opportunity to participate in the ownership of
12 a franchise under a valid franchise agreement for a reasonable
13 period, which need not exceed one year, after the death or
14 disability of the franchisee. During such reasonable period,
15 the surviving spouse or the child or children of the
16 franchisee shall either meet all of the qualifications which
17 the franchisee was subject to at the time of the death or
18 disability of the franchisee, or sell, transfer, or assign the
19 franchise to a person who meets the franchisor's current
20 qualifications for a new franchisee. The rights granted
21 pursuant to this subsection are subject to the surviving
22 spouse or the child or children of the franchisee maintaining
23 all standards and obligations of the franchise.

24 h. Incorporation of a proprietorship franchise shall be
25 permitted upon sixty days' prior written notice to the
26 franchisor. Such incorporation does not prohibit a franchisor
27 from requiring a personal guaranty by the franchisee of
28 obligations related to the franchise, and the owners of the
29 corporation must meet the franchisor's reasonable current
30 qualifications for franchisees.

31 i. A transfer within an existing ownership group of a
32 franchise shall be permitted provided that the transferee
33 meets the franchisor's reasonable current qualifications for
34 franchisees, and written notice is submitted to the franchisor
35 sixty days prior to such a transfer. If less than fifty

1 percent of the franchise would be owned by persons who meet
2 the franchisor's reasonable current qualifications, the
3 franchisor may refuse to authorize the transfer, provided that
4 enforcement of the reasonable current qualifications is not
5 arbitrary or capricious.

6 6. ENCROACHMENT.

7 a. If a franchisor develops, or grants to a franchisee the
8 right to develop, a new outlet or location which sells
9 essentially the same goods or services under the same
10 trademark, service mark, trade name, logotype, or other
11 commercial symbol as an existing franchisee and the new outlet
12 or location is in unreasonable proximity to the existing
13 franchisee's outlet or location and has an adverse effect on
14 the gross sales of the existing franchisee's outlet or
15 location, the existing adversely affected franchisee has a
16 cause of action for monetary damages in an amount calculated
17 pursuant to paragraph "d", unless any of the following apply:

18 (1) The franchisor has first offered the new outlet or
19 location to the existing franchisee on the same basic terms
20 and conditions available to the other potential franchisee and
21 such existing franchisee meets the reasonable current
22 qualifications of the franchisor including any financial
23 requirements, or, if the new outlet or location is to be owned
24 by the franchisor, on the terms and conditions that would
25 ordinarily be offered to a franchisee for a similarly situated
26 outlet or location.

27 (2) The adverse impact on the existing franchisee's annual
28 gross sales, based on a comparison to the annual gross sales
29 from the existing outlet or location during the twelve-month
30 period immediately preceding the opening of the new outlet or
31 location, is determined to have been less than six percent
32 during the first twelve months of operation of the new outlet
33 or location.

34 (3) The existing franchisee, at the time the franchisor
35 develops, or grants to a franchisee the right to develop, a

1 new outlet or location, is not in compliance with the
2 franchisor's then current reasonable criteria for eligibility
3 for a new franchise, not including any financial requirements.

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

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

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

14 (b) A reasonable formal procedure for mediating a dispute
15 resulting in an award of compensation or other form of
16 consideration to a franchisee to offset all or a portion of
17 the franchisee's lost profits caused by the establishment of
18 the new outlet or location. The procedure shall involve a
19 neutral third-party mediator. The procedure shall be deemed
20 reasonable if approved by a majority of the franchisor's
21 franchisees in the United States.

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

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

31 d. (1) In establishing damages under a cause of action
32 brought pursuant to this subsection, the franchisee has the
33 burden of proving the amount of lost profits attributable to
34 the compensable sales. In any action brought under this
35 subsection, the damages payable shall be limited to no more

1 than three years of the proven lost profits. For purposes of
2 this paragraph, "compensable sales" means the annual gross
3 sales from the existing outlet or location during the twelve-
4 month period immediately preceding the opening of the new
5 outlet or location less both of the following:

6 (a) Six percent of the annual gross sales for that twelve-
7 month period immediately preceding the opening of the new
8 outlet or location.

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

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

16 e. Any cause of action brought under this subsection must
17 be filed within eighteen months of the opening of the new
18 outlet or location or within thirty days after the completion
19 of the procedure under paragraph "b", subparagraph (1),
20 whichever is later.

21 7. TERMINATION.

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

32 b. Prior to termination of a franchise for good cause, a
33 franchisor shall provide a franchisee with written notice
34 stating the basis for the proposed termination. After service
35 of written notice, the franchisee shall have a reasonable

1 period of time to cure the default, which in no event shall be
2 less than thirty days or more than ninety days. In the event
3 of nonpayment of moneys due under the franchise agreement, the
4 period to cure need not exceed thirty days.

5 c. Notwithstanding paragraph "b", a franchisor may
6 terminate a franchise upon written notice and without an
7 opportunity to cure if any of the following apply:

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

11 (2) All or a substantial part of the assets of the
12 franchise or the business to which the franchisee relates are
13 assigned to or for the benefit of any creditor which is
14 subject to chapter 681. An assignment for the benefit of any
15 creditor pursuant to this subparagraph does not include the
16 granting of a security interest in the normal course of
17 business.

