

REFERENCE TITLE: **franchises; relationships; definitions**

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2775

Introduced by
Representative Travers

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 41;
RELATING TO FRANCHISES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 41, to read:

4 CHAPTER 41

5 FRANCHISES

6 ARTICLE 1. GENERAL PROVISIONS

7 44-8041. Purpose

8 THE DISTRIBUTION AND SALES THROUGH FRANCHISE AGREEMENTS IN THIS
9 STATE AFFECT THE GENERAL ECONOMY OF THIS STATE, THE PUBLIC INTEREST AND
10 THE PUBLIC WELFARE. THE PURPOSE OF THIS CHAPTER IS TO:

11 1. DEFINE THE RELATIONSHIP AND RESPONSIBILITIES OF FRANCHISORS AND
12 FRANCHISEES IN CONNECTION WITH FRANCHISE AGREEMENTS.

13 2. CORRECT THE FRANCHISE SYSTEMS TO ESTABLISH A MORE FREE MARKET
14 BALANCE OF POWER BETWEEN FRANCHISORS AND FRANCHISEES.

15 3. REQUIRE FRANCHISORS TO DEAL FAIRLY WITH THEIR FRANCHISEES WITH
16 REFERENCE TO ASPECTS WITHIN THE FRANCHISE RELATIONSHIP.

17 4. PROVIDE FRANCHISEES WITH JUDICIAL RELIEF AGAINST FRANCHISORS
18 THAT FAIL TO COMPLY WITH THE LAW.

19 44-8042. Definitions

20 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

21 1. "FRANCHISE":

22 (a) MEANS A CONTRACT OR AGREEMENT, EITHER EXPRESSED OR IMPLIED,
23 ORAL OR WRITTEN, BETWEEN TWO OR MORE PERSONS THAT DOES ALL OF THE
24 FOLLOWING:

25 (i) GRANTS A FRANCHISEE OR SUBFRANCHISEE THE RIGHT TO ENGAGE IN THE
26 BUSINESS OF OFFERING, SELLING OR DISTRIBUTING GOODS OR SERVICES UNDER A
27 MARKETING PLAN OR SYSTEM PRESCRIBED IN SUBSTANTIAL PART BY A FRANCHISOR.

28 (ii) PROVIDES THAT THE OPERATION OF THE FRANCHISEE'S BUSINESS
29 PURSUANT TO A MARKETING PLAN OR SYSTEM DESCRIBED IN ITEM (i) OF THIS
30 SUBDIVISION IS SUBSTANTIALLY ASSOCIATED WITH THE FRANCHISOR'S TRADEMARK,
31 SERVICE MARK, TRADE NAME, LOGOTYPE OR ADVERTISING OR ANOTHER COMMERCIAL
32 SYMBOL DESIGNATING THE FRANCHISOR OR ITS AFFILIATE.

33 (iii) REQUIRES THE FRANCHISEE TO PAY, DIRECTLY OR INDIRECTLY, A
34 FRANCHISE FEE.

35 (b) DOES NOT INCLUDE ANY OF THE FOLLOWING:

36 (i) ANY FRANCHISE THAT IS GOVERNED BY THE PETROLEUM MARKETING
37 PRACTICES ACT (P.L. 95-297; 92 STAT. 322; 15 UNITED STATES CODE SECTIONS
38 2801 THROUGH 2807).

39 (ii) LEASE DEPARTMENTS, LICENSES OR CONCESSIONS AT OR WITH A
40 GENERAL MERCHANDISE RETAIL ESTABLISHMENT IF THE LEASE DEPARTMENT, LICENSEE
41 OR CONCESSIONAIRE IS INCIDENTAL AND ANCILLARY TO THE GENERAL COMMERCIAL
42 OPERATION OF THE RETAIL ESTABLISHMENT. FOR THE PURPOSES OF THIS ITEM,
43 SALES OF A LEASED DEPARTMENT, LICENSE OR CONCESSIONAIRE ARE INCIDENTAL AND
44 ANCILLARY TO THE GENERAL COMMERCIAL OPERATION OF THE RETAIL ESTABLISHMENT
45 IF THEY AMOUNT TO LESS THAN TEN PERCENT OF THE ESTABLISHMENT'S SALES.

