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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1620 Session of  
2013

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INTRODUCED BY P. DALEY, KOTIK, THOMAS, COHEN, KORTZ, MAHONEY AND  
M. DALEY, JULY 24, 2013

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JULY 24, 2013

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AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania  
2 Consolidated Statutes, requiring responsible franchise  
3 practices; conferring powers and duties upon the Department  
4 of Community and Economic Development; and establishing  
5 remedies and penalties.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Part I of Title 12 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a chapter to read:

10 CHAPTER 9

11 RESPONSIBLE FRANCHISE PRACTICES

12 Sec.

13 901. Scope of chapter.

14 902. Declaration of policy.

15 903. Definitions.

16 904. Administration.

17 905. Good faith and fair dealing.

18 906. Limited fiduciary duty.

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- 1 908. Sourcing of goods and services.
- 2 909. Encroachment.
- 3 910. Covenants not to compete.
- 4 911. Illegal provisions.
- 5 912. Trade associations and discrimination.
- 6 913. Unlawful sales practices.
- 7 914. System changes and renewal agreements.
- 8 915. Renewal.
- 9 916. Termination.
- 10 917. Transfer of franchise system.
- 11 918. Remedies.
- 12 919. Penalties.

13 § 901. Scope of chapter.

14 This chapter relates to responsible franchise practices.

15 § 902. Declaration of policy.

16 The General Assembly finds and declares as follows:

17 (1) It is the purpose of this chapter to promote the  
18 vitality of franchising through fair, equitable and  
19 responsible franchise practices.

20 (2) Franchising has matured into a significant and  
21 competitive mode of product and service distribution in our  
22 national economy.

23 (3) Traditional common law doctrines have not evolved  
24 sufficiently to protect franchisees adequately from  
25 fraudulent or unfair practices in the sale and operation of  
26 franchised businesses, and significant contractual and  
27 procedural restrictions have denied franchisees viable legal  
28 recourse to protect their interests in the businesses.

29 (4) For all parties to a franchise, having disputes  
30 settled under inconsistent and widely varying state laws

1 provides little predictability and consistency in how the  
2 issue will be treated by the courts. A uniform set of  
3 standards would ensure that all franchisees and franchisors  
4 be treated the same on a particular issue, regardless of the  
5 state of operation.

6 (5) A franchisor that simply acts in compliance with the  
7 terms of its franchise contract with a franchisee is not  
8 necessarily dealing with its franchisee fairly and in good  
9 faith.

10 (6) The doctrine of unconscionability applies to a  
11 franchise contract.

12 (7) The franchisor and the franchisee have the need to:

13 (i) make reasonable changes to the franchise system  
14 to incorporate new and mutually advantageous products,  
15 technologies and methods of doing business; and

16 (ii) accommodate and meet competitive challenges in  
17 the business in which franchisees operate.

18 (8) This chapter shall be liberally construed to carry  
19 out this section.

20 § 903. Definitions.

21 The following words and phrases when used in this chapter  
22 shall have the meanings given to them in this section unless the  
23 context clearly indicates otherwise:

24 "Advertisement." Any oral or written communication  
25 disseminated in any medium or otherwise to the public in  
26 connection with an offer or sale of a franchise.

27 "Affiliate." A person controlling, controlled by or under  
28 common control with another person. The term includes an officer  
29 and director of the person controlling, controlled by or under  
30 common control with another person.

1 "Area franchise." A franchise between a franchisor and a  
2 franchisee under which the franchisee is granted the right to  
3 operate more than one unit within a specified geographic area.

4 "Franchise." As follows:

5 (1) Any of the following:

6 (i) An express or implied agreement between a  
7 franchisor and a franchisee, whether oral or written, by  
8 which:

9 (A) the franchisee is granted the right to  
10 offer, sell or distribute goods or services under a  
11 marketing plan or system prescribed or suggested in  
12 substantial part by the franchisor;

13 (B) the operation of the business is allowed to  
14 be substantially associated with a trademark, service  
15 mark, trade name, logotype, advertising or other  
16 commercial symbol, owned, controlled or used by the  
17 franchisor; and

18 (C) the franchisee is required to pay a  
19 franchise fee.

20 (ii) An area franchise.

21 (iii) A subfranchise.

22 (iv) A commercial relationship entered into in  
23 reasonable reliance on representations of the criteria of  
24 subparagraph (i).

25 (v) A commercial relationship explicitly referred to  
26 as a franchise by the seller.

