

SENATE NO. 142



AN ACT RELATIVE TO FRANCHISEE PROTECTION

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 93 of the General Laws, as appearing in the 2004 Official Edition, is hereby
2 amended by inserting at the end thereof the following new section:--

REGULATION OF FRANCHISE AGREEMENTS

4 Section 115. Franchise Agreements; Termination for Good Cause; Notice Requirements;
5 Prohibited Conduct; Terms

6 (a) No franchisor shall, directly or through any officer, agent or employee, terminate, cancel or
7 fail to renew a franchise, except for good cause shown which shall include, but not be
8 limited to, the franchisee's refusal or failure to comply substantially with any material and
9 reasonable obligation of the franchise agreement except such obligations under subsection
10 (d) of this section for the reasons stated in subsection (c) of this section. The franchisor
11 shall give the franchisee written notice of such termination, cancellation, or intent not to

12 renew at least sixty days in advance of such termination, cancellation or failure to renew
13 with the cause stated thereon; provided in the event the franchisor elects not to renew a
14 franchise pursuant to subsection (c) of this section, the franchisor shall give the franchisee
15 written notice of such intent not renew at least six months prior to the expiration of the
16 current franchise agreement. The provisions of this section shall not apply (1) where the
17 alleged grounds were voluntary abandonment by the franchisee of the franchise
18 relationship, in which event, such notice may be given fifteen days in advance of such
19 termination, cancellation, or failure to renew, or (2) where the alleged grounds are the
20 conviction of the franchisee in a court of competent jurisdiction of an offense punishable by
21 a term of imprisonment in excess of one year and directly related to the business conducted
22 pursuant to the franchise, in which event, such notice may be given at any time following
23 such conviction and shall be effective upon such delivery and written receipt of such
24 notice, subject to the requirements of the subdivision (9) of subsection (e) of this section.

25 (b) Upon termination of any franchise for whatever cause or reason, except voluntary
26 relinquishment or abandonment of the franchise by the franchisee, the franchisor shall
27 fairly compensate the franchisee or the franchisee's estate for the fair market value, at the
28 time of termination of the franchise, of the franchisee's inventory, supplies, equipment and
29 furnishing purchased by the franchisee from the franchisor or its approved sources and
30 good will, if any, exclusive of personalized items which have not value to the franchisor
31 and inventory, supplies, equipment and furnishings not reasonable required in the conduct
32 of the franchise business; provided that compensation need not be made to franchisee of
33 good will if (1) the franchisee has been given one year's notice of non-renewal, and (2) the
34 franchisor agrees in writing not to enforce any covenant which restrains the franchisee from

35 competing with the franchisor, and provided further, that a franchisor may offset against
36 amounts owed to a franchisee under this subsection any amount owed by such franchisee to
37 franchisor.

38 (c) A franchisor may elect not to renew a franchise which involves the lease by the franchisor
39 to the franchisee of real property and improvement, in the event the franchisor (1) sells or
40 leases such real property and improvements to other than a subsidiary or affiliate of the
41 franchisor for any use; or (2) sells or leases such real property to subsidiary or affiliate of
42 the franchisor, except such subsidiary or affiliate shall not use such real property and
43 improvements to a use not covered by the franchise agreement; or (3) converts such real
44 property from a person not the franchisee and such lease from such person is terminated or
45 not renewed.

46 (d) No franchisor shall terminate, cancel or fail to renew a franchise for the failure of refusal of
47 the franchisee to do any of the following: (1) refusal to take part in promotional campaigns
48 of the franchisor's products; (2) failure to meet sales quotas suggested by the franchisor; (3)
49 refusal to sell any products at a price suggested by the franchisor or supplier; (4) refusal to
50 keep the premises open and operating during those hours which are documented by the
51 franchisee to be unprofitable to the franchisee or to preclude the franchisee from
52 establishing his own hours of operation beyond the hour of 10:00 p.m. and prior to 6:00
53 a.m.; or (5) refusal to give the franchisor or supplier financial records of the operation of
54 the franchise which are not related or unnecessary to the franchisee's obligations under the
55 franchise agreement. Subdivisions (1) to (5), inclusive, shall not be deemed material and
56 reasonable obligations, substantial failure to comply with franchise terms, or good cause
57 under subsection (a) of this section.