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

27 (4) The franchisor and franchisee agree in writing to
28 terminate the franchise.

29 (5) The franchisee knowingly makes any material
30 misrepresentations or knowingly omits to state any material
31 facts relating to the acquisition or ownership or operation of
32 the franchise business.

33 (6) The franchisee repeatedly fails to comply with one or
34 more material provisions of the franchise agreement, when the
35 enforcement of such material provisions is not arbitrary or

1 capricious, whether or not the franchisee complies after
2 receiving notice of the failure to comply.

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

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

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

12 8. NONRENEWAL OF A FRANCHISE.

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

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

18 (2) Any of the following circumstances exist:

19 (a) Good cause exists, provided that the refusal of the
20 franchisor to renew is not arbitrary or capricious. For
21 purposes of this subsection, "good cause" means cause based on
22 a legitimate business reason.

23 (b) The franchisor and franchisee agree not to renew the
24 franchise.

25 (c) The franchisor completely withdraws from directly or
26 indirectly distributing its products or services in the
27 geographic market served by the franchisee, provided that upon
28 expiration of the franchise, the franchisor agrees not to seek
29 to enforce any covenant of the nonrenewed franchisee not to
30 compete with the franchisor or franchisees of the franchisor.

31 b. As a condition of renewal of the franchise, a franchise
32 agreement may require that the franchisee meet the then
33 current requirements for franchises and that the franchisee
34 execute a new agreement incorporating the then current terms
35 and fees for new franchises.

1 9. SOURCES OF GOODS OR SERVICES. A franchisor shall not
2 require that a franchisee purchase goods, supplies,
3 inventories, or services exclusively from the franchisor or
4 from a source or sources of supply specifically designated by
5 the franchisor where such goods, supplies, inventories, or
6 services of comparable quality are available from sources
7 other than those designated by the franchisor.

8 However, the publication by the franchisor of a list of
9 approved suppliers of goods, supplies, inventories, or
10 services, or the requirement that such goods, supplies,
11 inventories, or services comply with specifications and
12 standards prescribed by the franchisor, does not constitute
13 designation of a source. Additionally, the reasonable right
14 of a franchisor to disapprove a supplier does not constitute a
15 designation of source. This subsection does not apply to the
16 principal goods, supplies, inventories, or services
17 manufactured by the franchisor, or such goods, supplies,
18 inventories, or services entitled to protection as a trade
19 secret.

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

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

30 The duty of good faith is imposed in situations including,
31 but not limited to, where the franchisor opens a new outlet or
32 location that has an adverse impact on an existing franchisee.

33 12. PRIVATE CIVIL ACTION. A person who violates a
34 provision of this section or order issued under this section
35 is liable for damages caused by the violation, including, but

1 not limited to, costs and reasonable attorneys' and experts'
2 fees, and subject to other appropriate relief including
3 injunctive and other equitable relief.

4 13. CHOICE OF LAW. A condition, stipulation, or provision
5 requiring the application of the law of another state in lieu
6 of this section is void.

7 14. CONSTRUCTION WITH OTHER LAW. This section does not
8 limit any liability that may exist under another statute or at
9 common law.

10 15. CONSTRUCTION. This section shall be liberally
11 construed to effectuate its purposes.

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

19 Sec. 2. NEW SECTION. 523H.2A APPLICABILITY --
20 LIMITATION.

21 1. Notwithstanding section 523H.2, this chapter does not
22 apply to a franchise agreement which is entered into on or
23 after July 1, 1999. A franchise agreement which is entered
24 into on or after July 1, 1999, shall be subject to section
25 537A.10.

26 2. This chapter shall govern all actions with respect to a
27 franchise agreement entered into prior to July 1, 1999, no
28 matter when the occurrence giving rise to such action occurs.

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SENATE FILE 324

H-8391

1 Amend the amendment, H-8021, to Senate File 324, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by striking lines 3 through 10 and
5 inserting the following:

6 "____". Page 2, by inserting after line 12 the
7 following:

8 "(4) "Franchise" also does not include a contract
9 under which a"."

10 2. By renumbering as necessary.

By JAGER of Black Hawk

CORMACK of Webster

HEATON of Henry

WEIGEL of Chickasaw

MERTZ of Kossuth

O'BRIEN of Boone

H-8391 FILED MARCH 16, 2000

Act 3/20/00
(p. 826)

SENATE FILE 324

H-1517

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 6, by inserting after line 12 the
4 following:

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

11 2. Page 6, by inserting after line 23 the
12 following:

B. 13 "____. A franchisor shall not transfer its interest
14 in a franchise unless the franchisor makes reasonable
15 provision for the performance of the franchisor's
16 obligations under the franchise agreement by the
17 transferee. For purposes of this section "reasonable
18 provision" means that upon the transfer, the entity
19 assuming the franchisor's obligation has the financial
20 means to perform the franchisor's obligations in the
21 ordinary course of business, but does not mean that
22 the franchisor transferring the franchise is required
23 to guarantee obligations of the underlying franchise
24 agreement."