27 (2) The term does not include a nonprofit organization  
28 operated on a cooperative basis by and for independent  
29 retailers which wholesales goods and services primarily to  
30 its member retailers and to which all of the following apply:

1           (i) As to control and ownership:

2           (A) each member has substantially the same  
3           control and ownership of the cooperative; or

4           (B) control and ownership is apportioned by  
5           number of retail units owned.

6           (ii) Only persons that will avail themselves of the  
7           services furnished by the organization may be members.

8           (iii) Transfer of ownership is prohibited or  
9           limited.

10          (iv) Capital investment receives no return.

11          (v) Benefits to members are made on the basis of  
12          patronage of the cooperative or on the basis of retail  
13          units owned.

14          (vi) A member is not personally liable for  
15          obligations of the organization in the absence of a  
16          direct undertaking or authorization by the member.

17          (vii) Services of the organization are furnished  
18          primarily for the use of a member.

19          (viii) No part of the receipts, income or profit of  
20          the organization is paid to a for-profit entity. This  
21          subparagraph does not include an arms-length payment for  
22          necessary goods and services.

23          (ix) A member is not required to purchase goods or  
24          services from a designated for-profit entity other than  
25          an approved supplier selected on an objective basis.

26          (3) The term does not include a contract regulated by  
27          the Petroleum Marketing Practices Act (Public Law 95-297, 15  
28          U.S.C. § 2801 et seq.).

29          "Franchise broker." A person that sells, offers for sale or  
30          arranges for the sale of a franchise. The term does not include

1 a franchisor or franchisee or an employee of a franchisor or  
2 franchisee.

3 "Franchisee." A person that is granted a franchise. The term  
4 includes:

5 (1) a subfranchisor with regard to the relationship with  
6 the franchisor; and

7 (2) a subfranchisee with regard to the relationship with  
8 the subfranchisor.

9 "Franchise contract." A contract to implement a franchise.  
10 The term includes a document ancillary to the contract or to the  
11 franchise.

12 "Franchise fee." Any payment or agreement to pay for the  
13 right to enter into or continue in a franchise. The term  
14 includes payment for goods or services. The term does not  
15 include any of the following:

16 (1) The purchase or agreement to purchase goods at a  
17 good faith wholesale price if the purchaser has no obligation  
18 to:

19 (i) purchase more goods than a reasonable person  
20 normally would purchase as a starting inventory; or

21 (ii) maintain an ongoing inventory or supply.

22 (2) Payment of a reasonable service charge to the issuer  
23 of a credit card by an establishment accepting or honoring  
24 the credit card.

25 (3) Payment to a trading stamp company by a person  
26 issuing trading stamps in connection with a retail sale.

27 "Franchisor." A person that grants a franchise. The term  
28 includes:

29 (1) an affiliate of the person; and

30 (2) unless stated otherwise in this chapter, a

1 subfranchisor with regard to its relationship with the  
2 franchisee.

3 "Good faith." Honesty in fact and the observance of  
4 reasonable commercial standards of fair dealing.

5 "Marketing plan." A plan or system concerning a material  
6 aspect of conducting business. Indicia of a marketing plan  
7 include:

8 (1) Price specification, special pricing system or  
9 discount plans.

10 (2) Sales or display equipment or merchandising devices.

11 (3) Sales techniques.

12 (4) Promotional or advertising materials or cooperative  
13 advertising.

14 (5) Training regarding the promotion, operation or  
15 management of the business.

16 (6) Operational, managerial, technical or financial  
17 guidelines or assistance.

18 "Material." The term includes:

19 (1) Anything of a nature which a reasonable individual  
20 would consider important in making a decision relating to,  
21 entering into, remaining in or abandoning a franchise  
22 relationship.

23 (2) Anything of a nature which has actual or potential  
24 significant financial impact on a franchisor, franchisee or  
25 prospective franchisee.

26 "Reasonable current qualifications." Qualifications based  
27 upon legitimate business reasons.

28 "Sale of a franchise." As follows:

29 (1) The term includes a material modification of an  
30 existing franchise, whether upon renewal or otherwise.

1           (2) The term does not include the sale of an existing  
2 franchise by the franchisee if all of the following apply:

3           (i) Neither the franchisor nor an owner or affiliate  
4 has an ownership interest in the selling party.

5           (ii) The sale is not effected by or through the  
6 franchisor or its affiliate. A sale is not effected  
7 through a franchisor if the franchisor's involvement in  
8 it is limited to approving the prospective new  
9 franchisee.