1 2. "FRANCHISEE" MEANS A PERSON TO WHOM A FRANCHISE IS GRANTED.
2 3. "FRANCHISE FEE":
3 (a) MEANS ANY FEE OR CHARGE THAT A FRANCHISEE IS REQUIRED TO PAY OR
4 AGREES TO PAY FOR THE RIGHT TO ENTER INTO A BUSINESS UNDER A FRANCHISE
5 AGREEMENT, INCLUDING ANY PAYMENT FOR GOODS AND SERVICES.
6 (b) DOES NOT INCLUDE:
7 (i) THE PURCHASE OF OR AGREEMENT TO PURCHASE GOODS AT A BONA FIDE
8 WHOLESALE PRICE IF AN OBLIGATION IS NOT IMPOSED ON THE PURCHASER TO
9 PURCHASE OR PAY FOR A QUANTITY OF GOODS IN EXCESS OF WHAT A REASONABLE
10 BUSINESSPERSON NORMALLY WOULD PURCHASE BY WAY OF A STARTING INVENTORY OR
11 SUPPLY OR TO MAINTAIN A GOING INVENTORY OR SUPPLY.
12 (ii) THE PAYMENT OF A REASONABLE SERVICE CHARGE TO THE ISSUER OF A
13 CREDIT CARD BY AN ESTABLISHMENT ACCEPTING OR HONORING THAT CREDIT CARD.
14 (iii) THE PAYMENT, DIRECTLY OR INDIRECTLY, OF A FRANCHISE FEE THAT
15 DOES NOT EXCEED AN ANNUAL SUM OF \$100.
16 (iv) THE PAYMENT OF A SUM NOT EXCEEDING \$1,000 ANNUALLY FOR THE
17 PURCHASE PRICE OR RENTAL OF FIXTURES, EQUIPMENT OR OTHER TANGIBLE PROPERTY
18 TO BE USED IN AND THAT IS NECESSARY FOR OPERATING THE FRANCHISED BUSINESS
19 IF THE PRICE OR RENTAL DOES NOT EXCEED THE COST THAT THE FRANCHISEE WOULD
20 INCUR IF THE FRANCHISEE ACQUIRES THE ITEM FROM OTHER PERSONS OR IN THE
21 OPEN MARKET.
22 4. "FRANCHISOR" MEANS A PERSON THAT GRANTS OR HAS GRANTED A
23 FRANCHISE.
24 44-8043. Waiver; void
25 ANY CONDITION, STIPULATION OR PROVISION PURPORTING TO BIND ANY
26 PERSON TO WAIVE COMPLIANCE WITH ANY PROVISION OF THIS CHAPTER IS CONTRARY
27 TO PUBLIC POLICY AND VOID.
28 44-8044. Jurisdiction; applicability; nonprofits
29 A. THIS CHAPTER APPLIES TO ANY FRANCHISE WHEN EITHER THE FRANCHISEE
30 IS DOMICILED IN THIS STATE OR THE FRANCHISED BUSINESS IS OR HAS BEEN
31 OPERATED IN THIS STATE.
32 B. ANY PROVISION OF A FRANCHISE AGREEMENT REQUIRING THE FRANCHISEE
33 TO WAIVE THE PROVISIONS OF THIS CHAPTER IS CONTRARY TO PUBLIC POLICY AND
34 IS VOID AND UNENFORCEABLE.
35 C. THIS CHAPTER DOES NOT APPLY TO A NONPROFIT ORGANIZATION THAT IS
36 OPERATED ON A COOPERATIVE BASIS BY AND FOR INDEPENDENT RETAILERS THAT
37 WHOLESALES GOODS AND SERVICES PRIMARILY TO ITS MEMBER RETAILERS IF ALL OF
38 THE FOLLOWING APPLY:
39 1. CONTROL AND OWNERSHIP OF EACH MEMBER IS SUBSTANTIALLY EQUAL.
40 2. MEMBERSHIP IS LIMITED TO THOSE WHO WILL USE THE SERVICES
41 FURNISHED BY THE NONPROFIT ORGANIZATION.
42 3. TRANSFER OF OWNERSHIP IS PROHIBITED OR LIMITED.
43 4. CAPITAL INVESTMENT DOES NOT RECEIVE A RETURN.
44 5. THERE ARE SUBSTANTIALLY EQUAL BENEFITS THAT PASS TO THE MEMBERS
45 ON THE BASIS OF PATRONAGE OF THE NONPROFIT ORGANIZATION.

1 A FLOOD, AN EARTHQUAKE, A PUBLIC HEALTH EMERGENCY OR OTHER SIMILAR CAUSES
2 BEYOND THE FRANCHISEE'S CONTROL.

3 3. THE FRANCHISOR AND FRANCHISEE AGREE IN WRITING TO TERMINATE THE
4 FRANCHISE.

5 4. THE FRANCHISEE MAKES ANY MATERIAL MISREPRESENTATIONS RELATING TO
6 THE ACQUISITION OF THE FRANCHISE BUSINESS, OR THE FRANCHISEE ENGAGES IN
7 CONDUCT THAT REFLECTS MATERIALLY AND UNFAVORABLY ON THE OPERATION AND
8 REPUTATION OF THE FRANCHISE BUSINESS OR SYSTEM.

