

By Senator Latvala

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1                   A bill to be entitled  
2           An act relating to franchises; creating s. 686.101,  
3           F.S.; providing a short title; creating s. 686.102,  
4           F.S.; providing legislative findings and intent;  
5           providing construction; creating s. 686.103, F.S.;  
6           defining terms; creating s. 686.104, F.S.; prohibiting  
7           a franchisor from terminating a franchise under  
8           certain circumstances; providing limitations on what  
9           constitutes good cause; providing that immediate  
10          notice of termination of a franchise for specified  
11          reasons under certain circumstances is reasonable;  
12          creating s. 686.105, F.S.; providing that a franchise  
13          is deemed to be continuing under certain  
14          circumstances; prohibiting a franchisor from refusing  
15          to renew a franchise unless specified criteria have  
16          been met; authorizing a franchisor to require a  
17          franchisee to meet specified requirements; authorizing  
18          a franchisee to file an action or to request  
19          arbitration under certain circumstances; requiring a  
20          franchise and other related agreements to continue in  
21          effect under certain circumstances; creating s.  
22          686.106, F.S.; prohibiting a franchisor from denying  
23          certain persons the opportunity to participate in the  
24          ownership of a franchise for a specified period after  
25          the death of the franchisee or the person controlling  
26          a majority interest; requiring specified persons to  
27          meet certain requirements or to sell, transfer, or  
28          assign the franchise after the death of the franchisee  
29          or the person controlling a majority interest;  
30          authorizing a franchisee to sell, transfer, or assign  
31          a franchise, specified assets, or an interest in the  
32          franchisee under certain circumstances; prohibiting a

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33 franchisor from preventing a franchisee from selling  
34 or transferring a franchise, assets of the franchise  
35 business, or an interest in the franchisee under  
36 certain circumstances; requiring the franchisor to  
37 make available and to apply specified requirements for  
38 the approval of new or renewing franchises, under  
39 certain circumstances; requiring a franchisee to  
40 notify a franchisor of certain intent; providing  
41 notice requirements; providing application  
42 requirements for the proposed purchaser, transferee,  
43 or assignee of a franchise, certain assets, or an  
44 interest in the franchisee, under certain  
45 circumstances; requiring a franchisor to notify a  
46 franchisee of the approval status of a proposed sale,  
47 assignment, or transfer within a specified timeframe;  
48 providing notice requirements; requiring that a  
49 franchisor's decision in a claim against a franchisor  
50 be a question of fact; providing that a summary  
51 judgment is not prohibited under certain  
52 circumstances; providing that certain provisions do  
53 not prohibit a franchisor from exercising a  
54 contractual right of first refusal under certain  
55 circumstances; creating s. 686.107, F.S.; providing  
56 that a franchisee must have the opportunity to  
57 monetize certain equity from the franchise business  
58 under certain circumstances; requiring the repurchase  
59 by a franchisor of certain inventory, supplies,  
60 equipment, good will, and furnishings upon  
61 termination, nonrenewal, or expiration of a franchise

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62 subject to certain requirements; providing exceptions;  
63 authorizing a franchisor to offset money owed to a  
64 franchisee for the repurchase of certain items with  
65 money owed by the franchisee to the franchisor;  
66 providing applicability; providing that a franchisor  
67 is civilly liable for failing or refusing to  
68 repurchase certain inventory, supplies, equipment,  
69 good will, and furnishings under specified  
70 requirements upon termination, nonrenewal, or  
71 expiration of a franchise; creating s. 686.108, F.S.;

72 requiring the repurchase by a franchisor of certain  
73 inventory, supplies, equipment, good will, and  
74 furnishings upon the death or incapacity of a  
75 franchisee or person controlling a majority interest  
76 under certain circumstances; providing an exception;  
77 providing applicability; creating s. 686.109, F.S.;

78 requiring a franchisor to indemnify a franchisee under  
79 certain circumstances; creating s. 686.111, F.S.;

80 requiring a franchisor or subfranchisor and a  
81 franchisee to deal with each other in good faith;  
82 providing that it is a violation of certain provisions  
83 for a franchisor to act arbitrarily, capriciously, in  
84 bad faith, or unconscionably under specified  
85 circumstances; providing that it is a violation of  
86 certain provisions for a franchisor and subfranchisor  
87 to restrict or inhibit specified rights of  
88 franchisees; prohibiting a franchisor from  
89 intentionally misrepresenting or failing to disclose  
90 specified information; providing that certain