58 (e) No franchisor, directly or indirectly, through any officer, agent, or employee, shall do any
59 of the following: (1) prohibit, directly or indirectly, the right of free association among
60 franchisees for any lawful purpose; (2) prohibit the transfer by will of any franchise and the
61 rights of any franchisee; (3) require or prohibit any change in management of any franchise
62 unless such requirement or prohibition of such change shall be for good cause, which cause
63 shall be stated in writing by the franchisor; (4) impose unreasonable standards of
64 performance upon a franchisee; (5) fail to deal in good faith with a franchisee; (6) sell, rent
65 or offer to sell to a franchisee any product or service for more than a fair and reasonable
66 price; (7) impose on a franchisee by contract, rule or regulation, whether written or oral, any
67 standard of conduct unless the franchisor, his agents or representatives sustain the burden
68 of proving such to be reasonable and necessary; (8) discrimination between franchisees in
69 the charges offered or made for royalties, goods, services, equipment, rentals, advertising
70 services, or in any other business dealing, unless (A) any such type of discrimination
71 between franchisees would be necessary to allow a particular franchisee to fairly meet
72 competition in the open market or (B) to the extent that the franchisor satisfies the burden
73 of proving that any classification of or discrimination between franchisees is reasonable, is
74 based on franchises granted at materially different times and such discrimination is
75 reasonably related to such difference in time or on other proper and justifiable distinctions,
76 and is not arbitrary. Nothing shall be construed under this subsection, however, as granting
77 to a franchisor any right which may be limited by any other state or federal statutes; (9)
78 notify the franchisee of a claimed breach of franchise agreement for good cause later than
79 one hundred eighty days from the date good cause arises or one hundred eighty days after

80 the franchisor knew or in the exercise of reasonable care should have known of said
81 claimed good cause.

82 (f) Any franchisee or franchisor, upon request, shall have the right to have the question of
83 good cause submitted to arbitration in accordance with the rules of the American
84 Arbitration Association. Any franchisee or franchisor, upon the rendering of a decision in
85 arbitration, shall have the right to apply to the superior court in the county wherein such
86 franchisee or franchisor is doing the business or resides for confirmation, modification,
87 correction or vacation of any arbitration decision.

88 (g) Every franchisor shall protect and save harmless its franchisee from financial loss and
89 expense, including legal fees and costs, if any, arising out of any claim, demand, suit or
90 judgment by reason of defect in merchandise or methods or procedures prescribed by
91 franchisor and performed by such franchisee, except for alleged negligence or willful
92 misconduct of such franchisee.

93 (h) Every Franchisor shall reimburse its franchisee at the prevailing retail price for any services
94 rendered or party supplied by such franchisee in satisfaction of any warranty issued by such
95 franchisor, and no franchisor shall restrict a franchisee from rendering services or providing
96 parts in accordance with standards of good workmanship in satisfaction of any such
97 warranty.

98 SECTION 2. For the purposes of this section, the following words shall have the following meanings:

99 "Franchise" shall mean a contract or agreement, either expressed or implied, whether oral or
100 written, between two or more persons by which: (a) a franchisee is granted the right to engage in the
101 business of offering, selling or distributing goods or services, under a marketing plan or system
102 prescribed or suggested in substantial part by a franchisor; and (b) the operation of the franchisee's

103 business pursuant to such plan or system is substantially associated with the franchisor's trademark,
104 service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor
105 or its affiliate.

106 "Franchisee" shall mean an individual to who a franchise is granted.

107 "Franchisor" shall mean an individual, corporation, partnership, joint venture, association, joint
108 stock company, trust, or unincorporated organization that grants a franchise.