

H.733

Introduced by Representatives Marcotte of Coventry, Graning of Jericho,
Bosch of Clarendon, Carris Duncan of Whitingham, Duke of
Burlington, Micklus of Milton, Olson of Starksboro, Page of
Newport City, and White of Bethel

Referred to Committee on

Date:

Subject: Commerce and trade; franchise agreement regulation

Statement of purpose of bill as introduced: This bill proposes to regulate the
relationship between franchisors and franchisees in this State, including the
regulation of franchise agreements.

An act relating to the regulation of franchise agreements

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 106 is added to read:

CHAPTER 106. FRANCHISE AGREEMENTS

§ 4051. DEFINITIONS

As used in this chapter:

(1)(A) “Agreement not to compete” means an agreement between a
franchisor and franchisee that restricts the franchisee after separating from the
franchisor from operating its business:

- 1 (i) in a certain geographic area;
2 (ii) for a certain period of time; or
3 (iii) in any other way that significantly impacts the ability of the
4 franchisee to compete with the franchisor.

5 (B) An agreement not to compete does not include an agreement that
6 prohibits the disclosure of trade secrets as defined in section 4601 of this title
7 or a nondisclosure agreement that protects confidential business information
8 that does not constitute a trade secret.

9 (2) “Franchise” means the brand, name, trademark, or other identifying
10 information owned and managed by a franchisor.

11 (3) “Franchise agreement” means an agreement in which a franchisor
12 grants a franchisee the right to operate a business or to offer, sell, or distribute
13 goods or services identified or associated with the franchisor’s trademark.

14 (4) “Franchised business” means a business that is being operated by a
15 franchisee that is subject to a franchise agreement with a franchisor.

16 (5) “Franchisee” means a person that currently operates or formerly
17 operated a business under a franchisor’s brand, name, trademark, or other
18 identifying information, pursuant to a franchise agreement.

19 (6) “Franchisor” means a person that sells the right to operate a business
20 to a franchisee pursuant to a franchise agreement.

1 § 4052. TERMINATION BY FRANCHISOR

2 (a) Except as otherwise provided in this chapter, no franchisor shall
3 terminate a franchise agreement prior to the expiration of its term, except for
4 good cause.

5 (b) Except as provided in subsection (c) of this section, good cause shall be
6 limited to the failure of the franchisee to substantially comply with the lawful
7 requirements imposed upon the franchisee by the franchise agreement after
8 being given written notice not less than 60 days in advance of the termination
9 and a reasonable opportunity to cure the failure, which shall be not less than 60
10 days after receipt of the notice of noncompliance.

11 (c) If, during the period in which the franchise agreement is in effect, there
12 occurs any of the following events that are relevant to the franchised business,
13 immediate notice of termination by the franchisor without an opportunity to
14 cure shall be deemed reasonable:

15 (1) The franchisee is the subject of an order for relief in bankruptcy or
16 judicially determined to be insolvent, all or a substantial part of the assets
17 thereof are assigned to or for the benefit of any creditor, or the franchisee
18 admits the franchisee's inability to pay the franchisee's debts as they come
19 due.

20 (2) The franchisee abandons the franchised business by failing to
21 operate the business for five consecutive days during which the franchisee is

1 required to operate the business under the terms of the franchise agreement,
2 unless such failure to operate is due to fire, flood, earthquake, or other similar
3 causes beyond the franchisee's control.

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

6 (4) The franchisee makes any material misrepresentations relating to the
7 acquisition of the franchised business or the franchisee engages in conduct that
8 reflects materially and unfavorably upon the operation and reputation of the
9 franchised business.

10 (5) The franchisee fails, for a period of 10 days after notification of
11 noncompliance, to comply with any federal, State, or local law or regulation,
12 including all health, safety, building, and labor laws or regulations applicable
13 to the operation of the franchised business.

14 (6) The franchisee, after curing any failure pursuant to subsection (b) of
15 this section, engages in the same noncompliance, whether or not such
16 noncompliance is corrected after notice, in excess of three times in a calendar
17 year.