9 5. FOR A PERIOD OF TEN DAYS AFTER A NOTIFICATION OF NONCOMPLIANCE,
10 THE FRANCHISEE FAILS TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL LAW,
11 INCLUDING ALL HEALTH, SAFETY, BUILDING AND LABOR LAWS APPLICABLE TO THE
12 OPERATION OF THE FRANCHISE.

13 6. AFTER CURING ANY FAILURE PURSUANT TO SECTION 44-8045, THE
14 FRANCHISEE ENGAGES IN THE SAME NONCOMPLIANCE WHETHER OR NOT THE
15 NONCOMPLIANCE IS CORRECTED AFTER NOTICE.

16 7. THE FRANCHISEE REPEATEDLY FAILS TO COMPLY WITH ONE OR MORE
17 REQUIREMENTS OF THE FRANCHISE, WHETHER OR NOT CORRECTED AFTER A
18 NOTIFICATION OF NONCOMPLIANCE.

19 8. THE FRANCHISED BUSINESS OR BUSINESS PREMISES OF THE FRANCHISE IS
20 SEIZED, TAKEN OVER OR FORECLOSED BY A GOVERNMENT OFFICIAL IN THE EXERCISE
21 OF THE GOVERNMENT OFFICIAL'S DUTIES OR SEIZED, TAKEN OVER OR FORECLOSED BY
22 A CREDITOR, LIENHOLDER OR LESSOR IF EITHER:

23 (a) A FINAL JUDGMENT AGAINST THE FRANCHISEE REMAINS UNSATISFIED FOR
24 THIRTY DAYS UNLESS A SUPERSEDEAS OR OTHER APPEAL BOND HAS BEEN FILED.

25 (b) A LEVY OF EXECUTION HAS BEEN MADE ON THE LICENSE GRANTED BY THE
26 FRANCHISE AGREEMENT OR ON ANY PROPERTY USED IN THE FRANCHISED BUSINESS AND
27 IT IS NOT DISCHARGED WITHIN FIVE DAYS OF THE LEVY.

28 9. THE FRANCHISEE IS CONVICTED OF A FELONY OR ANY OTHER CRIMINAL
29 MISCONDUCT THAT IS RELEVANT TO OPERATING THE FRANCHISE.

30 10. THE FRANCHISEE FAILS TO PAY ANY FRANCHISE FEES OR OTHER AMOUNTS
31 DUE TO THE FRANCHISOR OR ITS AFFILIATE WITHIN FIVE DAYS AFTER RECEIVING
32 WRITTEN NOTICE THAT THE FEES ARE OVERDUE.

33 11. THE FRANCHISOR MAKES A REASONABLE DETERMINATION THAT CONTINUED
34 OPERATION OF THE FRANCHISE BY THE FRANCHISEE WILL RESULT IN AN IMMINENT
35 DANGER TO PUBLIC HEALTH OR SAFETY.

36 B. IF THE FRANCHISE EXPRESSLY ALLOWS TERMINATION FOR A REASON
37 DESCRIBED IN SUBSECTION A OF THIS SECTION, THERE IS A LAWFUL TERMINATION
38 OR NONRENEWAL OF A SEPARATE MOTOR FUEL FRANCHISE GOVERNED BY PROVISIONS OF
39 THE PETROLEUM MARKETING PRACTICES ACT (P.L. 95-297; 92 STAT. 322; 15
40 UNITED STATES CODE SECTIONS 2801 THROUGH 2807) THAT IS OPERATED BY THE
41 FRANCHISEE OR AFFILIATE OF THE FRANCHISEE LOCATED AT THE SAME BUSINESS
42 PREMISES IF BOTH FRANCHISES ARE GRANTED BY THE SAME FRANCHISOR OR AN
43 AFFILIATE OF THE FRANCHISOR.

1 44-8047. Lawful termination or nonrenewal

2 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, ON A LAWFUL
3 TERMINATION OR NONRENEWAL OF A FRANCHISEE, THE FRANCHISOR SHALL PURCHASE
4 FROM THE FRANCHISEE, AT THE VALUE OF THE PRICE PAID MINUS DEPRECIATION,
5 ALL INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES AND FURNISHINGS PURCHASED OR
6 PAID FOR UNDER THE TERMS OF THE FRANCHISE AGREEMENT OR ANY ANCILLARY OR
7 COLLATERAL AGREEMENT BETWEEN THE FRANCHISEE AND THE FRANCHISOR OR ITS
8 APPROVED SUPPLIERS AND SOURCES THAT ARE, AT THE TIME OF THE NOTICE OF
9 TERMINATION OR NONRENEWAL, IN THE FRANCHISEE'S POSSESSION OR USED BY THE
10 FRANCHISEE IN THE FRANCHISE BUSINESS. THE FRANCHISOR MAY RECEIVE CLEAR
11 TITLE TO AND POSSESSION OF ALL ITEMS PURCHASED FROM THE FRANCHISEE UNDER
12 THIS SUBSECTION.

