

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2080

Session of
1987

INTRODUCED BY KENNEY AND BURNS, DECEMBER 15, 1987

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE,
DECEMBER 15, 1987

AN ACT

1 Regulating operation of franchise agreements.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Fair
6 Franchise Law.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Community of interest." A continuing financial interest
12 between the franchisor and franchisee in either the operation of
13 the franchise or the marketing of such goods or services.

14 "Franchise." A contract or agreement, either expressed or
15 implied, whether oral or written, between two or more persons,
16 by which a person is granted the right to sell or distribute

1 goods or services, or use a trade name, trademark, service mark,
2 logotype, advertising or other commercial symbol, in which there
3 is a community of interest in the business of offering, selling
4 or distributing goods or services at wholesale, retail, by
5 lease, agreement or otherwise.

6 "Franchisee." A person who is a grantee of a franchise
7 either situated in this Commonwealth or a grantor incorporated
8 in this Commonwealth.

9 "Franchisor." A person who grants a franchise.

10 "Good cause."

11 (1) Failure by a franchisee to comply with any lawful
12 requirements of the franchise agreement which requirements
13 are not discriminatory as compared with requirements imposed
14 on other similarly situated franchisees either by their terms
15 or in the manner of their enforcement.

16 (2) Failure by the franchisee to act in good faith in
17 carrying out the terms of the franchise.

18 "Person." A natural person, partnership, joint venture,
19 corporation, an association, a joint stock company, a trust or
20 an unincorporated organization.

21 Section 3. Purposes; rules of construction; variation by
22 contract.

23 (a) Liberal construction.--This act shall be liberally
24 construed and applied to promote its underlying remedial
25 purposes and policies.

26 (b) Purposes.--The underlying purposes and policies of this
27 act are:

28 (1) To promote the compelling interest of the public in
29 fair business relations between franchisees and franchisors
30 and in the continuation of franchises on a fair basis.

1 (2) To protect franchisees against unfair treatment by
2 franchisors, who inherently have superior economic power and
3 superior bargaining power in the negotiation of franchises.

4 (3) To provide franchisees with rights and remedies in
5 addition to those existing by contract or common law.

6 (4) To govern all franchises, including any renewals or
7 amendments, to the full extent consistent with the
8 Constitution of the United States and the Constitution of
9 Pennsylvania.

10 (c) Nonvariation by contract.--The effect of this act may
11 not be varied by contract or agreement. Any contract or
12 agreement purporting to do so is void and unenforceable to that
13 extent only.

14 Section 4. Notification.

15 (a) General rule.--Except as provided in this act, no
16 franchisor may cancel, fail to renew or otherwise terminate a
17 franchise unless such franchisor furnishes prior notification in
18 accordance with subsection (b) to the franchisee affected.

19 (b) Contents.--The notification required under subsection
20 (a) shall be in writing and shall be sent to the franchisee by
21 certified mail not less than 120 days before the date on which
22 such franchise will be canceled, not renewed or otherwise
23 terminated. Such notification shall contain a statement of
24 intention to cancel, not renew or otherwise terminate, together
25 with the reasons therefor, the date on which such action shall
26 take effect, and a statement of the remedy or remedies available
27 to such franchisee under this act, including a summary of the
28 applicable provisions of this act. The notice shall state all
29 reasons for termination, cancellation or nonrenewal and shall
30 provide the franchisee 120 days in which to rectify any claimed

1 deficiency. If the deficiency is rectified within 120 days, the
2 notice shall be void.

3 (c) Court intervention.--Any court having jurisdiction may
4 reduce, after hearing, the requirement of 120 days' notice upon
5 application by the franchisor, and service of the application
6 upon the franchisee affected, and establishment by the
7 franchisor that such reduction is necessary:

8 (1) in order to protect against an imminent danger to
9 public health or safety caused by the franchisee;

10 (2) by reason of insolvency or bankruptcy of the
11 franchisee;

12 (3) because of other compelling exigency.