18 (7) The franchisee repeatedly fails to substantially comply with the
19 lawful requirements of the franchise agreement, whether or not corrected after
20 notice.

1 (8) The franchisee or business premises of the franchisee are seized,
2 taken over, or foreclosed by a government official in the exercise the official's
3 duties or seized, taken over, or foreclosed by a creditor, lienholder, or lessor,
4 provided that a final judgment against the franchisee remains unsatisfied for 30
5 days, unless a supersedeas or other appeal bond has been filed or a levy of
6 execution has been made upon the license granted by the franchise agreement
7 or upon any property used in the franchised business and it is not discharged
8 within five days following such levy.

9 (9) The franchisee is convicted of a felony or any other criminal
10 misconduct that is relevant to the operation of the franchise.

11 (10) The franchisee fails to pay any franchise fees or other amounts due
12 to the franchisor or its affiliate not less than 10 days after receiving written
13 notice that such fees are overdue.

14 (11) The franchisor is able to meet the burden of proof that the
15 continued operation of the franchised business by the franchisee will result in
16 an imminent danger to public health or safety.

17 § 4053. INVENTORY AFTER TERMINATION OR NONRENEWAL

18 (a) Except as provided in this section, upon a lawful termination or
19 nonrenewal of a franchise agreement pursuant to this chapter, the franchisor
20 shall purchase from the franchisee, at the then-current market value, all
21 inventory, supplies, equipment, fixtures, furnishings, and improvements

1 purchased or paid for under the terms of the franchise agreement or any
2 ancillary or collateral agreement by the franchisee from or to the franchisor or
3 its approved suppliers and sources, that are, at the time of the notice of
4 termination or nonrenewal, in the possession of the franchisee or used by the
5 franchisee in the franchised business. The franchisor shall have the right to
6 receive clear title to and possession of all items purchased from the franchisee
7 pursuant to this section.

8 (b) This section shall not require the franchisor to purchase any
9 personalized items or inventory, supplies, equipment, fixtures, or furnishings:

10 (1) not reasonably required to conduct the operation of the franchised
11 business in accordance with the franchise agreement or any ancillary or
12 collateral agreement; or

13 (2) to which the franchisee, at the cessation of operation of the
14 franchised business by the franchisee, cannot lawfully, or does not, grant the
15 franchisor clear title and possession upon the franchisor's payment to the
16 franchisee for the inventory, supplies, equipment, fixtures, or furnishings.

17 (c) This section shall not apply:

18 (1) when the franchisee declines a bona fide offer of renewal from the
19 franchisor, which does not include an agreement that is substantially different
20 than the original contract, including royalties and fees paid, split of revenue
21 share, or term of contract;

1 (2) if the franchisor does not prevent the franchisee from retaining
2 control of the principal place of the franchised business;

3 (3) to any termination or nonrenewal of a franchise due to a publicly
4 announced and nondiscriminatory decision by the franchisor to completely
5 withdraw from all franchise activity within the relevant geographic market area
6 in which the franchised business is located;

7 (4) if the franchisor and franchisee mutually agree in writing to
8 terminate or not renew the franchise agreement; and

9 (5) to any inventory, supplies, equipment, fixtures, or furnishings that
10 are sold by the franchisee between the date of the notice of termination or
11 nonrenewal and the cessation of operation of the franchised business, by the
12 franchisee, pursuant to the termination or nonrenewal.

13 (d) Upon the termination or nonrenewal of a franchise agreement, a
14 franchisor may offset against the amounts owed to a franchisee under this
15 section any amounts owed by the franchisee to the franchisor if the:

16 (1) franchisee agrees to the amount owed; or

17 (2) franchisor has received a final adjudication of any amounts owed.