10          (3) The term does not include the renewal or extension  
11 of an existing franchise if there is no interruption in the  
12 operation of the franchised business by the franchisee.

13 "Skill and knowledge." A special level of expertise which:

14          (1) is beyond the minimum level of skill or knowledge  
15 required of a person engaging in a service or business and  
16 involves a special level of expertise;

17          (2) is the result of:

18           (i) acquired learning and aptitude developed by  
19 special training and experience in the business to be  
20 conducted under the franchise; or

21           (ii) extensive use and experience with the products  
22 or services or the operating system of the franchise;

23          (3) is the result of experience in organizing a  
24 franchise system and in providing training, assistance and  
25 services to franchisees; and

26          (4) would be expected by a prospective franchisee in  
27 reasonable reliance on the written and oral commitments and  
28 representations of the franchisor.

29 "Subfranchise." An agreement under which a franchisor gives  
30 a person the right to sell or negotiate the sale of franchises.



1 A contract or agreement which is a franchise does not become a  
2 subfranchise merely because, under the terms of the contract or  
3 agreement, a person is granted the right to receive compensation  
4 for referrals to a franchisor or subfranchisor or to receive  
5 compensation for acting as a sales representative on their  
6 behalf.

7 "Subfranchisee." A person that is granted a franchise by a  
8 subfranchisor.

9 "Subfranchisor." A person that is granted a subfranchise by  
10 a franchisor.

11 § 904. Administration.

12 (a) Powers.--The department has the following powers to  
13 carry out this chapter:

14 (1) Promulgate regulations.

15 (2) Prescribe forms.

16 (3) Initiate prosecutions under section 919(b) (relating  
17 to penalties).

18 (b) Duties.--The department has the following duties to  
19 carry out this chapter:

20 (1) Inform the public of the provisions of this chapter.

21 (2) Investigate complaints and possible violations of  
22 this chapter and of regulations under this chapter.

23 § 905. Good faith and fair dealing.

24 (a) Good faith.--

25 (1) A franchise contract imposes on each party a duty to  
26 act in good faith in its performance and enforcement. The  
27 duty under this paragraph:

28 (i) prohibits each party to the franchise from  
29 taking action which will have the effect of destroying or  
30 injuring the right of the other party to receive the full

1 expected benefits of the contract; and

2 (ii) obligates each party to the franchise to do  
3 everything required under the contract to accomplish the  
4 purpose.

5 (2) An action which prevents enjoyment, even if not  
6 prohibited by the express terms of the contract, is  
7 prohibited.

8 (b) Fair dealing.--Franchisors and franchisees shall act in  
9 a fair equitable manner toward each other so as to guarantee  
10 freedom from wrongfulness, arbitrariness, coercion and duress by  
11 the other party.

12 § 906. Limited fiduciary duty.

13 Without regard to whether a fiduciary duty is imposed  
14 generally on the franchisor by virtue of a franchise  
15 relationship, the franchisor owes a fiduciary duty to its  
16 franchisee and is obligated to exercise the highest standard of  
17 care in all of the following:

18 (1) Performing bookkeeping, collections, payroll or  
19 accounting services on behalf of the franchisee. The  
20 franchisor may only use the information concerning the  
21 franchised business gained while performing the services  
22 under this paragraph for good faith and legitimate business  
23 purposes. As used in this paragraph, the term "good faith and  
24 legitimate business purposes" does not include competition  
25 with the franchisee.

26 (2) Administering or supervising the administration of  
27 an advertising or promotional fund to which the franchisee is  
28 required to make contributions. The following apply to a fund  
29 under this paragraph:

30 (i) The fund:

1                   (A) shall be kept in a segregated account; and

2                   (B) shall not be subject to the claim of a  
3                   creditor of the franchisor.

4                   (ii) The franchisor shall, at the franchisor's own  
5                   expense, provide an independent certified audit of the  
6                   fund within 60 days following the close of the  
7                   franchisor's fiscal year. The audit shall fully disclose  
8                   all fees, expenses or other payments from the fund to the  
9                   franchisor.

10 § 907. Due care.

11                   (a) Duty.--A franchisor is required to exercise the skill  
12                   and knowledge normally possessed by franchisors in good standing  
13                   in the same or similar types of business. A franchisor may  
14                   satisfy this subsection by:

15                   (1) contracting for, hiring or purchasing skill and  
16                   knowledge;

17                   (2) either:

18                   (i) incorporating skill and knowledge in the  
19                   franchise; or

20                   (ii) communicating or providing skill and knowledge  
21                   to the franchisee.