13 Section 5. Cancellation, nonrenewal, termination.

14 (a) General rule.--No franchisor may cancel, fail to renew
15 or otherwise terminate a franchise unless the franchisor has
16 good cause for such cancellation, failure to renew or
17 termination, and the franchisee has not corrected the conduct
18 specified in such notification as the reason for such
19 cancellation, failure to renew or termination within 90 days
20 after the date of such notification. The burden of proving good
21 cause is on the franchisor.

22 (b) Court action.--Any court having jurisdiction may waive,
23 after hearing, the requirement of 90 days for the franchisee to
24 correct the conduct specified in the notice upon application by
25 the franchisor, and service of the application upon the
26 franchisee affected, and establishment by the franchisor that
27 such waiver is necessary:

28 (1) in order to protect against an imminent danger to
29 public health or safety caused by the franchisee;

30 (2) by reason of insolvency or bankruptcy of the

1 franchisee;

2 (3) because of other compelling exigency.

3 Section 6. Transfer, assignment, bequeath or sale.

4 (a) Restriction.--It shall be a violation of this act for
5 any franchisee to transfer, assign, bequeath or sell a franchise
6 or interest therein to another person, unless such a term is
7 provided in the franchise, or unless the franchisee shall first
8 notify the franchisor of such intention by written notice
9 setting forth in the notice of intent the prospective name of
10 that person, address, statement of financial qualification and
11 business experience during the previous five years.

12 (b) Duty of franchisor.--The franchisor shall within 60 days
13 after receipt of such notice either approve in writing to the
14 franchisee such transfer, assignment, bequest or sale or by
15 written notice advise the franchisee of the unacceptability of
16 the proposed transfer, assignment, bequest or sale setting forth
17 material reasons relating to the character, financial ability or
18 business experience of such person. If the franchisor does not
19 reply within the specified 60 days, his approval is deemed
20 granted.

21 (c) Compliance with requirements.--No such transfer,
22 assignment, bequest or sale hereunder shall be valid unless the
23 named person agrees in writing to comply with all the
24 requirements of the franchise then in effect.

25 (d) Additional fees.--In the event of any transfer,
26 assignment, bequest or sale by the franchisee of the franchise
27 agreement or of any renewal of the franchise agreement, no
28 franchisor may exact any additional franchise fees except those
29 involved in the cost of transferring ownership of the franchise
30 agreement.

1 Section 7. Action for damages and permanent injunctive relief.

2 Any franchisee who is injured or threatened with injury by
3 reason of anything forbidden or declared unlawful by this act
4 may bring an action therefor in any court having jurisdiction in
5 the county where the defendant resides or is found, or any agent
6 resides or is found, or where service may be obtained, without
7 respect to the amount in controversy, for damages and permanent
8 injunctive relief, including a reasonable attorney fee, together
9 with all reasonable expenses and taxable court costs.

10 Section 8. Temporary injunction.

11 At the request of the franchisee, the court shall grant a
12 temporary injunction to enjoin the termination or nonrenewal of
13 any franchise agreement during the pendency of the action and
14 prior to entry of judgment, upon a showing by the franchisee
15 that the action raises substantial questions going to the merits
16 of the action. Any termination or nonrenewal of a franchise
17 agreement shall be deemed an irreparable injury.

18 Section 9. Nonapplicability.

19 (a) Monetary restrictions.--This act does not apply to any
20 franchise with gross annual receipts to the franchisee from the
21 franchise of less than \$25,000.

22 (b) Prior agreements.--The provisions of this act shall not
23 apply to any cancellation, nonrenewal, termination, transfer,
24 assignment, sale or bequeath that took effect prior to the
25 effective date of this act. However, the provisions of this act
26 shall apply to any cancellation, nonrenewal, termination,
27 transfer, assignment, sale or bequeath occurring subsequent to
28 the effective date of this act.

29 Section 10. Effective date.

30 This act shall take effect in 60 days.