13 B. THIS SECTION DOES NOT REQUIRE THE FRANCHISOR TO PURCHASE ANY
14 PERSONALIZED ITEMS, INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES OR
15 FURNISHINGS IF EITHER:

16 1. THE INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES OR FURNISHINGS ARE
17 NOT REASONABLY REQUIRED TO CONDUCT THE OPERATION OF THE FRANCHISE BUSINESS
18 IN ACCORDANCE WITH THE FRANCHISE AGREEMENT OR ANY ANCILLARY OR COLLATERAL
19 AGREEMENT.

20 2. THE FRANCHISEE, AT THE CESSATION OF OPERATION OF THE FRANCHISE
21 BUSINESS BY THE FRANCHISEE, CANNOT LAWFULLY GRANT OR DOES NOT GRANT THE
22 FRANCHISOR CLEAR TITLE AND POSSESSION WHEN THE FRANCHISOR PAYS THE
23 FRANCHISEE FOR THE INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES OR
24 FURNISHINGS.

25 C. THIS SECTION DOES NOT APPLY:

26 1. IF THE FRANCHISEE DECLINES A BONA FIDE OFFER OF RENEWAL FROM THE
27 FRANCHISOR.

28 2. IF THE FRANCHISOR DOES NOT PREVENT THE FRANCHISEE FROM RETAINING
29 CONTROL OF THE PRINCIPAL PLACE OF THE FRANCHISE BUSINESS.

30 3. TO ANY TERMINATION OR NONRENEWAL OF A FRANCHISE DUE TO A
31 PUBLICLY ANNOUNCED AND NONDISCRIMINATORY DECISION BY THE FRANCHISOR TO
32 COMPLETELY WITHDRAW FROM ALL FRANCHISE ACTIVITY WITHIN THE RELEVANT
33 GEOGRAPHIC MARKET AREA IN WHICH THE FRANCHISE IS LOCATED.

34 4. IF THE FRANCHISOR AND FRANCHISEE MUTUALLY AGREE IN WRITING TO
35 TERMINATE OR NOT RENEW THE FRANCHISE.

36 5. TO ANY INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES OR FURNISHINGS
37 THAT ARE SOLD BY THE FRANCHISEE BETWEEN THE DATE OF THE NOTICE OF
38 TERMINATION OR NONRENEWAL AND THE CESSATION OF OPERATION OF THE FRANCHISE
39 BUSINESS BY THE FRANCHISEE PURSUANT TO THE TERMINATION OR NONRENEWAL.

40 D. ON THE TERMINATION OR NONRENEWAL OF A FRANCHISE, A FRANCHISOR
41 MAY OFFSET AGAINST THE AMOUNTS OWED TO A FRANCHISEE UNDER SUBSECTION A OF
42 THIS SECTION ANY AMOUNTS OWED BY THE FRANCHISEE TO THE FRANCHISOR IF THE
43 FRANCHISEE AGREES TO THE AMOUNT OWED OR THE FRANCHISOR HAS RECEIVED A
44 FINAL ADJUDICATION OF ANY AMOUNTS OWED.

1 44-8048. Notice of intention not to renew; sale of business

2 A. A FRANCHISOR MUST RENEW A FRANCHISE UNLESS THE FRANCHISOR
3 PROVIDES THE FRANCHISEE WITH A WRITTEN NOTICE OF ITS INTENTION NOT TO
4 RENEW AT LEAST ONE HUNDRED EIGHTY DAYS BEFORE THE END OF THE FRANCHISE
5 AGREEMENT AND ANY OF THE FOLLOWING APPLIES:

6 1. DURING THE ONE HUNDRED EIGHTY-DAY PERIOD THE FRANCHISOR ALLOWS
7 THE FRANCHISEE TO SELL THE FRANCHISEE'S BUSINESS TO A PURCHASER THAT MEETS
8 THE FRANCHISOR'S THEN-CURRENT REQUIREMENTS FOR GRANTING NEW FRANCHISES OR
9 IF THE FRANCHISOR IS NOT GRANTING A SIGNIFICANT NUMBER OF NEW FRANCHISES,
10 THE THEN-CURRENT REQUIREMENTS FOR GRANTING RENEWAL FRANCHISES.