18 § 4054. NONRENEWAL

19 (a) Advance notice. No franchisor shall fail to renew a franchise agreement
20 unless such franchisor provides the franchisee with written notice of its

1 intention not to renew at least 180 days before the termination date of the
2 agreement; and

3 (1) during the 180 days prior to termination of the franchise agreement
4 the franchisor permits the franchisee to sell the franchisee's business to a
5 purchaser meeting the franchisor's then-current requirements for granting new
6 franchises, or if the franchisor is not granting a significant number of new
7 franchises, the then-current requirements for granting renewal franchises; or

8 (2) the refusal to renew is not for the purpose of converting the
9 franchisee's business premises to operation by employees or agents of the
10 franchisor for such franchisor's own account, provided that nothing in this
11 subdivision or subdivision (1) of this subsection shall prohibit a franchisor
12 from exercising a right of first refusal to purchase the franchisee's business;
13 and

14 (A) termination would be permitted pursuant to section 4052 of this
15 title;

16 (B) the franchisee and the franchisor agree not to renew the
17 franchise; or

18 (C) the franchisor withdraws from distributing its products or
19 services through franchises in the geographic market served by the franchisee,
20 provided that:

1 (i) the franchisor, during the period of time after giving notice
2 pursuant to this subsection (a), offers such franchisee a right of first refusal of
3 not less than 30 days of a bona fide offer made by another to purchase such
4 franchisor's interest in such premises;

5 (ii) in the case of the sale, transfer, or assignment to another
6 person of the franchisor's interest in one or more other controlled marketing
7 premises, such other person in good faith offers the franchisee a franchise on
8 substantially the same terms and conditions currently being offered by such
9 other person to other franchisees; or

10 (iii) the franchisor and the franchisee fail to agree to changes or
11 additions to the terms and conditions of the franchise agreement, if such
12 changes or additions would result in renewal of the franchise agreement on
13 substantially the same terms and conditions on which the franchisor is then
14 customarily granting renewal franchises, or if the franchisor is not then
15 granting a significant number of renewal franchises, the terms and conditions
16 on which the franchisor is then customarily granting new franchises.

17 (b) Nothing in subsection (a) of this section shall prohibit a franchisor from
18 offering or agreeing before expiration of the current franchise term to extend
19 the term of the franchise for a limited period in order to satisfy the time of
20 notice of nonrenewal requirement of this section.

1 § 4055. TERMINATION BY FRANCHISEE

2 A franchisee may terminate a franchise agreement without penalty or fees,
3 in the event of changes to the franchise system or the competitive
4 circumstances of the franchised business that would cause substantial negative
5 impact or substantial financial hardship to the franchisee in the operation of its
6 franchised business.

7 § 4056. TRANSFER OR SALE OF BUSINESS BY FRANCHISEE

8 (a) Death of franchisee. No franchisor shall deny the surviving spouse,
9 heirs, or estate of a deceased franchisee the opportunity to participate in the
10 ownership of the franchise under a valid franchise agreement for not less than
11 12 months after the death of the franchisee or majority shareholder of the
12 franchisee. During that time, the surviving spouse, heirs, or estate of the
13 deceased shall either satisfy all of the then-current qualifications for a
14 purchaser of a franchised business or sell, transfer, or assign the franchise to a
15 person that satisfies the franchisor's then-current standards for new
16 franchisees. The rights granted pursuant to this section shall be granted subject
17 to the surviving spouse, heirs, or estate of the deceased maintaining all
18 standards and obligations of the franchise agreement.

19 (b) Freedom to sell.

20 (1) It is unlawful for a franchisor to prevent a franchisee from selling or
21 transferring a franchise, all or substantially all of the assets of the franchised

1 business, or a controlling or noncontrolling interest in the franchised business
2 to another person provided that the person is qualified under the franchisor's
3 then-existing standards for the approval of new or renewing franchisees.
4 These standards shall be made available to the franchisee and shall be
5 consistently applied to similarly situated franchisees operating within the
6 franchise brand.