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91 violations constitute a misdemeanor of the second  
92 degree; providing penalties; providing that a person  
93 may be awarded certain damages, attorney fees, and  
94 other costs under specified circumstances; providing  
95 that certain actions are deemed unfair and deceptive;  
96 authorizing the Department of Legal Affairs by itself  
97 or jointly with the Department of Agriculture and  
98 Consumer Services to sue a franchisor on behalf of  
99 certain persons for specified violations; creating s.  
100 686.112, F.S.; providing that a contract or franchise  
101 agreement is void and unenforceable under certain  
102 circumstances; creating s. 686.113, F.S.; providing  
103 notice requirements for the termination, renewal, or  
104 expiration of a franchise; creating s. 686.114, F.S.;  
105 providing that provisions in a franchise agreement  
106 which restrict venue or choice of law are void under  
107 certain circumstances; creating s. 686.115, F.S.;  
108 providing that the rights of a franchisor and  
109 franchisee to agree to binding arbitration are not  
110 limited under certain circumstances; creating s.  
111 686.116, F.S.; providing remedies for a franchisee or  
112 an aggrieved or injured person under certain  
113 circumstances; authorizing punitive damages under  
114 certain circumstances; authorizing the Department of  
115 Legal Affairs or the state attorney to bring an action  
116 for injunctive relief or other civil relief under  
117 certain circumstances; clarifying that specified  
118 remedies are in addition to existing remedies;  
119 creating s. 686.117, F.S.; providing applicability;

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120 amending s. 817.416, F.S.; providing applicability;  
121 providing a directive to the Division of Law Revision  
122 and Information; providing an effective date.  
123

124 Be It Enacted by the Legislature of the State of Florida:  
125

126 Section 1. Section 686.101, Florida Statutes, is created to  
127 read:

128 686.101 Short title.—Sections 686.101-686.117 may be cited  
129 as the "Protect Florida Small Business Act."

130 Section 2. Section 686.102, Florida Statutes, is created to  
131 read:

132 686.102 Legislative findings and intent; construction of  
133 the act.—

134 (1) The Legislature finds that the welfare of franchisees,  
135 including the success and failure of their franchise businesses,  
136 greatly affects the general economy of this state, the public  
137 interest, and the public welfare. The intent of the Legislature  
138 is to promote fair business relations between franchisees and  
139 franchisors and to protect franchisees against unfair treatment  
140 by franchisors. Therefore, it is necessary to regulate the  
141 conduct of franchisors and their representatives in order to  
142 prevent fraud, unfair business practices, unfair methods of  
143 competition, impositions, and other abuses upon franchisees in  
144 this state.

145 (2) In order to promote the intention and policies  
146 announced in this section, the provisions of this act shall be  
147 liberally construed.

148 Section 3. Section 686.103, Florida Statutes, is created to

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149 read:

150 686.103 Definitions.—As used in this act, the term:

151 (1) "Affiliate" means a person controlling, controlled by,  
152 or under common control with another person or, in the case of a  
153 business entity, such entity's officer, director, or other  
154 person in control of the activities of such entity.

155 (2) "Area franchise" means a contract or agreement,  
156 expressed or implied, written or oral, regardless of whether the  
157 contract or agreement is designated as a franchise, permit,  
158 license, resolution, contract, certificate, agreement, or  
159 otherwise, between a franchisor and another person through which  
160 that person is granted the right, for consideration in whole or  
161 in part for such right:

162 (a) To sell or negotiate the sale of a franchise in the  
163 name or on behalf of the franchisor; or

164 (b) To become an area developer and develop a franchise for  
165 the benefit of that person or that person's affiliates.

166 (3) "Area franchisee" means the owner of an area franchise.

167 (4) (a) "Franchise" or "franchise agreement" means a  
168 contract or agreement, expressed or implied, written or oral,  
169 regardless of whether the contract or agreement is designated as  
170 a franchise, permit, license, resolution, contract, certificate,  
171 agreement, or otherwise, for a definite or indefinite time,  
172 between two or more persons by which:

173 1. A franchisee is granted the right to engage in the  
174 business of offering, selling, or distributing goods or services  
175 under a marketing plan or system prescribed in substantial part  
176 by a franchisor;

177 2. The operation of the franchise business pursuant to that

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178 marketing plan or system is substantially associated with the  
179 franchisor's trademark, service mark, trade name, logotype,  
180 advertising, or other commercial symbol designating the  
181 franchisor or its affiliate; and

182 3. The franchisee is required to pay, directly or  
183 indirectly, a franchise fee.

184 (b) The term "franchise" or "franchise agreement" includes  
185 an area franchise.

186 (c) The term "franchise" or "franchise agreement" does not  
187 include any of the following:

188 1. A franchise governed by the Agricultural Equipment  
189 Manufacturers and Dealers Act.

190 2. Any activity governed by ss. 686.501-686.506.

191 3. A franchise governed by the Outdoor Power Equipment  
192 Manufacturers, Distributors, Wholesalers, and Servicing Dealers  
193 Act.

194 4. A motor vehicle franchise or agreement governed by ss.  
195 320.60-320.70.

196 5. A business relation between a beer distributor and a  
197 manufacturer governed by s. 563.022.

198 6. A professional sports franchise as described in s.  
199 288.11625(2)(c).

200 (5) "Franchise business" means a business unit that is  
201 owned or operated by a franchisee and that is subject to a  
202 marketing plan or system prescribed by the franchise.

203 (6) "Franchise fee" means a fee or charge greater than \$100  
204 annually which a franchisee is required to pay or agrees to pay,  
205 directly or indirectly, to the franchisor for the right to enter  
206 into or continue a franchise, including, but not limited to, a

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207 payment for goods or services. However, any one of the following  
208 is not considered a franchise fee:

209 (a) A fee or charge that a franchisee pays or agrees to pay  
210 the franchisor for goods at a bona fide wholesale price if no  
211 obligation is imposed upon the franchisee to purchase or pay for  
212 a quantity of goods in excess of that which a reasonable person  
213 normally would purchase by way of a starting inventory or supply  
214 or to maintain an ongoing inventory or supply.