25 3. Page 6, by inserting after line 32 the
26 following:

27 "____. A franchisor, as a condition to a transfer
28 of a franchise, shall not obligate a franchisee to
29 undertake obligations or relinquish any rights
30 unrelated to the franchise proposed to be transferred,
31 or to enter into a release of claims broader than a
32 similar release of claims by the franchisor against
33 the franchisee which is entered into by the
34 franchisor.

35 _____. A franchisor shall not discriminate against a
36 proposed transferee of a franchise on the basis of
37 race, color, national origin, religion, sex, or
38 disability.

C. 39 _____. A franchisor, after a transfer of a
40 franchise, shall not seek to enforce any covenant of
41 the transferred franchise against the transferor which
42 prohibits the transferor from engaging in any lawful
43 occupation or enterprise. However, this subsection
44 does not prohibit the franchisor from enforcing a
45 contractual covenant against the transferor not to
46 exploit the franchisor's trade secrets or intellectual
47 property rights, unless otherwise agreed to by the
48 parties."

49 4. Page 7, by striking lines 34 and 35 and
50 inserting the following: "franchisees. If less than

H-1517

H-1517

Page 2

1 fifty".

2 5. Page 8, by inserting after line 5 the
3 following:

4 "j. A franchisor shall not interfere or attempt to
5 interfere with any permissible disposition of an
6 interest in a franchise or franchised business."

7 6. Page 8, line 31, by striking the word "six"
8 and inserting the following: "five".

9 7. Page 9, by striking lines 4 through 6.

10 8. Page 9, line 35, by striking the words "no
11 more".

12 9. Page 10, line 1, by striking the words "than
13 three years of proven".

14 10. Page 10, line 6, by striking the word "Six"
15 and inserting the following: "Five".

E

16 11. Page 10, line 29, by inserting after the word
17 "capricious" the following: "when compared to the
18 actions of the franchisor in other similar
19 circumstances".

20 12. By striking page 11, line 33, through page
21 12, line 2, and inserting the following:

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

F

30 13. Page 13, line 2, by inserting after the word
31 "supplies," the following: "equipment, fixtures,".

32 14. Page 13, line 5, by inserting after the word
33 "supplies," the following: "equipment, fixtures,".

34 15. Page 13, line 9, by inserting after the word
35 "supplies," the following: "equipment, fixtures,".

36 16. Page 13, line 10, by inserting after the word
37 "supplies," the following: "equipment, fixtures,".

38 17. Page 13, line 16, by inserting after the word
39 "supplies," the following: "equipment, fixtures,".

40 18. Page 13, line 17, by inserting after the word
41 "supplies," the following: "equipment, fixtures,".

G

42 19. Page 13, by inserting after line 24 the
43 following:

44 "10A. LIMITED FIDUCIARY DUTY. Without regard to
45 whether a fiduciary duty is imposed generally on the
46 franchisor by virtue of a franchise agreement, the
47 franchisor owes a fiduciary duty to its franchisees
48 and is obligated to exercise the highest standards of
49 care for franchisee interests where the franchisor
50 does any of the following:

H-1517

H-1517

Page 3

1 a. Undertakes to perform bookkeeping, collection,
2 payroll, or accounting services on behalf of the
3 franchisee.

4 b. Administers, controls, or supervises, either
5 directly or through any subsidiary or affiliate, any
6 advertising, marketing, or promotional fund or program
7 to which franchisees are required to, or routinely,
8 contribute."

G

9 20. Page 13, by striking lines 25 through 32 and
10 inserting the following:

11 "11. DUTY OF GOOD FAITH. A franchise imposes on
12 the parties a duty of good faith in performance and
13 enforcement of the franchise agreement. "Good faith"
14 means honesty in fact and the observance of reasonable
15 commercial standards of fair dealing in the trade.

16 The duty of good faith is imposed in situations
17 including, but not limited to, where the franchisor
18 opens a new outlet, location, or channel of
19 distribution that has an adverse impact on an existing
20 franchisee."

H

21 21. Page 13, by inserting before line 33 the
22 following:

23 "____. REPURCHASE OF ASSETS. A franchisor shall
24 not terminate or refuse to renew a franchise without
25 fairly compensating the franchisee for the fair market
26 value, at the time of termination or expiration of the
27 franchise, of the franchisee's inventory, supplies,
28 equipment, and furnishings purchased from the
29 franchisor or approved supplier, and good will,
30 exclusive of personalized materials which have no
31 value to the franchisor, and inventory, supplies,
32 equipment, and furnishings not reasonably required in
33 the conduct of the franchise business. However,
34 compensation need not be made to a franchisee for good
35 will if the franchisee is given one year's notice of
36 nonrenewal and the franchisor agrees in writing not to
37 enforce any covenant which restrains the franchisee
38 from competing with the franchisor. A franchisor may
39 offset against amounts owed to a franchisee under this
40 subsection any amounts owed by such franchisee to the
41 franchisor."