7 (2) Notwithstanding subdivision (1) of this subsection, a franchisee shall
8 not have the right to sell, transfer, or assign the franchise, all or substantially
9 all of the assets of the franchised business, or a controlling or noncontrolling
10 interest in the franchised business without the written consent of the franchisor,
11 except that the consent shall not be withheld unless the:

12 (A) buyer, transferee, or assignee does not meet the standards for
13 new or renewing franchisees described in subdivision (1) of this subsection (b);
14 or

15 (B) franchisee and the buyer, transferee, or assignee do not comply
16 with the transfer conditions specified in the franchise agreement.

17 (c) Right of first refusal. This section does not prohibit a franchisor from
18 exercising the contractual right of first refusal to purchase a franchised
19 business, all or substantially all of the assets of a franchised business, or a
20 controlling or noncontrolling interest in a franchised business after receipt of a
21 bona fide offer from a proposed purchaser to purchase the franchised business,

1 assets, or interest. A franchisor exercising the contractual right of first refusal
2 shall offer the seller payment at least equal to the value offered in the bona fide
3 offer. This section does not require a franchisor to exercise a contractual right
4 of first refusal.

5 (d) Notification of intent to sell.

6 (1) The franchisee shall, prior to the sale, assignment, or transfer of a
7 franchised business, all or substantially all of the assets of a franchised
8 business, or a controlling or noncontrolling interest in the franchised business
9 to another person, notify the franchisor of the franchisee's intent to sell,
10 transfer, or assign the franchise, all or substantially all of the assets of the
11 franchised business, or the controlling or noncontrolling interest in the
12 franchised business. The notice shall be in writing and delivered to the
13 franchisor by business courier or by receipted mail and include all of the
14 following:

15 (A) The proposed transferee's name and address.

16 (B) A copy of all agreements related to the sale, assignment, or
17 transfer of the franchise, the assets of the franchised business, or the interest in
18 the franchised business.

19 (C) The proposed transferee's application for approval to become the
20 successor franchisee, which shall include all forms, financial disclosures, and
21 related information generally utilized by the franchisor in reviewing

1 prospective new franchisees, if those forms are readily made available to the
2 existing franchisee. If the forms are not readily available, the franchisee shall
3 request and the franchisor shall deliver the forms to the franchisee not later
4 than 15 days after the request.

5 (2) As soon as practicable after the receipt of the proposed transferee's
6 application, the franchisor shall notify, in writing, the franchisee and the
7 proposed transferee of any additional information or documentation necessary
8 to complete the transfer application. If the franchisor's then-existing standards
9 for the approval of new or renewing franchisees are not readily available to the
10 franchisee when the franchisee notifies the franchisor of the franchisee's intent
11 to sell, transfer, or assign the franchise, the assets of the franchised business, or
12 the controlling or noncontrolling interest in the franchised business, the
13 franchisor shall communicate the standards to the franchisee not later than 15
14 days after receiving the notification.

15 (e) Approval or disapproval of sale.

16 (1) The franchisor shall, not later than 60 days after the receipt of all of
17 the necessary information and documentation required pursuant to subsection
18 (d) of this section, or as specified by written agreement between the franchisor
19 and the franchisee, notify the franchisee of the approval or disapproval of the
20 proposed sale, assignment, or transfer. A proposed sale, assignment, or
21 transfer shall be deemed approved unless disapproved by the franchisor in the

1 manner provided by this subsection. If the proposed sale, assignment, or
2 transfer is disapproved, the franchisor shall include in the notice of disapproval
3 a statement setting forth the reasons for the disapproval.

4 (2) In any action in which the franchisor's disapproval of a sale,
5 assignment, or transfer pursuant to this section is an issue, the reasonableness
6 of the franchisor's decision shall be a question of fact requiring consideration
7 of all existing circumstances. For purposes of this subsection, the finder of fact
8 may be an arbitrator specified in the franchise agreement or an arbitrator
9 chosen from a list of impartial arbitrators supplied by the American Arbitration
10 Association or another impartial person. Nothing in this subsection shall
11 prohibit summary judgment when the reasonableness of transfer approval or
12 disapproval can be decided as a matter of law.