11 2. THE REFUSAL TO RENEW IS NOT FOR THE PURPOSE OF CONVERTING THE
12 FRANCHISEE'S BUSINESS PREMISES TO OPERATION BY EMPLOYEES OR AGENTS OF THE
13 FRANCHISOR FOR THE FRANCHISOR'S OWN ACCOUNT. ON EXPIRATION OF THE
14 FRANCHISE, THE FRANCHISOR AGREES NOT TO SEEK TO ENFORCE ANY COVENANT OF
15 THE NONRENEWED FRANCHISEE NOT TO COMPETE WITH THE FRANCHISOR OR
16 FRANCHISEES OF THE FRANCHISOR. THIS PARAGRAPH DOES NOT PROHIBIT A
17 FRANCHISOR FROM EXERCISING A RIGHT OF FIRST REFUSAL TO PURCHASE THE
18 FRANCHISEE'S BUSINESS.

19 3. TERMINATION WOULD BE ALLOWED PURSUANT TO SECTION 44-8045 OR
20 44-8046.

21 4. THE FRANCHISEE AND THE FRANCHISOR AGREE NOT TO RENEW THE
22 FRANCHISE.

23 5. THE FRANCHISOR WITHDRAWS FROM DISTRIBUTING ITS PRODUCTS OR
24 SERVICES THROUGH FRANCHISES IN THE GEOGRAPHIC MARKET SERVED BY THE
25 FRANCHISEE, IF ALL OF THE FOLLOWING OCCUR:

26 (a) ON EXPIRATION OF THE FRANCHISE, THE FRANCHISOR AGREES NOT TO
27 SEEK TO ENFORCE ANY COVENANT OF THE NONRENEWED FRANCHISEE NOT TO COMPETE
28 WITH THE FRANCHISOR OR FRANCHISEES OF THE FRANCHISOR.

29 (b) THE FAILURE TO RENEW IS NOT FOR THE PURPOSE OF CONVERTING THE
30 BUSINESS TO OPERATION BY EMPLOYEES OR AGENTS OF THE FRANCHISOR FOR THE
31 FRANCHISOR'S OWN ACCOUNT.

32 (c) IF THE FRANCHISOR DETERMINES TO SELL, TRANSFER OR ASSIGN ITS
33 INTEREST IN MARKETING PREMISES OCCUPIED BY A FRANCHISEE WHOSE FRANCHISE
34 AGREEMENT IS NOT RENEWED PURSUANT TO THIS PARAGRAPH, EITHER:

35 (i) DURING THE ONE HUNDRED EIGHTY-DAY PERIOD AFTER GIVING NOTICE,
36 THE FRANCHISOR OFFERS THE FRANCHISEE A RIGHT OF FIRST REFUSAL OF A BONA
37 FIDE OFFER MADE BY ANOTHER TO PURCHASE THE FRANCHISOR'S INTEREST IN THE
38 PREMISES. THE RIGHT OF FIRST REFUSAL UNDER THIS ITEM SHALL BE AT LEAST A
39 THIRTY-DAY PERIOD.

40 (ii) IN THE CASE OF THE SALE, TRANSFER OR ASSIGNMENT TO ANOTHER
41 PERSON OF THE FRANCHISOR'S INTEREST IN ONE OR MORE OTHER CONTROLLED
42 MARKETING PREMISES, THE OTHER PERSON IN GOOD FAITH OFFERS THE FRANCHISEE A
43 FRANCHISE ON SUBSTANTIALLY THE SAME TERMS AND CONDITIONS CURRENTLY BEING
44 OFFERED BY THE OTHER PERSON TO OTHER FRANCHISEES.

1 OF NEW OR RENEWING FRANCHISEES. THE FRANCHISOR SHALL DISCLOSE THESE
2 STANDARDS TO THE FRANCHISEE PURSUANT TO SECTION 44-8051, AND THE STANDARD
3 SHALL BE CONSISTENTLY APPLIED TO SIMILARLY SITUATED FRANCHISEES OPERATING
4 WITHIN THE FRANCHISE BRAND, AND THE FRANCHISEE AND THE BUYER, TRANSFEREE
5 OR ASSIGNEE SHALL COMPLY WITH THE TRANSFER CONDITIONS SPECIFIED IN THE
6 FRANCHISE AGREEMENT. THIS SUBSECTION DOES NOT REQUIRE A FRANCHISOR TO
7 DISCLOSE THE FRANCHISOR'S CONFIDENTIAL INFORMATION.

8 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A FRANCHISEE DOES
9 NOT HAVE THE RIGHT TO SELL, TRANSFER OR ASSIGN THE FRANCHISE ALL OR
10 SUBSTANTIALLY ALL OF THE ASSETS OF THE FRANCHISE BUSINESS OR A CONTROLLING
11 OR NONCONTROLLING INTEREST IN THE FRANCHISE BUSINESS WITHOUT THE WRITTEN
12 CONSENT OF THE FRANCHISOR. THE CONSENT MAY BE WITHHELD ONLY IF THE BUYER,
13 TRANSFEREE OR ASSIGNEE DOES NOT MEET THE STANDARDS FOR NEW OR RENEWING
14 FRANCHISEES DESCRIBED IN SUBSECTION A OF THIS SECTION OR THE FRANCHISEE
15 AND THE BUYER, TRANSFEREE OR ASSIGNEE DO NOT COMPLY WITH THE TRANSFER
16 CONDITIONS SPECIFIED IN THE FRANCHISE AGREEMENT.