I

42 22. Page 14, by inserting after line 3 the
43 following:

44 "Punitive damages may also be awarded if an act or
45 omission of the franchisor, which constitutes the
46 violation of this section, occurs with malice or
47 reckless disregard for the statutory or contractual
48 rights of the franchisee."

J

49 23. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1517 FILED APRIL 8, 1999

A. LOST

B. + C W/D

3/20/00

D. S. Withdrawn
(p. 836)

SENATE FILE 324

H-1595

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 3 the
4 following:

5 "4A. MEET AND CONFER. A group of franchisees may
6 seek to meet and confer with a franchisor regarding
7 any issues related to a franchise agreement or its
8 enforcement. If a group of franchisees obtains
9 express written authorization by twenty percent of
10 existing franchisees in the state, the franchisor of
11 the existing franchises shall meet and confer in good
12 faith with representatives of the franchisee group
13 over issues related to the franchises. The
14 representatives of the franchisee group shall be
15 selected by a majority vote at a meeting where all
16 franchisees receive ten days' notice or through
17 written authorization by a majority of the members of
18 the franchisee group."

19 2. By renumbering as necessary.

By WITT of Black Hawk

H-1595 FILED APRIL 13, 1999

3/20/00
(p. 829)

SENATE FILE 324

H-1596

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 19 the
4 following:

5 "9A. KICKBACKS. It shall be unlawful for a
6 franchisor to receive any kickback or benefit,
7 directly or indirectly, from a supplier of goods or
8 services to the franchisor's franchisees."

9 2. By renumbering as necessary.

By WITT of Black Hawk

H-1596 FILED APRIL 13, 1999

w/h 3/20/00
p. 837

SENATE FILE 324

H-1597

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 32 the
4 following:

5 "11A. POLITICAL COERCION. It shall be unlawful
6 for a franchisor, directly or indirectly, to coerce
7 political participation from franchisees, their
8 employees, or their families."

9 2. By renumbering as necessary.

By WITT of Black Hawk

H-1597 FILED APRIL 13, 1999

lost
3/20/00 (p. 836)

SENATE FILE 324

H-1544

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 5, by inserting after line 3 the
 4 following:
 5 "4A. NOTICE REQUIRED. A franchise agreement
 6 entered into in this state shall prominently display
 7 in ten point type the following notice: "This
 8 Agreement is subject to the Iowa Fair Franchising Act.
 9 The Act establishes certain rights and
 10 responsibilities for franchisors and franchisees. The
 11 provisions of the Act could be important to you in the
 12 operation of this franchise. Consult your attorney or
 13 legal advisor for advice regarding the scope and
 14 applicability of this important statutory provision."
 15 2. Page 14, by inserting after line 18 the
 16 following:
 17 "___ TITLE. This section may be known as the
 18 "Iowa Fair Franchising Act"."
 19 3. By renumbering as necessary.

By MURPHY of Dubuque

H-1544 FILED APRIL 12, 1999

Lost 3/20/00 (p. 828)

SENATE FILE 324

H-1543

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 6, by inserting after line 32 the
 4 following:
 5 "___ A franchisor shall not discriminate against
 6 a proposed transferee of a franchise on the basis of
 7 race, color, national origin, religion, sex, or
 8 disability."
 9 2. By relettering as necessary.

By METCALF of Polk
FORD of Polk

H-1543 FILED APRIL 12, 1999

*Adopted
3/20/00
(p. 836)*

SENATE FILE 324

H-1604

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 3 the
4 following:

5 "4A. MANAGEMENT CHANGES. It shall be a violation
6 of this chapter for any franchisor, through any
7 officer, agent, or employee, to directly or indirectly
8 require or prohibit a change in management of a
9 franchisee unless the requirement or prohibition of
10 change shall be for good cause, which shall be stated
11 in writing to the franchisee."

12 2. Page 12, by inserting after line 35 the
13 following:

14 "c. A franchisor shall not refuse to renew a
15 franchise if the refusal is for the purpose of
16 converting the franchisee's business into an operation
17 that will be owned directly or indirectly by the
18 franchisor."

19 3. Page 13, by inserting after line 19 the
20 following:

21 "9A. TIMELY DELIVERY. It shall be unlawful for a
22 franchisor to refuse or fail to supply to a franchisee
23 in reasonable quantities and within a reasonable time
24 after receipt of an order any goods, supplies,
25 inventories, or services that the franchisor has
26 agreed to supply to the franchisee, unless the failure
27 is caused by acts or causes beyond the control of the
28 franchisor."

29 4. Page 13, line 24, by inserting after the word
30 "activities." the following: "In any action where
31 retaliation is proved, compensatory damages shall be
32 trebled."

33 5. By renumbering, relettering, or redesignating
34 and correcting internal references as necessary.

By HOLVECK of Polk

H-1604 FILED APRIL 13, 1999

W/D 3/20/00 (p. 837)

SENATE FILE 324

H-1622

- 1 Amend Senate File 324, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 12, line 13, by inserting after the word
- 4 "renew" the following: ", directly or indirectly,
- 5 through any officer, agent, or employee,".