13 § 4057. RIGHTS AND PROHIBITIONS

14 The following rights and prohibitions govern the relationship between a
15 franchisor and its franchisee:

16 (1) The parties shall deal with each other in good faith and in a
17 commercially reasonable manner.

18 (2) A franchisor or franchisee, during the sale or establishment of a
19 franchised business, shall not misrepresent or fail to disclose any of the
20 following:

1 (A) the prospects or chances for success of the proposed or existing
2 franchised business;

3 (B) the known total investment for such franchised business; or

4 (C) any effort to sell or establish more franchise locations than is
5 reasonable to expect the market or market area for the particular franchise to
6 sustain.

7 (3) It is prohibited and deemed an unfair and deceptive act or practice,
8 or an unfair method of competition, and a violation of this chapter for a
9 franchisor, or an officer, agent, employee, or other representative of a
10 franchisor, to directly or indirectly do any of the following:

11 (A) terminate or fail to renew a franchise agreement in violation of
12 this chapter;

13 (B) allow a franchise agreement to expire without complying with
14 this chapter;

15 (C) fail to repurchase inventory, supplies, goods, fixtures, and
16 equipment as required by this chapter;

17 (D) violate Section 5(a) of the Federal Trade Commission Act, 15
18 U.S.C § 45, in connection with its business as a franchisor, or an officer, agent,
19 or other representative thereof;

1 (E) resort to false or misleading advertising in connection with its
2 business as a franchisor, or an officer, agent, or other representative of a
3 franchisor;

4 (F) without prior written disclosure to a franchisee, obtain vendor
5 rebates, kickbacks, or similar payments from another person with which the
6 franchisee does business or that the franchisee employs on account of or in
7 relation to the transactions between the franchisee, the franchisor, and the other
8 person;

9 (G) require a franchisee to assent to a release, assignment, novation,
10 waiver, or estoppel that would relieve any person for liability imposed under
11 this chapter, including through the use of a disclaimer or checklist designed to
12 avoid protection under this chapter;

13 (H) require a franchisee to make any capital expenditure greater than
14 \$5,000.00 without providing a validated business case to the franchisee
15 showing that such expenditure has a positive return on investment for the
16 franchisee;

17 (I) require a franchisee to purchase or lease goods or services of the
18 franchisor or from approved sources of supply unless and to the extent that the
19 franchisor satisfies the burden of proving that such restrictive purchasing
20 agreements are reasonably necessary for a lawful purpose justified on business

1 grounds, and do not substantially affect competition, provided that this
2 subdivision (I) does not apply to the initial inventory of the franchise;

3 (J) discriminate between franchisees in the charges offered or made
4 for goods, services, equipment, rentals, or advertising services or in any other
5 business dealing, unless and to the extent that the franchisor satisfies the
6 burden of proving that any classification of or discrimination between
7 franchisees is:

8 (i) reasonable;

9 (ii) based on franchises granted at materially different times and
10 such discrimination is reasonably related to such difference in time, or is based
11 on other proper and justifiable distinctions considering the purposes of this
12 chapter; and

13 (iii) not arbitrary, provided that nothing in this subdivision (iii)
14 precludes negotiation of the terms and conditions of a franchise at the initiative
15 of the franchisees;

16 (K) sell, rent, or offer to sell to a franchisee any product or service for
17 more than a fair and reasonable price;

18 (L) obtain money, goods, services, anything of value, or any other
19 benefit from any other person with which the franchisee does business on
20 account of such business unless such benefit is disclosed to the franchisee;

1 (M) restrict a franchisee from sourcing environmentally conscious
2 products that meet required specifications or products that use environmentally
3 conscious packaging; or

4 (N) fail to make readily available to franchisees, without charge, true,
5 accurate, and complete copies of all records of marketing, rewards programs,
6 and advertising funds and fees that have been paid by franchisees, vendors,
7 suppliers, and licensees.

8 § 4058. FRANCHISE AGREEMENT PROVISIONS

9 (a) Pricing. A franchisor shall not require a franchisee to sell any product
10 or service for a price at a loss or otherwise not reasonably acceptable to the
11 franchisee.