17 C. THIS SECTION DOES NOT PROHIBIT A FRANCHISOR FROM EXERCISING THE
18 CONTRACTUAL RIGHT OF FIRST REFUSAL TO PURCHASE A FRANCHISE, ALL OR
19 SUBSTANTIALLY ALL OF THE ASSETS OF A FRANCHISE BUSINESS OR A CONTROLLING
20 OR NONCONTROLLING INTEREST IN A FRANCHISE BUSINESS AFTER RECEIVING A BONA
21 FIDE OFFER FROM A PROPOSED PURCHASER TO PURCHASE THE FRANCHISE, ASSETS OR
22 INTEREST. A FRANCHISOR EXERCISING THE CONTRACTUAL RIGHT OF FIRST REFUSAL
23 SHALL OFFER THE SELLER PAYMENT THAT IS AT LEAST EQUAL TO THE VALUE OFFERED
24 IN THE BONA FIDE OFFER.

25 D. FOR THE PURPOSES OF THIS SECTION, "FRANCHISE BUSINESS" INCLUDES
26 A LEGAL ENTITY THAT IS A PARTY TO A FRANCHISE AGREEMENT.

27 44-8051. Notice of franchisee's intent to sell, assign or
28 transfer; requirements; notice of approval or
29 disapproval; franchisor's right of first refusal;
30 definition

31 A. BEFORE THE SALE, ASSIGNMENT OR TRANSFER OF A FRANCHISE, ALL OR
32 SUBSTANTIALLY ALL OF THE ASSETS OF A FRANCHISE BUSINESS OR A CONTROLLING
33 OR NONCONTROLLING INTEREST IN THE FRANCHISE BUSINESS, THE FRANCHISEE SHALL
34 NOTIFY THE FRANCHISOR OF THE FRANCHISEE'S INTENT TO SELL, ASSIGN OR
35 TRANSFER THE FRANCHISE, ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE
36 FRANCHISE BUSINESS OR THE CONTROLLING OR NONCONTROLLING INTEREST IN THE
37 FRANCHISE BUSINESS. THE NOTICE MUST BE IN WRITING, BE DELIVERED TO THE
38 FRANCHISOR BY BUSINESS COURIER OR BY CERTIFIED MAIL AND INCLUDE ALL OF THE
39 FOLLOWING:

- 40 1. THE PROPOSED TRANSFEREE'S NAME AND ADDRESS.
- 41 2. A COPY OF ALL AGREEMENTS RELATED TO THE SALE, ASSIGNMENT OR
42 TRANSFER OF THE FRANCHISE, THE ASSETS OF THE FRANCHISE BUSINESS OR THE
43 INTEREST IN THE FRANCHISE BUSINESS.
- 44 3. THE PROPOSED TRANSFEREE'S APPLICATION FOR APPROVAL TO BECOME THE
45 SUCCESSOR FRANCHISEE. THE APPLICATION SHALL INCLUDE ALL FORMS, FINANCIAL

1 DISCLOSURES AND RELATED INFORMATION THAT THE FRANCHISOR USES IN REVIEWING
2 PROSPECTIVE NEW FRANCHISEES, IF THOSE FORMS ARE READILY MADE AVAILABLE TO
3 THE EXISTING FRANCHISEE. IF THE FORMS ARE NOT READILY AVAILABLE, THE
4 FRANCHISEE SHALL REQUEST AND THE FRANCHISOR SHALL DELIVER THE FORMS TO THE
5 FRANCHISEE BY BUSINESS COURIER OR CERTIFIED MAIL WITHIN FIFTEEN CALENDAR
6 DAYS. AS SOON AS PRACTICABLE AFTER RECEIVING THE PROPOSED TRANSFEREE'S
7 APPLICATION, THE FRANCHISOR SHALL NOTIFY IN WRITING THE FRANCHISEE AND THE
8 PROPOSED TRANSFEREE OF ANY ADDITIONAL INFORMATION OR DOCUMENTATION
9 NECESSARY TO COMPLETE THE TRANSFER APPLICATION. IF THE FRANCHISOR'S
10 THEN-EXISTING STANDARDS FOR THE APPROVAL OF NEW OR RENEWING FRANCHISEES
11 ARE NOT READILY AVAILABLE TO THE FRANCHISEE WHEN THE FRANCHISEE NOTIFIES
12 THE FRANCHISOR OF THE FRANCHISEE'S INTENT TO SELL, TRANSFER OR ASSIGN THE
13 FRANCHISE, THE ASSETS OF THE FRANCHISE BUSINESS OR THE CONTROLLING OR
14 NONCONTROLLING INTEREST IN THE FRANCHISE BUSINESS, THE FRANCHISOR SHALL
15 COMMUNICATE THE STANDARDS TO THE FRANCHISEE WITHIN FORTY-FIVE CALENDAR
16 DAYS. THIS SUBSECTION DOES NOT REQUIRE A FRANCHISOR TO DISCLOSE THE
17 FRANCHISOR'S CONFIDENTIAL INFORMATION.