By WEIGEL of Chickasaw

H-1622 FILED APRIL 14, 1999

w/d
3/20/00 (P. 836)

SENATE FILE 324

H-1623

- 1 Amend Senate File 324, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 10, line 23, by inserting after the word
- 4 "terminate" the following: ", directly or indirectly,
- 5 through any officer, agent, or employee,".

By WEIGEL of Chickasaw

H-1623 FILED APRIL 14, 1999

w/d
3/20/00 (P. 836)

SENATE FILE 324

H-1619

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 13, by inserting before line 1 the
 4 following:
 5 "8A. NOTICE OF RIGHTS. In the event of
 6 termination or nonrenewal of a franchise, or
 7 settlement of any claim between a franchisor and
 8 franchisee, a franchisor shall include the following
 9 statement in the written notice of termination,
 10 nonrenewal, or settlement in at least ten point type:
 11 "Notice. This transaction is subject to the terms and
 12 conditions of the Iowa Fair Franchising Act, Iowa Code
 13 Section 537A.10. The Act establishes statutory rights
 14 of franchisees. You are encouraged to consult
 15 competent legal counsel to determine your legal rights
 16 under the Act."
 17 2. Page 14, by inserting after line 18 the
 18 following:
 19 "____. TITLE. This section may be known as the
 20 "Iowa Fair Franchising Act".
 21 3. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1619 FILED APRIL 14, 1999

w/d 3/20/00 (p. 836)

SENATE FILE 324

H-1620

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 5, by inserting after line 3 the
 4 following:
 5 "4A. UNILATERAL MODIFICATION. A franchise
 6 agreement shall not provide that it can be
 7 unilaterally modified by the franchisor."
 8 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1620 FILED APRIL 14, 1999

lost 3/20/00 (p. 829)

SENATE FILE 324

H-1621

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 13, by inserting after line 32 the
 4 following:
 5 "11A. LIMITATIONS ON TERMS AND CONDITIONS. A
 6 franchisor shall not provide any term or condition in
 7 any lease or other agreement ancillary or collateral
 8 to a franchise, which term or condition directly or
 9 indirectly violates this section."

By WEIGEL of Chickasaw

H-1621 FILED APRIL 14, 1999

w/d 3/20/00 (p. 836)

SENATE FILE 324

H-1643

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "0A. STATEMENT OF PURPOSE. The purposes and
6 policies of this section are as follows:

7 a. To promote the compelling interest of the
8 public in fair business relationships between
9 franchisees and franchisors, and in the continuation
10 of franchises on a fair basis.

11 b. To protect franchisees against unfair treatment
12 by franchisors, who inherently have superior economic
13 power and superior bargaining power in the negotiation
14 of franchises.

15 c. To provide franchisees with rights and remedies
16 in addition to these existing by contractor common
17 law.

18 d. To govern all franchises, including any
19 renewals or amendments, to the full extent consistent
20 with the constitutions of this state and the United
21 States."

22 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1643 FILED APRIL 15, 1999

W/D

3/20/00 (P. 828) SENATE FILE 324

H-1644

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 3 the
4 following:

5 "4A. BUSINESS HOURS. A franchisor may only
6 require a franchisee to keep the franchisee's retail
7 outlet open for business for a specified number of
8 hours per day or per week if the requirement is
9 negotiated in good faith by both parties, is arrived
10 at by mutual agreement, and is based on a bona fide
11 business need."

12 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1644 FILED APRIL 15, 1999

Lost

3/20/00

(p. 830)

SENATE FILE 324

H-1641

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 5, by inserting after line 3 the
 4 following:
 5 "4A. ADVERTISING FEES. It shall be unlawful to
 6 collect any advertising fee from a franchisee and not
 7 use the funds for the purpose of advertising the
 8 business conducted by the franchisee. With respect to
 9 collection and expenditure of advertising fees, the
 10 franchisor owes a fiduciary duty to the franchisor's
 11 franchisees."
 12 2. By renumbering as necessary.
 By WEIGEL of Chickasaw

H-1641 FILED APRIL 15, 1999

3/20/00
(p. 830)

SENATE FILE 324

H-1642

1 Amend Senate File 324, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 5, by inserting after line 3 the
 4 following:
 5 "4A. EARNINGS CLAIMS. A franchisor may make an
 6 earnings claim to a prospective franchisee only if the
 7 following requirements are satisfied:
 8 a. Reasonable proof is provided to support the
 9 accuracy of the claim.
 10 b. The claim is relevant to the prospective
 11 franchisee's proposed location.
 12 For the purposes of this subsection, "earnings
 13 claim" means any oral, written, or visual
 14 representation to a prospective franchisee for general
 15 dissemination in the media which states or suggests a
 16 specific level or range of potential or actual sales,
 17 income, or gross or net profits. An earnings claim
 18 includes, but is not limited to, projections, pro
 19 forma statements, statements of actual historical
 20 performance, cash flows, cost estimates at arbitrary
 21 sales levels, and statements that suggest levels of
 22 sales or profits."
 23 2. By renumbering as necessary.
 By WEIGEL of Chickasaw

H-1642 FILED APRIL 15, 1999

W/D
3/20/00
(p. 837)

SENATE FILE 324

H-1648

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 19 the
4 following:

5 "9A. FAIR PRICES. It shall be unlawful for a
6 franchisor to sell, rent, or offer to sell or rent to
7 a franchisee any product or service for more than a
8 fair and reasonable price."