12 (b) Liquidated damages. Liquidated damages clauses shall not be
13 enforceable in a case of termination of the franchise agreement by the
14 franchisor.

15 (c) No cross default. A default under one franchise agreement shall not in
16 and of itself constitute a default under another franchise agreement to which
17 the franchisee or an affiliate of the franchisee is a party.

18 (d) Control. No franchisor shall maintain direct or indirect control of the
19 franchisee's employees or of the day-to-day operation of the franchised
20 business.

1 (e) Hours of operation. No renewal of a franchise agreement or change in
2 the operations manual or like policy shall impose a change in the hours of
3 operation in which the franchisee deems that it is unprofitable or unsafe to
4 operate, or that interferes with a religious holiday.

5 (f) Notices. All notices of termination or nonrenewal required by this
6 chapter:

7 (1) shall be in writing;

8 (2) shall be posted by registered, certified, or other receipted mail;
9 delivered by telegram; or personally delivered to the franchisee; and

10 (3) shall contain a statement of intent to terminate or not renew the
11 franchised business together with:

12 (A) the reasons therefor; and

13 (B) the effective date of such termination or nonrenewal or
14 expiration.

15 (g) Negotiated franchise agreement. Any franchise agreement that differs
16 from the disclosed franchise agreement shall, in totality, have negotiated terms
17 that are to the benefit of the franchisee.

18 (h) Arbitration. Pre-dispute, mandatory arbitration clauses are forbidden in
19 a franchise agreement.

20 (i) Venue of disputes. A provision in a franchise agreement restricting
21 venue to a forum outside this State is void with respect to any claim arising

1 under or relating to a franchise agreement involving a franchised business
2 operating within this State.

3 (j) Limitations of claims. No franchise agreement shall place a limitation
4 on claims that is in conflict with existing State law.

5 (k) Noncompete language.

6 (1) Any agreement not to compete, including an agreement not to
7 compete contained within a contract or franchise agreement, is void and
8 unenforceable.

9 (2) For existing agreements not to compete that violate subdivision (1)
10 of this subsection, the franchisor must notify each franchisee that is party to the
11 agreement that the agreement not to compete is void and legally unenforceable.
12 Notice shall be in the form of a written individualized communication
13 addressed to the franchisee or former franchisee and shall be delivered to the
14 last known address and email address of the franchisee or former franchisee.

15 § 4059. LIABILITY

16 (a) Liability and governing law.

17 (1) If any franchisor violates any provision of this chapter, a franchisee
18 may bring an action against such franchisor in any court of competent
19 jurisdiction of this State for damages sustained by the franchisee as a
20 consequence of the franchisor's violation, together with the actual costs of the
21 action, including reasonable actual attorney's fees, and the franchisee also may

1 be granted injunctive relief against unlawful termination, cancellation,
2 nonrenewal, or any other act or practice prohibited by this chapter.

3 (2) Notwithstanding any term or provision of a franchise agreement to
4 the contrary:

5 (A) the laws of this State shall govern the interpretation of the
6 franchise agreement of a franchise located in the State and the performance of
7 the parties thereunder;

8 (B) the courts of this State and the federal courts with jurisdiction
9 over cases filed in the State shall have exclusive jurisdiction with respect to
10 any action brought under this chapter or any action brought by a franchisor
11 concerning a franchise located in this State; and

12 (C) except as expressly provided herein, nothing in this chapter shall
13 abrogate the right of a franchisee to sue under any other law.

14 (b) Unlawful termination or nonrenewal. In the event a franchisor
15 terminates or fails to renew a franchisee in violation of this chapter, the
16 franchisee shall be entitled to receive from the franchisor the fair market value
17 of the franchised business and franchise assets and any other damages caused
18 by the violation of this chapter.

19 (c) Offset. The franchisor may offset against any remedies a prior recovery
20 by the franchisee and any sums owed to the franchisor or its subsidiaries by the
21 franchisee pursuant to the franchise agreement or any ancillary agreement.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2026.