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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1214** Session of  
1981

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INTRODUCED BY ALDEN AND PERZEL, APRIL 21, 1981

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REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, APRIL 21, 1981

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AN ACT

1 Relating to certain franchise practices and providing penalties.

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1                   warranty.

2       Section 15.   Penalty.

3       Section 16.   Effective date.

4       The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6       Section 1.   Short title.

7       This act shall be known and may be cited as the "Franchise  
8 Practices Act."

9       Section 2.   Legislative findings.

10       The Legislature finds and declares that distribution and  
11 sales through franchise arrangements in the State of  
12 Pennsylvania vitally affects the general economy of the State,  
13 the public interest and the public welfare. It is therefore  
14 necessary in the public interest to define the relationship and  
15 responsibilities of franchisors and franchisees in connection  
16 with franchise arrangements.

17       Section 3.   Definitions.

18       The following words and phrases when used in this act shall  
19 have, unless the context clearly indicates otherwise, the  
20 meanings given to them in this section:

21       "Franchise." A written arrangement for a definite or  
22 indefinite period, in which a person grants to another person a  
23 license to use a trade name, trade mark, service mark or related  
24 characteristics, and in which there is a community of interest  
25 in the marketing of goods or services at wholesale, retail, by  
26 lease, agreement or otherwise.

27       "Franchisor." A person who grants a franchise to another  
28 person.

29       "Person." A natural person, corporation, partnership, trust  
30 or other entity and, in case of an entity, it shall include any

1 other entity which has a majority interest in such entity or  
2 effectively controls such other persons in active control of the  
3 activities of each entity.

4 "Place of business." A fixed geographical location at which  
5 the franchisee displays for sale and sells the franchisor's  
6 goods or offers for sale and sells the franchisor's services.  
7 Place of business shall not mean an office, a warehouse, a place  
8 of storage, a residence or a vehicle.

9 "Sale, transfer or assignment." Any disposition of a  
10 franchise or any interest therein, with or without  
11 consideration, to include but not limited to bequest,  
12 inheritance, gift, exchange, lease or license.

#### 13 Section 4. Application of act.

14 This act applies only to a franchise, the performance of  
15 which contemplates or requires the franchisee to establish or  
16 maintain a place of business within the State of Pennsylvania,  
17 where gross sales of products or services between the franchisor  
18 and franchisee covered by such franchise shall have exceeded  
19 \$35,000 for the 12 months next preceding the institution of suit  
20 pursuant to this act, and where more than 20% of the  
21 franchisee's gross sales are intended to be or are derived from  
22 such franchise.

#### 23 Section 5. Termination of franchise.

24 (a) Notice.--It shall be a violation of this act for a  
25 franchisor directly or indirectly through any officer, agent or  
26 employee to terminate, cancel or fail to renew a franchise  
27 without having first given written notice setting forth all the  
28 reasons for such termination, cancellation or intent not to  
29 renew to the franchise at least 60 days in advance of such  
30 termination, cancellation or failure to renew, except:

1           (1) where the alleged grounds are voluntary abandonment  
2 by the franchisee of the franchise relationship in which  
3 event the aforementioned written notice may be given 15 days  
4 in advance of such termination, cancellation or failure to  
5 renew; and

6           (2) where the alleged grounds are the conviction of the  
7 franchisee in a court of competent jurisdiction of an  
8 indictable offence directly related to the business conducted  
9 pursuant to the franchise in which event the aforementioned  
10 termination, cancellation or failure to renew may be  
11 effective immediately upon the delivery and receipt of  
12 written notice of same at any time following the  
13 aforementioned conviction.

14       (b) Grounds.--It shall be a violation of this act for a  
15 franchisor to terminate, cancel or fail to renew a franchise  
16 without good cause. For the purposes of this act, good cause for  
17 terminating, cancelling or failing to renew a franchise shall be  
18 limited to failure by the franchisee to substantially comply  
19 with those requirements imposed upon him by the franchise.

20 Section 6. Transfer of franchise.

21       (a) Notice.--It shall be a violation of this act for a  
22 franchisee to transfer, assign or sell a franchise or interest  
23 therein to another person unless the franchisee shall first  
24 notify the franchisor of such intention by written notice  
25 setting forth in the notice of intent the prospective  
26 transferee's name, address, statement of financial qualification  
27 and business experience during the previous five years.

28       (b) Decision.--The franchisor shall within 60 days after  
29 receipt of such notice either approve in writing to the  
30 franchisee such sale to proposed transferee or by written notice

1 advise the franchisee of the unacceptability of the proposed  
2 transferee setting forth material reasons relating to the  
3 character, financial ability or business experience of the  
4 proposed transferee. If the franchisor does not reply within the  
5 specified 60 days, his approval is deemed granted.

6 (c) Compliance with franchise.--No such transfer, assignment  
7 or sale hereunder shall be valid unless the transferee agrees in  
8 writing to comply with all the requirements of the franchise  
9 then in effect.

#### 10 Section 7. Prohibited practices.

11 It shall be a violation of this act for a franchisor,  
12 directly or indirectly through any officer, agent or employee,  
13 to engage in any of the following practices:

14 (1) To require a franchisee at time of entering into a  
15 franchise arrangement to assent to a release, assignment,  
16 novation, waiver or estoppel which would relieve any person  
17 from liability imposed by this act.

18 (2) To prohibit directly or indirectly the right of free  
19 association among franchisees for any lawful purpose.

20 (3) To require or prohibit any change in management of  
21 any franchise unless such requirement or prohibition of  
22 change shall be good cause, which shall be stated in writing  
23 by the franchisor.