9 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1648 FILED APRIL 15, 1999

W/D
3/20/00 (P. 836)

SENATE FILE 324

H-1679

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 19 the
4 following:

5 "9A. PRICING. It shall be unlawful for a
6 franchisor to increase the prices of goods provided by
7 the franchisor which the franchisee had ordered for
8 retail consumers prior to the franchisee's receipt of
9 a written official price increase notification. This
10 subsection does not apply to price increases caused by
11 a need to conform with state or federal law, the
12 revaluation of the United States dollar in the case of
13 foreign-made goods, or pursuant to the franchise
14 agreement."

15 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1679 FILED APRIL 19, 1999

W/D
3-20-00 (P. 836)

SENATE FILE 324

H-1682

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 12, by inserting after line 35 the
4 following:

5 "8A. NOTICES. All notices of termination or
6 nonrenewal required by this chapter shall satisfy all
7 of the following:

8 a. Be in writing.

9 b. Be posted by registered, certified, or other
10 receipted mail, delivered by telegram, or personally
11 delivered to the franchisee.

12 c. Contain a statement of intent to terminate or
13 not renew the franchise, together with the reasons for
14 such termination or nonrenewal.

15 d. Include the effective date of such termination,
16 nonrenewal, or expiration."

17 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1682 FILED APRIL 19, 1999

W/D
3/20/00 (P. 836)

SENATE FILE 324

H-1645

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 32 the
4 following:

5 "11A. BOOKS AND RECORDS. A franchisor or
6 subfranchisor offering franchises for sale in this
7 state shall at all times keep and maintain a complete
8 set of books, records, and accounts of such sales,
9 which shall at all times be open to inspection by the
10 commissioner of insurance."

11 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1645 FILED APRIL 15, 1999

W/D
3/20/00 (p 836)

SENATE FILE 324

H-1646

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 3 the
4 following:

5 "4A. MINIMUM TERM. A franchise agreement entered
6 into or renewed, whether oral or written, shall not be
7 for a term of less than three years and for successive
8 terms of not less than three years after the initial
9 three-year period, unless terminated or not renewed
10 pursuant to this section."

11 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1646 FILED APRIL 15, 1999

W/D
3/20/00 (p. 830)

SENATE FILE 324

H-1647

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 13, by inserting after line 19 the
4 following:

5 "9A. FIDUCIARY DUTY. With respect to moneys held
6 by the franchisor for the benefit of any franchisee,
7 including but not limited to advertising or
8 promotional accounts, the franchisor shall have a
9 fiduciary duty to the franchisee."

10 2. By renumbering as necessary.

By WEIGEL of Chickasaw

H-1647 FILED APRIL 15, 1999

W/D
3/20/00
(p. 836)

SENATE FILE 324

H-8021

- 1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 13, line 32, by inserting after the word
4 "franchisee." the following: "A determination of
5 whether the duty of good faith with respect to a new
6 outlet or location has been met shall be made pursuant
7 to the provisions, standards, and procedures in
8 subsection 6.
9 11A. EXCLUSION. For purposes of this section,
10 "franchise" does not include a contract under which a
11 franchise relationship is established with respect to
12 retreaded tires and related equipment used for
13 commercial vehicles."
14 2. Page 14, line 23, by striking the figure
15 "1999" and inserting the following: "2000".
16 3. Page 14, line 24, by striking the figure
17 "1999" and inserting the following: "2000".
18 4. Page 14, line 27, by striking the figure
19 "1999" and inserting the following: "2000".

Adopted 3/20/00 (p.828)

By COMMITTEE ON COMMERCE AND REGULATION
METCALF of Polk, Chairperson

H-8021 FILED FEBRUARY 9, 2000

SENATE FILE 324

H-8040

- 1 Amend the amendment, H-8021, to Senate File 324, as
2 amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by striking lines 3 through 10 and
5 inserting the following:
6 "____. Page 2, by inserting after line 12 the
7 following:
8 "(4) "Franchise" also does not include a contract
9 under which a".
10 2. By renumbering as necessary.

By BODDICKER of Cedar

H-8040 FILED FEBRUARY 16, 2000

W/D 3/20/00 (p.826)

SENATE FILE 324

H-1680

- 1 Amend Senate File 324, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 3 the
- 4 following:
- 5 "4A. LIMITATIONS ON FRANCHISE SALES. A franchise
- 6 shall not be offered for sale or sold in this state if
- 7 the franchise agreements or business methods of the
- 8 franchisor violate this section."
- 9 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1680 FILED APRIL 19, 1999

lost 3/20/00
(p. 831)