215 (b) A payment of a reasonable service charge to the issuer  
216 of a credit card by an establishment accepting or honoring the  
217 credit card.

218 (c) A payment to a trading stamp company by a person who  
219 issues trading stamps in connection with the retail sale of  
220 goods or services.

221 (d) A payment, not exceeding a sum of \$1,000 annually, for  
222 the purchase or rental of fixtures, goods, or other tangible  
223 property necessary for the operation of the franchise business,  
224 if the purchase or rental price does not exceed the cost of  
225 acquiring the fixtures, goods, or other tangible property in the  
226 open market.

227 (7) "Franchisee" means a person to whom a franchise is  
228 offered or granted.

229 (8) "Franchisor" means a person who grants a franchise to a  
230 franchisee.

231 (9) "Fraud" means and includes actual fraud or constructive  
232 fraud as normally defined, in addition to the following:

233 (a) A misrepresentation in any manner, whether  
234 intentionally false or arising from negligence, of a material  
235 fact.



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236 (b) A promise or representation not made honestly and in  
237 good faith.

238 (c) An intentional failure to disclose a material fact.

239 (d) Any artifice employed to deceive another.

240 (10) "Goods" means any article or thing without limitation,  
241 or any part of such article or thing, including any article or  
242 thing used or consumed by a franchisee in rendering a service  
243 established, organized, directed, or approved by a franchisor.

244 (11) "Person" means a natural person, corporation, limited  
245 liability company, association, partnership, trust, or other  
246 business entity and, in the case of a business entity, includes  
247 any other affiliate of such entity.

248 (12) "Sale" means and includes the issuance, transfer,  
249 agreement for transfer, exchange, pledge, hypothecation, or  
250 mortgage in any manner or form, whether by transfer in trust or  
251 otherwise, of any goods or interest therein, or of any franchise  
252 related thereto, for a consideration, and any option,  
253 subscription or other contract, or solicitation, looking to a  
254 sale, or offer or attempt to sell in any form, whether in  
255 written or oral form, for a consideration.

256 Section 4. Section 686.104, Florida Statutes, is created to  
257 read:

258 686.104 Termination.—

259 (1) Except as otherwise provided in this act, a franchisor  
260 may not terminate a franchise except for good cause. The  
261 termination of a franchise without good cause constitutes an  
262 unfair termination, regardless of the specified time period of  
263 the franchise. Except as provided in subsection (2), good cause  
264 is limited to the failure of the franchisee to substantially

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265 comply with the reasonable and material requirements imposed  
266 upon the franchisee by the franchise agreement after being given  
267 notice at least 90 days in advance of the termination and a  
268 reasonable opportunity, which may not be less than 60 days after  
269 the date of the notice of noncompliance, to cure the failure. If  
270 the franchisee cures the failure within the time given to cure,  
271 the termination notice is void.

272 (2) A franchisor may give to a franchisee an immediate  
273 notice of termination without an opportunity to cure if, during  
274 the period in which the franchise is in effect, any one of the  
275 following events, relevant to the franchise, occurs:

276 (a) The franchisee has been the subject of an order for  
277 relief in bankruptcy, has been judicially determined to be  
278 insolvent, has had all or a substantial part of its assets  
279 assigned to or for the benefit of any creditor, or has admitted  
280 its inability to pay its debts as they come due.

281 (b) The franchisee abandons, by failing to operate, the  
282 franchise business for 10 consecutive days during which, under  
283 the terms of the franchise, the franchisee is required to  
284 operate the franchise business, or for any shorter period after  
285 which it is not unreasonable under the facts and circumstances  
286 for the franchisor to conclude that the franchisee does not  
287 intend to continue to operate the franchise business, unless  
288 such failure to operate is due to an act of God; a work  
289 stoppage; a strike or labor difficulty; a fire, flood,  
290 hurricane, or sinkhole; or other causes beyond the franchisee's  
291 control.

292 (c) The franchisor and franchisee agree in writing to  
293 terminate the franchise.

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294 (d) The franchisee fails, for a period of 10 days after a  
295 notice of noncompliance, to comply with any federal, state, or  
296 local law or regulation, including, but not limited to, any  
297 health, safety, building, and labor law or regulation applicable  
298 to the operation of the franchise.

299 (e) A final judgment against the franchisee remains  
300 unsatisfied for 30 days, and the franchise business or franchise  
301 business premises are seized, taken over, or foreclosed by a  
302 government official exercising his or her duties, or seized,  
303 taken over, or foreclosed by a creditor, lienholder, or lessor,  
304 unless a supersedeas or other appeal bond has been filed.

305 (f) A levy of execution has been made on the license  
306 granted by the franchise or on a property used in the franchise  
307 business and is not discharged within 5 days after such levy.

308 (g) The franchisee is convicted of a felony or any other  
309 criminal misconduct that significantly, directly, and adversely  
310 affects the operation of the franchise business.