22                   (b) System standards.--Franchisors and franchisees are  
23                   mutually required to conform to clearly established systemwide  
24                   standards of operation which are not arbitrarily promulgated or  
25                   enforced.

26                   (c) Training and assistance.--Franchisors shall provide each  
27                   franchisee with initial training and continuing commercial or  
28                   technical assistance during the entire life of the agreement.

29 § 908. Sourcing of goods and services.

30                   (a) Scope of section.--This section shall apply to all goods

1 and services which the franchisee is required to obtain, whether  
2 or not they are related to a trademark, trade name, trade  
3 secret, or patent owned, used or controlled by or licensed to  
4 the franchisor or its affiliate.

5 (b) Franchisee's choice.--

6 (1) Except as set forth in paragraph (2), a franchisor  
7 may not prohibit or restrict a franchisee from obtaining  
8 equipment, supplies, goods or services used in the  
9 establishment or operation of the franchised business from  
10 sources of the franchisee's choosing.

11 (2) Goods and services may be required to meet  
12 established uniform systemwide quality standards which are  
13 not arbitrarily promulgated or enforced by the franchisor.

14 (c) Lists.--Without limiting the rights of the franchisee  
15 under subsection (b), a franchisor shall provide and  
16 continuously update an inclusive list of suggested vendors for  
17 all goods and services related to the business.

18 (d) Benefits of purchasing.--

19 (1) A franchisor shall fully disclose whether or not it  
20 receives any rebate, commission or other benefit as a result  
21 of the purchase of goods or services by a franchisee.

22 (2) A rebate, commission or benefit under paragraph (1)  
23 shall be remitted to the franchisee that made the purchase.

24 (e) Reports.--The franchisor shall at least annually, using  
25 generally accepted accounting principles, report the amount of  
26 revenue and profit it earns from the sale of goods and services  
27 to the franchisee and to subfranchisees.

28 § 909. Encroachment.

29 (a) Notice.--A franchisor, prior to granting or licensing a  
30 new franchise or opening a new channel of distribution, shall

1 provide at least 120 days' written notice to all franchisees in  
2 proximity of the proposed new franchise or channel of  
3 distribution.

4 (b) Proximity.--A franchisor may not grant or license a new  
5 franchise or otherwise establish a new channel of distribution  
6 for goods or services if paragraphs (1) and (2) apply:

7 (1) The goods or services are similar to those:

8 (i) offered by a franchisee; and

9 (ii) identified by the same trade name, trademark,  
10 logotype, commercial system or advertising:

11 (A) used by a franchise; or

12 (B) owned or managed by an entity related to the  
13 franchisor.

14 (2) The new franchise or new channel of distribution is  
15 in unreasonable proximity to an outlet or business owned or  
16 licensed to the franchisee so that the effect or probable  
17 effect of operating the new franchise or new channel of  
18 distribution is to cause a reduction in gross sales of the  
19 existing franchise.

20 (c) Liability.--Except as set forth in subsection (d), the  
21 following apply:

22 (1) A franchisor that violates subsection (b) is liable  
23 to the injured franchisee for damages, including:

24 (i) loss of income resulting from the reduction in  
25 gross sales; and

26 (ii) reduction in value of the franchised business.

27 (2) A franchisee may obtain injunctive relief against a  
28 franchisor that violates subsection (b).

29 (3) A franchisee that prevails in an action under this  
30 subsection shall be awarded:

1           (i) costs of litigation; and

2           (ii) reasonable attorney fees.

3           (d) Exception.--Subsection (c) shall not apply if paragraphs  
4 (1) and (2) apply:

5           (1) The reduction in gross sales for an existing  
6 franchise caused by the operation of the new franchise or new  
7 channel of distribution, based on a comparison to annual  
8 gross sales from the same franchise location during the 12-  
9 month period immediately preceding the initial operation of  
10 the new franchise or new channel of distribution, is  
11 determined to have been less than 10% during the first 12  
12 months following the initial operation of the new franchise  
13 or new channel of distribution.

14           (2) The franchisor agrees to compensate the existing  
15 franchisee for market sales diverted by the opening of the  
16 new franchise or new channel of distribution in accordance  
17 with the following:

18           (i) The franchisor and franchisee must agree upon  
19 the proper amount of the compensation to be provided.