SENATE FILE 324

H-1681

- 1 Amend Senate File 324, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 5, by inserting after line 3 the
- 4 following:
- 5 "4A. DISCRIMINATION AMONG FRANCHISES. A
- 6 franchisor shall not unreasonably and materially
- 7 discriminate among franchisees in assessing franchise
- 8 fees, or charges for goods, services, equipment, or
- 9 leases, or any other action. Acts of discrimination
- 10 which may be reasonable include, but are not limited
- 11 to, the following:
- 12 a. Discrimination based on franchises granted at
- 13 different times or places and the discrimination is
- 14 reasonably related to such differences in time or
- 15 place.
- 16 b. Discrimination related to a program under which
- 17 franchisees are made available to a class of persons
- 18 that may have been denied franchise opportunities in
- 19 the past, based on suspect classifications, including
- 20 race, sex, religion, or national origin.
- 21 c. Discrimination designed to accommodate efforts
- 22 by one or more franchisees to cure deficiencies in the
- 23 operation of franchised businesses or defaults in
- 24 franchise agreements."
- 25 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-1681 FILED APRIL 19, 1999

3/20/00 Lost
(p. 831)

HOUSE AMENDMENT TO
SENATE FILE 324

S-5185

1 Amend Senate File 324, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 6, by inserting after line 32 the
4 following:

5 "_____. A franchisor shall not discriminate against
6 a proposed transferee of a franchise on the basis of
7 race, color, national origin, religion, sex, or
8 disability."

9 2. Page 13, line 32, by inserting after the word
10 "franchisee." the following: "A determination of
11 whether the duty of good faith with respect to a new
12 outlet or location has been met shall be made pursuant
13 to the provisions, standards, and procedures in
14 subsection 6.

15 11A. EXCLUSION. For purposes of this section,
16 "franchise" does not include a contract under which a
17 franchise relationship is established with respect to
18 retreaded tires and related equipment used for
19 commercial vehicles."

20 3. Page 14, line 23, by striking the figure
21 "1999" and inserting the following: "2000".

22 4. Page 14, line 24, by striking the figure
23 "1999" and inserting the following: "2000".

24 5. Page 14, line 27, by striking the figure
25 "1999" and inserting the following: "2000".

26 6. By renumbering, relettering, or redesignating
27 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5185 FILED MARCH 21, 2000

Senate Concurred 4/13/00 (p. 967)

*-motion to R/C by Gronstal
-motion to R/C withdrawn 4/10/00*

SENATE FILE 324

S-5322

1 Amend the amendment, S-5185, to Senate File 324, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

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

6 "_____. Page 2, by inserting after line 12 the
7 following:

8 "(4) "Franchise" also does not include a contract
9 under which a franchise relationship is established
10 with respect to retreaded tires and related equipment
11 used for commercial vehicles.""

12 2. Page 1, by striking lines 9 through 19.

13 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL
JOHN W. JENSEN

S-5322 FILED APRIL 3, 2000

LOST

(p. 966)

SENATE FILE 324

AN ACT

RELATING TO CERTAIN FRANCHISE AGREEMENTS AND THE RIGHTS AND RESPONSIBILITIES OF THE PARTIES UNDER SUCH AGREEMENTS.

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

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

1. DEFINITIONS.

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

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

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

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

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

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

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

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

(b) A master franchise.

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

(3) "Franchise" also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. "Franchise" also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322F, 522, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

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

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

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

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

(4) The purchase or agreement to purchase, at a fair market value, any fixtures, equipment, leasehold improvements,

real property, supplies, or other materials reasonably necessary to enter into or continue a business.

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

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

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

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

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

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

f. "Franchisor" means a person who grants a franchise or master franchise, or an affiliate of such a person.

Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this section.

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

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

(2) Sales or display equipment or merchandising devices.

(3) Sales techniques.

(4) Promotional or advertising materials or cooperative advertising.

(5) Training regarding the promotion, operation, or management of the business.

(6) Operational, managerial, technical, or financial guidelines or assistance.

h. "Master franchise" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

i. "Offer" or "offer to sell" means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

j. "Person" means a person as defined in section 4.1, subsection 20.

k. "Sale" or "sell" means every contract or agreement of sale of, contract to sell or disposition of, a franchise or interest in a franchise for value.

l. "Subfranchise" means an agreement by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

m. "Subfranchisee" means a person who is granted a franchise from a subfranchisor.

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

2. APPLICABILITY. Notwithstanding section 523H.2, this section applies to a new or existing franchise that is operated in this state and that is subject to an agreement entered into on or after the effective date of this Act. For purposes of this section, the franchise is operated in this state only if the premises from which the franchise is operated is physically located in this state. For purposes of this section, a franchise including marketing rights in or to this state, is deemed to be operated in this state only if the franchisee's principal business office is physically located in this state. This section does not apply to a franchise solely because an agreement relating to the franchise provides that the agreement is subject to or governed by the laws of this state. The provisions of this section do not apply to any existing or future contracts between Iowa franchisors and franchisees who operate franchises located out of state.

3. JURISDICTION AND VENUE OF DISPUTES.

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

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

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

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

5. **TRANSFER OF FRANCHISE.**

a. A franchisee may transfer the franchised business and franchise to a transferee, provided that the transferee satisfies the reasonable current qualifications of the franchisor for new franchisees. For the purposes of this subsection, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious.