18 B. WITHIN NINETY DAYS AFTER RECEIVING ALL OF THE NECESSARY
19 INFORMATION AND DOCUMENTATION REQUIRED PURSUANT TO SUBSECTION A OF THIS
20 SECTION OR AS SPECIFIED BY WRITTEN AGREEMENT BETWEEN THE FRANCHISOR AND
21 THE FRANCHISEE, THE FRANCHISOR SHALL NOTIFY THE FRANCHISEE OF THE APPROVAL
22 OR DISAPPROVAL OF THE PROPOSED SALE, ASSIGNMENT OR TRANSFER. THE NOTICE
23 SHALL BE IN WRITING AND SHALL BE DELIVERED TO THE FRANCHISEE BY BUSINESS
24 COURIER OR CERTIFIED MAIL. A PROPOSED SALE, ASSIGNMENT OR TRANSFER IS
25 DEEMED APPROVED UNLESS DISAPPROVED BY THE FRANCHISOR IN THE MANNER
26 PROVIDED BY THIS SECTION. IF THE PROPOSED SALE, ASSIGNMENT OR TRANSFER IS
27 DISAPPROVED, THE FRANCHISOR MUST INCLUDE IN THE NOTICE OF DISAPPROVAL A
28 STATEMENT STATING THE REASONS FOR THE DISAPPROVAL.

29 C. IN ANY ACTION IN WHICH THE FRANCHISOR'S DISAPPROVAL OF A SALE,
30 ASSIGNMENT OR TRANSFER PURSUANT TO THIS SECTION IS AN ISSUE, THE
31 REASONABLENESS OF THE FRANCHISOR'S DECISION IS A QUESTION OF FACT
32 REQUIRING CONSIDERATION OF ALL EXISTING CIRCUMSTANCES. FOR THE PURPOSES
33 OF THIS SUBSECTION, THE FINDER OF FACT MAY BE AN ARBITRATOR SPECIFIED IN
34 THE FRANCHISE AGREEMENT. THIS SUBSECTION DOES NOT PROHIBIT SUMMARY
35 JUDGMENT WHEN THE REASONABLENESS OF TRANSFER APPROVAL OR DISAPPROVAL CAN
36 BE DECIDED AS A MATTER OF LAW.

37 D. THIS SECTION DOES NOT DO EITHER OF THE FOLLOWING:

38 1. REQUIRE A FRANCHISOR TO EXERCISE A CONTRACTUAL RIGHT OF FIRST
39 REFUSAL.

40 2. PROHIBIT A FRANCHISOR FROM EXERCISING THE CONTRACTUAL RIGHT OF
41 FIRST REFUSAL TO PURCHASE A FRANCHISE, ALL OR SUBSTANTIALLY ALL OF THE
42 ASSETS OF A FRANCHISE BUSINESS OR A CONTROLLING OR NONCONTROLLING INTEREST
43 IN A FRANCHISE BUSINESS AFTER RECEIVING A BONA FIDE OFFER FROM A PROPOSED
44 PURCHASER TO PURCHASE THE FRANCHISE, ASSETS OR INTEREST. ANY FRANCHISOR
45 EXERCISING THE CONTRACTUAL RIGHT OF FIRST REFUSAL SHALL OFFER THE SELLER

1 PAYMENT THAT IS AT LEAST EQUAL TO THE VALUE OFFERED IN THE BONA FIDE
2 OFFER.

3 E. FOR THE PURPOSES OF THIS SECTION, "FRANCHISE BUSINESS" INCLUDES
4 A LEGAL ENTITY THAT IS A PARTY TO A FRANCHISE AGREEMENT.

5 44-8052. Notices of termination or nonrenewal

6 ALL NOTICES OF TERMINATION OR NONRENEWAL REQUIRED BY THIS CHAPTER
7 MUST:

8 1. BE IN WRITING.

9 2. BE POSTED BY CERTIFIED MAIL OR PERSONALLY DELIVERED TO THE
10 FRANCHISEE.