24 (4) To restrict the sale of any equity or debenture  
25 issue or the transfer of any securities of a franchise or in  
26 any way prevent or attempt to prevent the transfer, sale or  
27 issuance of shares of stock or debentures to employees,  
28 personnel of the franchisee, or heir of the principal owner,  
29 as long as basic financial requirements of the franchisor are  
30 complied with, and provided any such sale, transfer or

1 issuance does not have the effect of accomplishing a sale of  
2 the franchise.

3 (5) To impose unreasonable standards of performance upon  
4 a franchisee.

5 (6) To provide a term or condition in a lease or other  
6 agreement ancillary or collateral to a franchise, which term  
7 or condition directly or indirectly violates this act.

8 Section 8. Application of act to prior grants of franchises.

9 This act shall not apply to a franchise granted prior to the  
10 effective date of this act. The renewal of a franchise or an  
11 amendment to an existing franchise shall not be excluded from  
12 the application of this act.

13 Section 9. Action against franchisor.

14 It shall be a defense for a franchisor, to an action brought  
15 under this act by a franchisee, to show that said franchisee has  
16 failed to substantially comply with the requirements imposed by  
17 the franchise and other agreements ancillary or collateral  
18 thereto.

19 Section 10. Damages; injunction and costs.

20 A franchisee may bring an action against its franchisor for  
21 violation of this act in the Superior Court of the State of  
22 Pennsylvania to recover damages sustained by reason of any  
23 violation of this act and, where appropriate, shall be entitled  
24 to injunctive relief. Such franchisee, if successful, shall also  
25 be entitled to the cost of the action including, but not limited  
26 to, reasonable attorney's fees.

27 Section 11. Limitation of liability of franchisor.

28 There shall be no liability on the part of, and no cause of  
29 action other than as provided by this act shall arise against a  
30 franchisor, its officers, agents or employees furnishing

1 information as to reasons for termination, cancellation, intent  
2 not to renew, failure to renew, unacceptability of a proposed  
3 transferee, or relating to the character, financial ability or  
4 business experience of a proposed transferee, or for statements  
5 made or evidence submitted at any hearing or trial conducted in  
6 connection therewith.

7 Section 12. Motor vehicle franchisor.

8 For the purposes of this act: "motor vehicle franchisor"  
9 means a franchisor engaged in the business of manufacturing or  
10 assembling motor vehicles, who will, under normal business  
11 conditions during the year, manufacture or assembly at least ten  
12 new motor vehicles, and his motor vehicle distributors; "motor  
13 vehicle franchisee" means every franchisee actively engaged in  
14 the business of buying, selling or exchanging motor vehicles or  
15 motorcycles and who has an established place of business.

16 Section 13. Third party actions.

17 (a) Indemnity.--Motor vehicle franchisor shall indemnify and  
18 hold harmless their motor vehicles franchisees from any and all  
19 claims, losses, damages and expenses, including attorney fees,  
20 resulting from or related to complaints, claims or suits against  
21 the motor vehicle franchisee by third parties concerning defects  
22 or alleged defects in any of the merchandise or service systems,  
23 procedures or methods of the motor vehicle franchisors which are  
24 sold or performed by the motor vehicle franchisee.

25 (b) Nonliability to franchisee.--With regards to services  
26 rendered by a motor vehicle franchisee, the motor vehicle  
27 franchisor shall not be liable to the motor vehicle franchisee  
28 by virtue of this section for any claims, losses, expenses or  
29 damages arising as a result of negligence or willful malfeasance  
30 by the motor vehicle franchisee. The motor vehicle franchisor

1 shall be liable for damages arising from or in connection with  
2 any services rendered by a motor vehicle franchisee in  
3 accordance with any service system, procedure or method  
4 suggested or required by the motor vehicle franchisor.

5 (c) Defects or transit damage.--The foregoing provisions for  
6 indemnification shall specifically include, but without limiting  
7 the generality of the foregoing, any defects or damages to  
8 merchandise occurring in transit from the motor vehicle  
9 franchisor to the motor vehicle franchisee in situations in  
10 which the motor vehicle franchisor designated the carrier or  
11 method of transportation.

12 Section 14. Reimbursement for services in satisfaction of  
13 warranty.

14 A motor vehicle franchisor shall reimburse motor vehicle  
15 franchisees who perform services or provide parts in  
16 satisfaction of a warranty issued by the motor vehicle  
17 franchisor:

18 (1) The motor vehicle franchisor shall reimburse each  
19 motor vehicle franchisee for such services as are rendered  
20 and for such parts as are supplied, in an amount equal to the  
21 prevailing retail price charged by such motor vehicle for  
22 such services and parts in circumstances where such services  
23 are rendered or such parts supplied other than pursuant to  
24 warranty: Provided, That such motor vehicle franchisee's  
25 prevailing retail price is not unreasonable when compared  
26 with that of the holders of motor vehicle franchises from the  
27 same motor vehicle franchisor for identical merchandise or  
28 services in the geographic area in which the motor vehicle  
29 franchisee is engaged in business.

30 (2) The motor vehicle franchisor shall not by agreement,



1 by restrictions upon reimbursement, or otherwise, restrict  
2 the nature and extent of services to be rendered or parts to  
3 be provided so that such restriction prevents services in a  
4 good and workmanlike manner and providing parts which are  
5 required in accordance with generally accepted standards.  
6 Such a restriction shall constitute a prohibited practice  
7 hereunder.

8 Section 15. Penalty.

9 A violation of this act shall be a misdemeanor of the third  
10 degree.

11 Section 16. Effective date.

12 This act shall take effect in 60 days.