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

(2) If pursuant to such a transfer less than fifty percent of the entire franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that

enforcement of the reasonable current qualifications is not arbitrary or capricious.

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

d. A franchisor may require as a condition of a transfer any of the following:

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

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

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

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

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

e. A transfer by a franchisee is deemed to be approved sixty days after the franchisee submits the request for consent to the transfer unless the franchisor withholds consent to the transfer as evidenced in writing, specifying

the reason or reasons for withholding the consent. The written notice must be delivered to the franchisee prior to the expiration of the sixty-day period. Any such notice is privileged and is not actionable based upon a claim of defamation.

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

g. A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children shall be permitted if following the transfer more than fifty percent of the interest in the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If following such a transfer fifty percent or less of the interest in the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

h. A franchisor shall not deny the surviving spouse or a child or children of a deceased or permanently disabled franchisee the opportunity to participate in the ownership of a franchise under a valid franchise agreement for a reasonable period, which need not exceed one year, after the death or disability of the franchisee. During such reasonable period, the surviving spouse or the child or children of the franchisee shall either meet all of the qualifications which the franchisee was subject to at the time of the death or disability of the franchisee, or sell, transfer, or assign the franchise to a person who meets the franchisor's current qualifications for a new franchisee. The rights granted pursuant to this subsection are subject to the surviving spouse or the child or children of the franchisee maintaining all standards and obligations of the franchise.

i. Incorporation of a proprietorship franchise shall be permitted upon sixty days' prior written notice to the

franchisor. Such incorporation does not prohibit a franchisor from requiring a personal guaranty by the franchisee of obligations related to the franchise, and the owners of the corporation must meet the franchisor's reasonable current qualifications for franchisees.

j. A transfer within an existing ownership group of a franchise shall be permitted provided that the transferee meets the franchisor's reasonable current qualifications for franchisees, and written notice is submitted to the franchisor sixty days prior to such a transfer. If less than fifty percent of the franchise would be owned by persons who meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer, provided that enforcement of the reasonable current qualifications is not arbitrary or capricious.

6. ENCROACHMENT.

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

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

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

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

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

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

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

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

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

c. A franchisor shall establish and make available to its franchisees a written policy setting forth its reasonable

criteria to be used by the franchisor to determine whether an existing franchisee is eligible for a franchise for an additional outlet or location.

d. (1) In establishing damages under a cause of action brought pursuant to this subsection, the franchisee has the burden of proving the amount of lost profits attributable to the compensable sales. In any action brought under this subsection, the damages payable shall be limited to no more than three years of the proven lost profits. For purposes of this paragraph, "compensable sales" means the annual gross sales from the existing outlet or location during the twelve-month period immediately preceding the opening of the new outlet or location less both of the following:

(a) Six percent of the annual gross sales for that twelve-month period immediately preceding the opening of the new outlet or location.

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

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

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

7. TERMINATION.

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

franchisor is not arbitrary or capricious. The burden of proof of showing that the action of the franchisor is arbitrary or capricious shall rest with the franchisee.

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

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

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

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

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

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

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

(6) The franchisee repeatedly fails to comply with one or more material provisions of the franchise agreement, when the enforcement of such material provisions is not arbitrary or capricious, whether or not the franchisee complies after receiving notice of the failure to comply.

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

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

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

8. NONRENEWAL OF A FRANCHISE.

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

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

(2) Any of the following circumstances exist:

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

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

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

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

9. SOURCES OF GOODS OR SERVICES. A franchisor shall not require that a franchisee purchase goods, supplies, inventories, or services exclusively from the franchisor or from a source or sources of supply specifically designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor.

However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or services, or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor, does not constitute designation of a source. Additionally, the reasonable right of a franchisor to disapprove a supplier does not constitute a designation of source. This subsection does not apply to the principal goods, supplies, inventories, or services manufactured by the franchisor, or such goods, supplies, inventories, or services entitled to protection as a trade secret.

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

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

The duty of good faith is imposed in situations including, but not limited to, where the franchisor opens a new outlet or

location that has an adverse impact on an existing franchisee. A determination of whether the duty of good faith with respect to a new outlet or location has been met shall be made pursuant to the provisions, standards, and procedures in subsection 6.

12. EXCLUSION. For purposes of this section, "franchise" does not include a contract under which a franchise relationship is established with respect to retreaded tires and related equipment used for commercial vehicles.

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

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

15. CONSTRUCTION WITH OTHER LAW. This section does not limit any liability that may exist under another statute or at common law.

16. CONSTRUCTION. This section shall be liberally construed to effectuate its purposes.

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

Sec. 2. NEW SECTION. 523H.2A APPLICABILITY -- LIMITATION.

1. Notwithstanding section 523H.2, this chapter does not apply to a franchise agreement which is entered into on or after July 1, 2000. A franchise agreement which is entered into on or after July 1, 2000, shall be subject to section 537A.10.

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2. This chapter shall govern all actions with respect to a franchise agreement entered into prior to July 1, 2000, no matter when the occurrence giving rise to such action occurs.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 324, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/14, 2000

THOMAS J. VILSACK
Governor