311 (h) The franchisor makes a reasonable determination that  
312 continued operation of the franchise business by the franchisee  
313 will result in imminent and substantial danger to public health  
314 or safety.

315 Section 5. Section 686.105, Florida Statutes, is created to  
316 read:

317 686.105 Nonrenewal.—

318 (1) A franchise agreement is deemed to be continuing unless  
319 the franchisor has complied with subsection (2).

320 (2) A franchisor may not refuse to renew a franchise unless  
321 all of the following criteria have been met:

322 (a) The franchisor provides written notice to the

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323 franchisee of the franchisor's intent not to renew at least 180  
324 days before the expiration date or before an extension of the  
325 franchise agreement.

326 (b) Any of the following circumstances exist:

327 1. Termination of the franchise agreement is authorized  
328 under s. 686.104.

329 2. The franchisor and franchisee agree in writing not to  
330 renew the franchise.

331 3. The franchisor completely withdraws from directly or  
332 indirectly distributing its products or services in the  
333 geographic market served by the franchisee.

334 (c) The franchisor agrees not to enforce against the  
335 franchisee, upon nonrenewal of the franchise, any covenant not  
336 to compete with the franchisor or with other franchisees of the  
337 franchisor.

338 (d) The nonrenewal of the franchise is not for the purpose  
339 of converting the franchise business to operation by an employee  
340 or agent of the franchisor for the franchisor's own account.

341 (e) If the franchisor determines to sell, transfer, or  
342 assign its interest in the marketing premises occupied by a  
343 franchisee whose franchise agreement is not renewed, either:

344 1. The franchisor, during the 180-day period after giving  
345 notice to the franchisee of its determination to sell, transfer,  
346 or assign its interest, provides the franchisee a right of first  
347 refusal of at least 30 days' duration of a bona fide offer made  
348 by another to purchase the franchisor's interest in the  
349 premises; or

350 2. The franchisor or the purchaser, transferee, or assignee  
351 of the franchisor's interest in good faith offers the franchisee

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352 a franchise on substantially the same terms and conditions being  
353 offered by such purchaser, transferee, or assignee to other  
354 franchisees at the time the franchisor determines to sell,  
355 transfer, or assign its interests.

356 (3) As a condition of renewal, a franchise agreement may  
357 require that the franchisee meet the reasonable qualifications  
358 for new franchisees existing at the time of renewal and that the  
359 franchisee execute a new franchise agreement incorporating terms  
360 and fees existing for new franchises at the time of renewal.

361 (4) A franchisee who receives a notice of intent not to  
362 renew a franchise agreement may file an action or request  
363 arbitration within the 180-day notice period to seek a  
364 determination of whether the nonrenewal is proper under ss.  
365 686.104-686.106. The franchise agreement and all other related  
366 agreements between the franchisor and the franchisee must  
367 continue in effect until a preliminary determination of the  
368 issues raised in the action or arbitration is made by the court  
369 or arbitrator.

370 Section 6. Section 686.106, Florida Statutes, is created to  
371 read:

372 686.106 Sales, transfers, and assignments.-

373 (1) A franchisor may not deny the surviving spouse, heir,  
374 or estate of a deceased franchisee or of the person controlling  
375 a majority interest in the franchisee the opportunity to  
376 participate in the ownership of the franchise or franchise  
377 business under a valid franchise agreement for at least 180 days  
378 after the death of the franchisee or person controlling a  
379 majority interest in the franchisee. During that time, the  
380 surviving spouse, heir, or estate of the deceased must either

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381 meet all of the existing reasonable qualifications for a  
382 purchaser of a franchise or must sell, transfer, or assign the  
383 franchise to a person who meets the franchisor's existing  
384 reasonable qualifications for new franchisees. The rights  
385 granted to the surviving spouse, heir, or estate under this  
386 section are granted subject to the surviving spouse, heir, or  
387 estate of the deceased maintaining all standards and obligations  
388 of the franchise.

389 (2) (a) A franchisee may sell, transfer, or assign a  
390 franchise, all or substantially all of the assets of the  
391 franchise business, or an interest in the franchisee with the  
392 prior written consent of the franchisor. The franchisor's  
393 consent may not be withheld unless the purchaser, transferee, or  
394 assignee does not meet the qualifications for new or renewing  
395 franchisees described in paragraph (b) or the franchisee and the  
396 purchaser, transferee, or assignee fail to comply with other  
397 reasonable transfer conditions specified in the franchise  
398 agreement.

399 (b) A franchisor may not prevent a franchisee from selling,  
400 transferring, or assigning a franchise, all or substantially all  
401 of the assets of the franchise business, or an interest in the  
402 franchisee to another person if the other person meets the  
403 franchisor's reasonable qualifications for the approval of new  
404 or renewing franchises in effect at the time the franchisor  
405 receives notice of the proposed sale, transfer, or assignment.  
406 The franchisor shall make this list of qualifications available  
407 to the franchisee, as provided in subsection (3), and the  
408 franchisor shall consistently apply such qualifications to  
409 similarly situated franchisees operating within the franchise

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410 brand.