11 3. CONTAIN A STATEMENT OF INTENT TO TERMINATE OR NOT RENEW THE
12 FRANCHISE THAT CONTAINS BOTH:

13 (a) THE REASONS FOR THE TERMINATION OR NONRENEWAL.

14 (b) THE EFFECTIVE DATE OF THE TERMINATION OR NONRENEWAL OR
15 EXPIRATION.

16 44-8053. Remedies; offset of prior recovery; violation of
17 federal rule

18 A. IF A FRANCHISOR TERMINATES OR FAILS TO RENEW A FRANCHISEE IN
19 VIOLATION OF THIS CHAPTER, THE FRANCHISEE IS ENTITLED TO RECEIVE FROM THE
20 FRANCHISOR THE FAIR MARKET VALUE OF THE FRANCHISED BUSINESS AND FRANCHISE
21 ASSETS AND ANY OTHER DAMAGES CAUSED BY THE VIOLATION.

22 B. A COURT MAY GRANT PRELIMINARY AND PERMANENT INJUNCTIONS FOR A
23 VIOLATION OR THREATENED VIOLATION OF THIS CHAPTER.

24 C. THE FRANCHISOR MAY OFFSET AGAINST ANY REMEDIES MADE PURSUANT TO
25 SUBSECTION A OF THIS SECTION ANY PRIOR RECOVERY BY THE FRANCHISEE AND ANY
26 SUMS THAT THE FRANCHISEE OWES THE FRANCHISOR OR ITS SUBSIDIARIES PURSUANT
27 TO THE FRANCHISE OR ANY ANCILLARY AGREEMENT.

28 44-8054. Rights of association

29 A FRANCHISOR, DIRECTLY OR INDIRECTLY, THROUGH ANY OFFICER, AGENT OR
30 EMPLOYEE, MAY NOT RESTRICT OR INHIBIT THE RIGHT OF FRANCHISEES TO JOIN A
31 TRADE ASSOCIATION OR TO PROHIBIT THE RIGHT OF FREE ASSOCIATION AMONG
32 FRANCHISEES FOR ANY LAWFUL PURPOSES. A VIOLATION OF THIS SECTION IS NOT A
33 CRIME.

34 44-8055. Venue restriction; void

35 A PROVISION IN A FRANCHISE AGREEMENT RESTRICTING VENUE TO A FORUM
36 OUTSIDE THIS STATE IS VOID WITH RESPECT TO ANY CLAIM ARISING UNDER OR
37 RELATING TO A FRANCHISE AGREEMENT INVOLVING A FRANCHISE BUSINESS OPERATING
38 WITHIN THIS STATE UNLESS BOTH PARTIES AGREE TO A VENUE CHANGE.

39 44-8056. Applicability

40 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, THIS CHAPTER
41 APPLIES ONLY TO:

42 1. FRANCHISES GRANTED OR RENEWED ON OR AFTER JANUARY 1, 2024 OR TO
43 FRANCHISES OF AN INDEFINITE DURATION THAT MAY BE TERMINATED BY THE
44 FRANCHISEE OR FRANCHISOR WITHOUT CAUSE.

1 2. FRANCHISE AGREEMENTS ENTERED INTO OR RENEWED ON OR AFTER JANUARY
2 1, 2024 OR TO FRANCHISES OF AN INDEFINITE DURATION THAT MAY BE TERMINATED
3 BY THE FRANCHISEE OR FRANCHISOR WITHOUT CAUSE.

4 B. THIS CHAPTER DOES NOT APPLY TO EITHER OF THE FOLLOWING:

5 1. A FRANCHISE AGREEMENT AMENDED AFTER JANUARY 1, 2024 IF THE
6 AMENDMENT TO THE FRANCHISE AGREEMENT WAS INITIATED BY THE FRANCHISEE AND
7 DID NOT SUBSTANTIALLY AND ADVERSELY IMPACT THE FRANCHISEE'S RIGHTS,
8 BENEFITS, PRIVILEGES, DUTIES, OBLIGATIONS OR RESPONSIBILITIES UNDER THE
9 FRANCHISE AGREEMENT.

10 2. A LODGING FRANCHISE.

11 44-8057. Modifications

12 A FRANCHISOR MAY NOT MODIFY A FRANCHISE AGREEMENT OR REQUIRE A
13 GENERAL RELEASE IN EXCHANGE FOR ANY ASSISTANCE RELATED TO A DECLARED STATE
14 OR FEDERAL EMERGENCY.

15 Sec. 2. Severability

16 If a provision of this act or its application to any person or
17 circumstance is held invalid, the invalidity does not affect other
18 provisions or applications of the act that can be given effect without the
19 invalid provision or application, and to this end the provisions of this
20 act are severable.

21 Sec. 3. Short title

22 This act may be cited as the "Franchise Investment Protection Act".