20           (ii) If there is no agreement under subparagraph  
21 (i), the following apply:

22           (A) Each party shall appoint an independent  
23 appraiser to determine the amount of the  
24 compensation.

25           (B) If the independent appraisers are unable to  
26 agree on the appropriate amount of the compensation,  
27 the independent appraisers shall appoint a third  
28 appraiser to determine the level of compensation.

29           (C) The determination of the independent  
30 appraiser shall be final and binding.

1 (e) Affirmative defense.--It is an affirmative defense to an  
2 action under subsection (c) that the decline in sales of an  
3 existing franchise occurred from a reason other than the  
4 operation in unreasonable proximity to the existing franchise of  
5 the new franchise or new channel of distribution.

6 § 910. Covenants not to compete.

7 (a) Prohibition.--Except as set forth in this section, a  
8 franchisor may not enter into a contract to prohibit the  
9 franchisee from engaging in business at a location after the  
10 franchise expires or is terminated under section 916 (relating  
11 to termination).

12 (b) Purchase of assets.--

13 (1) This section shall not apply if the franchisor, at  
14 least 30 days before the effective date of expiration or  
15 termination under section 916 pursuant to a written offer,  
16 purchases the assets of the franchised business for its fair  
17 market value as a going concern. The fair market value of the  
18 business must be:

19 (i) ascertained by an impartial appraiser acceptable  
20 to both parties; and

21 (ii) determined as if the business were to be resold  
22 or renewed for a period of years equal to the contract  
23 term being offered by the franchisor for new or renewed  
24 franchisees.

25 (2) Forgiveness of debt shall not be considered a  
26 purchase of assets.

27 (3) Upon nonrenewal under section 915(b)(2)(iii)  
28 (relating to renewal), a covenant under this paragraph shall  
29 be void.

30 (c) Protection of business of franchisor.--This section

1 shall not apply to a franchise contract obligating a franchisee,  
2 after expiration, termination or transfer of a franchise, to do  
3 any of the following:

4 (1) Cease using any trademark, trade secret or other  
5 intellectual property owned by the franchisor or its  
6 affiliate.

7 (2) Alter the appearance of the premises and the manner  
8 of operation of the franchise business to avoid any  
9 likelihood of confusion as to the affiliation of the business  
10 with its former franchisor.

11 § 911. Illegal provisions.

12 (a) Waiver.--A provision in a franchise contract which  
13 requires a franchisee or prospective franchisee to waive a  
14 provision of this chapter or a regulation under this chapter is  
15 void.

16 (b) Judicial forum.--A provision in a franchise contract  
17 which obligates a franchisee to mediate, arbitrate or litigate a  
18 claim or controversy under the franchise contract in a forum  
19 outside the state in which the franchised business is located  
20 shall be deemed to be in violation of this chapter and void.

21 § 912. Trade associations and discrimination.

22 (a) Trade associations.--

23 (1) A franchisor may not do any of the following:

24 (i) Prohibit a franchisee from joining a trade  
25 association.

26 (ii) Retaliate or discriminate against a franchisee  
27 for joining a trade association.

28 (2) A trade association of franchisees shall not be  
29 subject to any applicable antitrust law of this Commonwealth.

30 (3) Neither the existence of nor membership in a trade



1 association of franchisees shall be construed to be in  
2 restraint of trade.

3 (b) Discrimination.--

4 (1) Except as set forth in paragraph (2), a franchisor  
5 may not discriminate against a franchisee or prospective  
6 franchisee in the sale, renewal or approval of the transfer  
7 of a franchise on the basis of race, color, religion, gender,  
8 sexual preference, age, national origin or disability.

9 (2) This subsection does not prohibit a franchisor from  
10 making franchise opportunities available to individuals  
11 lacking the capital, training, business experience or other  
12 qualifications ordinarily required of its franchisees,  
13 pursuant to a good faith affirmative action or similar  
14 program adopted by the franchisor.

15 § 913. Unlawful sales practices.

16 (a) Franchises.--A person may not do any of the following in  
17 connection with the advertising, offering, sale or other  
18 promotion of a franchise:

19 (1) Employ any device, scheme or artifice to defraud.

20 (2) Engage in any act, practice, course of business or  
21 pattern of conduct which operates or is intended to operate  
22 as a fraud or deceit on a person.