411 (3) (a) To invoke the protections under this section, a  
412 franchisee must, before the sale, transfer, or assignment of a  
413 franchise, all or substantially all of the assets of the  
414 franchise business, or an interest in the franchisee, notify the  
415 franchisor of the franchisee's intent to sell, transfer, or  
416 assign. The notice must be in writing; must be delivered to the  
417 franchisor by certified or registered mail, return receipt  
418 requested, or by business courier; and must include all of the  
419 following:

420 1. The name and address of the proposed purchaser,  
421 transferee, or assignee.

422 2. A copy of all agreements related to the sale, transfer,  
423 or assignment of the franchise, the assets of the franchise  
424 business, or the interest in the franchisee.

425 3. The proposed purchaser's, transferee's, or assignee's  
426 application for approval to become the successor franchisee.

427 (b) The proposed purchaser's, transferee's, or assignee's  
428 application must include all forms, financial disclosures, and  
429 related information generally used by the franchisor in  
430 reviewing prospective new franchisees, if those forms are  
431 readily made available to the existing franchisee. If the forms  
432 are not readily available, the franchisee shall request, and the  
433 franchisor shall deliver, the forms to the franchisee by  
434 certified or registered mail, return receipt requested, or by  
435 business courier, within 15 calendar days after the franchisee's  
436 request. As soon as practicable after receipt of the proposed  
437 purchaser's, transferee's, or assignee's application, the  
438 franchisor shall notify the franchisee and the proposed

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439 purchaser, transferee, or assignee in writing of any additional  
440 information or documentation necessary to complete the sale,  
441 transfer, or assignment application. If the franchisor's list of  
442 qualifications for the approval of new or renewing franchisees  
443 in effect at the time the franchisor receives notice of the  
444 proposed sale, transfer, or assignment is not readily available  
445 to the franchisee when the franchisee notifies the franchisor of  
446 the franchisee's intent to sell, transfer, or assign the  
447 franchise, all or substantially all of the assets of the  
448 franchise business, or an interest in the franchisee, the  
449 franchisor must communicate the list of qualifications to the  
450 franchisee within 15 calendar days after receipt of the proposed  
451 purchaser's, transferee's, or assignee's application.

452 (c)1. The franchisor shall, within 60 days after receipt of  
453 all of the necessary information and documentation required  
454 under paragraph (a), or as specified by written agreement  
455 between the franchisor and the franchisee, notify the franchisee  
456 of the approval or disapproval of the proposed sale, transfer,  
457 or assignment. The notice must be in writing and be delivered to  
458 the franchisee by certified or registered mail, return receipt  
459 requested, or by business courier. If the proposed sale,  
460 transfer, or assignment is disapproved, the franchisor must  
461 include in the notice of disapproval a statement specifying the  
462 reasons for the disapproval. A proposed sale, transfer, or  
463 assignment is deemed approved unless disapproved by the  
464 franchisor in the manner provided in this subparagraph.

465 2. In a claim against the franchisor for disapproval of a  
466 sale, transfer, or assignment, the reasonableness of the  
467 franchisor's decision is a question of fact requiring



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468 consideration of all existing circumstances. This paragraph does  
469 not prohibit summary judgment when the reasonableness of the  
470 disapproval of a sale, transfer, or assignment can be decided as  
471 a matter of law.

472 (4) This section does not prohibit a franchisor from  
473 exercising the contractual right of first refusal to purchase a  
474 franchise, all or substantially all of the assets of a franchise  
475 business, or an interest in a franchisee after receipt of a bona  
476 fide offer from a proposed seller to purchase the franchise,  
477 assets, or interest. A franchisor exercising the contractual  
478 right of first refusal shall offer the seller payment at least  
479 equal to the value offered in the bona fide offer.

480 Section 7. Section 686.107, Florida Statutes, is created to  
481 read:

482 686.107 Repurchase of inventory upon termination,  
483 nonrenewal, or expiration of a franchise agreement.-

484 (1) (a) A franchisee must have the opportunity to monetize  
485 any equity that the franchisee may have developed in the  
486 franchise business before the termination of the franchise  
487 agreement without transferring the equity in the franchisor's  
488 intellectual property to the franchisee. Therefore, upon  
489 termination, nonrenewal, or expiration of a franchise agreement,  
490 a franchisor shall repurchase at fair market value inventory,  
491 supplies, goods, fixtures, equipment, and furnishings of the  
492 franchise business. The franchisor shall also purchase the  
493 goodwill of the franchise business.

494 (b) This section does not require the franchisor to  
495 purchase any personalized items, inventory, supplies, goods,  
496 fixtures, equipment, or furnishings that are not reasonably

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497 required to conduct the operation of the franchise business in  
498 accordance with the franchise agreement or any ancillary or  
499 collateral agreement or whose title and possession are not, or  
500 cannot be, lawfully granted by the franchisee to the franchisor  
501 upon the franchisor's payment to the franchisee for the  
502 inventory, supplies, goods, fixtures, equipment, or furnishings  
503 at the time the franchisee ceases to operate the franchise  
504 business.

505 (c) Upon the termination, nonrenewal, or expiration of a  
506 franchise, a franchisor may offset money owed to the franchisee  
507 under this section with any amount owed by the franchisee to the  
508 franchisor.

509 (d) This section does not apply if the franchisee declines  
510 a bona fide offer of renewal from the franchisor which is  
511 consistent with s. 686.105 and the franchise agreement between  
512 the franchisor and franchisee.

513 (e) This section does not apply if the franchisor does not  
514 prevent the franchisee from retaining control and continuing to  
515 operate the franchise business.

516 (f) This section does not apply if the franchisor and  
517 franchisee agree in writing to terminate or not renew the  
518 franchise or to allow the franchise to expire.

519 (g) This section does not apply to inventory, supplies,  
520 goods, fixtures, equipment, or furnishings sold by the  
521 franchisee between the date of the notice of termination,  
522 nonrenewal, or expiration and the date the franchisee ceases to  
523 operate the franchise business pursuant to a termination,  
524 nonrenewal, or expiration.

525 (2) If a franchisor fails or refuses to repurchase any

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526 inventory, supplies, goods, fixtures, equipment, good will, or  
527 furnishings required to be repurchased under subsection (1)  
528 within 60 days after the termination, nonrenewal, or expiration  
529 of a franchise, the franchisor is civilly liable for the entire  
530 value of the inventory, supplies, goods, fixtures, equipment,  
531 good will, and furnishings required to be repurchased under  
532 subsection (1), plus the franchisee's reasonable attorney fees,  
533 court costs, and interest on the inventory, supplies, goods,  
534 fixtures, equipment, good will, and furnishings computed at the  
535 legal interest rate provided in s. 687.01 from the 61st day  
536 after termination.

537 Section 8. Section 686.108, Florida Statutes, is created to  
538 read:

539 686.108 Repurchase of inventory upon death or incapacity of  
540 a franchisee.-

541 (1) In the event of the death or incapacity of a franchisee  
542 or person controlling a majority interest in the franchisee, the  
543 franchisor must, at the option of the heir at law, if the  
544 franchisee died intestate, the devisee under the terms of the  
545 deceased franchisee's last will and testament, if the franchisee  
546 died testate, or the person holding a power of attorney or a  
547 guardian in the event of incapacity, repurchase the inventory,  
548 supplies, goods, fixtures, equipment, good will, and furnishings  
549 under s. 686.107. The repurchase provisions of s. 686.107 are  
550 made expressly applicable to the repurchase under this section.  
551 The heir, devisee, transferee, person holding a power of  
552 attorney, or guardian has 1 year after the date of the death or  
553 incapacity, as applicable, of the franchisee or person  
554 controlling a majority interest to exercise his or her option to

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555 sell the inventory, supplies, goods, fixtures, equipment, good  
556 will, and furnishings of the franchise business. However, this  
557 section does not require the repurchase of inventory, supplies,  
558 goods, fixtures, equipment, good will, and furnishings in the  
559 event of death if the heir, devisee, or transferee and the  
560 franchisor enter into a new franchise agreement to operate the  
561 franchise business.

562 (2) This section is subject to the portion of the franchise  
563 agreement pertaining to death or incapacity of a franchisee or  
564 person controlling a majority interest to the extent that the  
565 franchise agreement is not inconsistent with this section.

566 Section 9. Section 686.109, Florida Statutes, is created to  
567 read:

568 686.109 Indemnification of franchisee.—A franchisor shall  
569 fully indemnify and hold harmless its franchisee against any  
570 loss, including, but not limited to, court costs and reasonable  
571 attorney fees or damages arising out of a complaint, claim, or  
572 lawsuit involving, but not limited to, strict liability,  
573 negligence, misrepresentation, express or implied breach of  
574 warranty, or rescission of a sale if the complaint, claim, or  
575 lawsuit relates to a part or an accessory; to the manufacture,  
576 assembly, or design of goods or services covered under this act;  
577 or to other functions of the franchisor which are beyond the  
578 control of the franchisee.

579 Section 10. Section 686.111, Florida Statutes, is created  
580 to read:

581 686.111 Rights and prohibitions.—The following rights and  
582 prohibitions govern the relations between a franchisor or  
583 subfranchisor and its franchisee:

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584 (1) The parties shall deal with each other in good faith.

585 (2) A franchisor or subfranchisor may not engage in any  
586 action that is arbitrary, capricious, in bad faith, or  
587 unconscionable and, in terms of law or equity, causes damage to  
588 a franchisee or to the public.

589 (3) A person may not, during the selling or establishing of  
590 a franchise, intentionally misrepresent or fail to disclose:

591 (a) The prospects or chances for success of the proposed or  
592 existing franchise;

593 (b) The known required total investment for such franchise;  
594 or

595 (c) Any effort to sell or establish more franchises than is  
596 reasonable to expect the market or market area for the  
597 particular franchise to sustain.

598 (4) It is prohibited and deemed an unfair and deceptive act  
599 or practice, or an unfair method of competition, and a violation  
600 of this section for a franchisor or subfranchisor, or an  
601 officer, agent, employee, or other representative thereof, to  
602 directly or indirectly:

603 (a) Coerce, compel, or attempt to coerce or compel a  
604 franchisee to enter into an agreement, written or oral,  
605 supplementary to an existing franchise with the franchisor, or  
606 the officer, agent, or other representative thereof; or commit  
607 any other act prejudicial to the franchisee by threatening to  
608 cancel the franchise or any contractual agreement existing  
609 between the franchisor and the franchisee. However, notice in  
610 good faith to the franchisee of the franchisee's violation or  
611 breach of a term or provision of the franchise or contractual  
612 agreement does not constitute a violation of this section if

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613 such notice is in writing, is mailed by registered or certified  
614 mail to the franchisee at its current business address, and  
615 contains the specific facts as to the franchisee's violation or  
616 breach of the franchise or contractual agreement;

617 (b) Terminate or fail to renew a franchise agreement in  
618 violation of this act;

619 (c) Allow a franchise agreement to expire without complying  
620 with this act;

621 (d) Fail to repurchase inventory, supplies, goods,  
622 fixtures, equipment, good will, and furnishings in violation of  
623 s. 686.107 or s. 686.108;

624 (e) Prevent a sale, transfer, or assignment of a franchise  
625 in violation of s. 686.106;

626 (f) Violate the Florida Deceptive and Unfair Trade  
627 Practices Act in connection with its business as a franchisor,  
628 or an officer, agent, or other representative thereof;

629 (g) Resort to or use false or misleading advertisement in  
630 connection with its business as a franchisor, or an officer,  
631 agent, or other representative thereof;

632 (h) Willfully discriminate, directly or indirectly, in  
633 price, programs, or terms of sale offered to a franchisee or  
634 give to a franchisee an economic, business, or competitive  
635 advantage not offered to another franchisee of the same or  
636 similar franchise;

637 (i) Impose, directly or indirectly, an unreasonable  
638 restriction on a franchisee relative to transfer, renewal,  
639 termination, location, or site control;

640 (j) Without prior written disclosure to a franchisee,  
641 obtain money, goods, services, anything of value, or any other

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642 benefit from another person with whom the franchisee does  
643 business or employs on account of or in relation to the  
644 transactions between the franchisee, the franchisor, and the  
645 other person;

646 (k) Require a franchisee to assent to a release,  
647 assignment, novation, waiver, or estoppel that would relieve any  
648 person from liability imposed under this act, including, but not  
649 limited to, through the use of a disclaimer or checklist  
650 designed to avoid a protection under this act;

651 (l) Require a franchisee to assent to the use of a choice  
652 of law provision by selecting a different state's law to govern  
653 the relationship of the parties;

654 (m) Restrict or inhibit, directly or indirectly, the right  
655 of a franchisee to join a trade association or the free  
656 association for any lawful purpose among franchisees;

657 (n) Compete with a franchisee within the franchisee's  
658 exclusive territory or grant a franchise to another person for a  
659 franchise business to be located within the exclusive territory;

660 (o) Impose upon a franchisee, by contract or rule, written  
661 or oral, any unreasonable standard of conduct; or

662 (p) Require a franchisee to waive its rights to a jury  
663 trial or waive any procedure or remedy otherwise available in  
664 this state, however, a binding arbitration clause is enforceable  
665 if it complies with s. 686.115.

666 (5) A person who executes or carries out a scheme, plan, or  
667 organization that violates any provision of this section, if  
668 knowledge or intent is proved, commits a misdemeanor of the  
669 second degree, punishable as provided in ss. 775.082 and  
670 775.083.

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671 (6) A person who shows in a civil court of law a violation  
672 of this section shall receive a judgment for all money invested  
673 in the franchise and all of the franchise business's losses and  
674 other damages incurred while running the franchise business.  
675 Upon such a showing, the court shall award reasonable attorney  
676 fees to any person holding an interest in a franchise or who has  
677 been injured by a violation of this act, and who is bringing the  
678 action against the person who violates this section and  
679 reasonable costs incurred in bringing such action.

680 (7) The Department of Legal Affairs, by itself or jointly  
681 with the Department of Agriculture and Consumer Services, may  
682 sue on behalf of the people of this state for injunctive relief  
683 against any franchisor plan or activity that is in violation of  
684 this act.

685 Section 11. Section 686.112, Florida Statutes, is created  
686 to read:

687 686.112 Unenforceable franchise agreement or other  
688 contract.—A franchise agreement or other contract, a part  
689 thereof or practice thereunder, which is in violation of any  
690 provision of this act is deemed against public policy and is  
691 void and unenforceable.

692 Section 12. Section 686.113, Florida Statutes, is created  
693 to read:

694 686.113 Notice requirements.—A notice of termination,  
695 nonrenewal, or expiration required under ss. 686.104-686.106  
696 must:

697 (1) Be in writing;

698 (2) Be posted by registered or certified mail, return  
699 receipt requested, or be personally delivered to the franchisee;



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700 and

701 (3) Contain a statement of intent to terminate, not renew,  
702 or allow the franchise to expire; the reasons for the  
703 termination, nonrenewal, or expiration; and the effective date  
704 of the termination, nonrenewal, or expiration.

705 Section 13. Section 686.114, Florida Statutes, is created  
706 to read:

707 686.114 Venue; choice of law.—A provision in a franchise  
708 agreement restricting the venue to a forum outside of this state  
709 or selecting the law of any other state or jurisdiction other  
710 than Florida is void with respect to any claim arising under or  
711 relating to a franchise agreement involving a franchisee that  
712 was, at the time of signing, a resident of this state or a  
713 business entity established in this state or involving a  
714 franchise business either operating or planning to be operated  
715 in this state.

716 Section 14. Section 686.115, Florida Statutes, is created  
717 to read:

718 686.115 Arbitration.—This act does not limit the right of a  
719 franchisor and franchisee to agree, before or after a dispute  
720 arises, to binding arbitration to settle a claim under this act  
721 if:

722 (1) The standards applied and the remedies available in the  
723 arbitration are not less than the requirements specified in this  
724 act; and

725 (2) Each arbitrator employed is chosen from a list of  
726 impartial arbitrators provided by the American Arbitration  
727 Association or is any other impartial person.

728 Section 15. Section 686.116, Florida Statutes, is created

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729 to read:

730 686.116 Remedies.-

731 (1) If a franchisor terminates, fails to renew, or allows a  
732 franchise to expire in violation of this act, the franchisee is  
733 entitled to receive from the franchisor the fair market value of  
734 the franchise business and franchise assets in addition to any  
735 other damage caused by the violation.

736 (2) In addition to any relief specified in this act, any  
737 person aggrieved or injured in his or her business or property  
738 by a violation of this act may bring an action in the  
739 appropriate state or federal court of this state and shall  
740 recover the damages sustained and the costs of such action,  
741 including reasonable attorney fees.

742 (3) Without regard and in addition to any other remedy or  
743 relief to which a person is entitled, any person aggrieved by a  
744 violation of this act may bring an action to obtain a  
745 declaratory judgment stating that an action or a practice  
746 violates these sections and may obtain injunctive relief  
747 enjoining a franchisor that has violated, is violating, or is  
748 otherwise likely to violate these sections from committing the  
749 violation.

750 (4) In an action for money damages, if a judge or jury  
751 finds that the franchisor has acted maliciously, the judge or  
752 jury may award punitive damages as authorized by state law.

753 (5) The Department of Legal Affairs or the state attorney  
754 may bring an action for injunctive relief or other appropriate  
755 civil relief for a violation of this act if the violation occurs  
756 in the judicial circuit of the department or the state attorney,  
757 respectively.

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758       (6) The remedies provided in this section are in addition  
759 to any other remedies provided by law or in equity, including,  
760 but not limited to, the Florida Deceptive and Unfair Trade  
761 Practices Act.

762       Section 16. Section 686.117, Florida Statutes, is created  
763 to read:

764       686.117 Applicability.-

765       (1) Any person or franchisor who engages directly or  
766 indirectly in an agreement or contract within this state in  
767 connection with a franchise; or any franchise whose franchisee  
768 is a resident of this state or is domiciled in this state or  
769 whose franchise business is, has been, or is intended to be  
770 operated in this state, is subject to this act and to the  
771 jurisdiction of the courts of this state, in accordance with the  
772 laws of this state, for violations of this act.

773       (2) This act applies to:

774       (a) Any written or oral agreement between a franchisor and  
775 a franchisee, including, but not limited to, a franchise  
776 offering; a franchise agreement; a sale of goods, services, and  
777 advertising; a lease or mortgage of real or personal property; a  
778 promise to pay; a security interest; a pledge; an insurance  
779 contract; an advertising contract; a construction or  
780 installation contract; a servicing contract; and any other  
781 agreement in which the franchisor has a direct or indirect  
782 interest;

783       (b) Any franchise entered into, renewed, amended, or  
784 revised after the effective date of this act;

785       (c) Any existing franchise of an indefinite duration which  
786 may be terminated by the franchisee or franchisor without cause;

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787 and

788 (d) Any existing franchise entered into before the  
789 effective date of this act, only to the extent that this act  
790 does not significantly impair the existing contract rights  
791 between the parties.

792 (3) This act is supplemental to, and does not preempt,  
793 local ordinances dealing with prohibited or unlawful conduct in  
794 the manufacturing, distribution, wholesaling, advertising, or  
795 sale of goods if such ordinances are not inconsistent with this  
796 act.

797 (4) This act supersedes s. 817.416 with respect to any  
798 franchisee that signs a franchise agreement on or after the  
799 effective date of this act. Section 817.416 continues to govern  
800 the claims of all franchisees that signed franchise agreements  
801 or were victims of fraud perpetrated before the effective date  
802 of this act, as well as distributors and any other entities,  
803 past, present, or future, which would be covered by s. 817.416,  
804 but not by this act.

805 Section 17. Subsection (5) is added to section 817.416,  
806 Florida Statutes, to read:

807 817.416 Franchises and distributorships;  
808 misrepresentations.—

809 (5) APPLICABILITY.—This section does not apply to a  
810 franchise entered into, renewed, amended, or revised on or after  
811 the effective date of this act. A franchise entered into,  
812 renewed, amended, or revised on or after the effective date of  
813 this act is subject to ss. 686.101-686.117.

814 Section 18. The Division of Law Revision and Information is  
815 directed to replace the phrase "the effective date of this act"

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816 wherever it occurs in this act with the date the act becomes a  
817 law.

818 Section 19. This act shall take effect upon becoming a law.