23 (3) Make an untrue statement of a material fact, omit a  
24 material fact or omit a material fact necessary in order to  
25 make the statement, in light of the circumstances under which  
26 it is made, not misleading.

27 (4) Represent or imply that a franchise has been  
28 endorsed, recommended or approved by a Federal or state  
29 agency or officer.

30 (b) Disclosure.--A person may not do any of the following in

1 connection with a presale franchise disclosure document required  
2 by statute or regulation:

3 (1) Make an untrue statement of material fact, omit a  
4 material fact or omit a material fact necessary to make a  
5 statement, in light of the circumstances under which it is  
6 made, not misleading.

7 (2) Fail to furnish a prospective franchisee with all  
8 information required to be disclosed at the time and in the  
9 manner required by regulation of the department or other  
10 applicable law.

11 (3) Make a representation to a prospective franchisee  
12 which is inconsistent with or contradicts information  
13 provided to the prospective franchisee in a required  
14 disclosure.

15 (4) Make a statement of fact which has the purpose or  
16 effect of misrepresenting:

17 (i) the profitability of a franchise opportunity;

18 (ii) the rate of success of franchises or  
19 franchisees associated with a franchise opportunity;

20 (iii) the expected market value of the franchise;

21 (iv) the equity the franchisee will accumulate in  
22 the franchised business; or

23 (v) the rate of success of franchises generally.

24 (c) Burden of proof.--In a criminal action under this  
25 section it shall be an affirmative defense that:

26 (1) the franchisor's statement or representation is  
27 accurate and not misleading; and

28 (2) there was a reasonable basis in fact for the  
29 franchisor's statement or representation at the time it was  
30 made.

1 § 914. System changes and renewal agreements.

2 A franchise contract may not be changed to do any of the  
3 following:

4 (1) Change the franchisee fee, royalty rates or other  
5 material financial terms of the franchise relationship.

6 (2) Operate to materially change, abrogate or deprive  
7 the franchisee of the intended benefits of the franchise  
8 contract.

9 § 915. Renewal.

10 (a) Fee.--A franchisor may impose a reasonable renewal  
11 franchise fee be paid to reimburse the franchisor for the  
12 franchisor's reasonable and actual expenses directly  
13 attributable to the renewal.

14 (b) Authority.--

15 (1) A franchisor must provide the franchisee at least  
16 six months' written notice of intent not to renew.

17 (2) Except as set forth in subsection (c), a franchisor  
18 may refuse to renew a franchise contract if one of the  
19 following applies:

20 (i) Termination of the franchise contract would be  
21 permitted under section 916 (relating to termination).

22 (ii) The franchisor and the franchisee agree in  
23 writing not to renew the franchise contract.

24 (iii) The franchisor:

25 (A) withdraws from distributing its products or  
26 services through franchises in the geographic market  
27 served by the franchisee; or

28 (B) ceases to offer new franchises.

29 (c) Prohibitions.--

30 (1) A franchisor may not impose as a condition of

1 renewal that the franchisee cease to own or operate an  
2 independent business not within an unreasonable proximity of  
3 the franchised business.

4 (2) A franchisor may not refuse to renew a franchise  
5 contract for the purpose of converting the franchisee's  
6 business to operation by the franchisor or by an affiliate of  
7 the franchisor.

8 § 916. Termination.

9 (a) Good cause.--A franchisor may not terminate a franchise  
10 contract or substantially change the competitive circumstances  
11 of the franchise prior to the expiration of its terms except for  
12 good cause which is:

13 (1) based on a legitimate and good faith business  
14 reason; and

15 (2) not arbitrary or capricious under practices of and  
16 the requirements imposed by the franchisor in other similar  
17 circumstances.

18 (b) Obligations.--Prior to termination under this section, a  
19 franchisor must do all of the following:

20 (1) Specify the precise basis for the proposed  
21 termination. This paragraph includes a description of the  
22 material terms of the franchise contract with which the  
23 franchisee is not in compliance.

24 (2) Except as set forth in subsection (c), provide to  
25 the franchisee a reasonable period of time, of at least 30  
26 days but not more than 90 days, to:

27 (i) cure nonfinancial events of default; and

28 (ii) pay money due to the franchisor or its  
29 affiliate.

30 (3) Offer to purchase from the franchisee the

1 franchisee's current inventory meeting the franchisor's then-  
2 present standards and held for sale in accordance with the  
3 franchise contract at the higher of:

4 (i) wholesale value; or

5 (ii) the franchisee's cost.

6 (c) Cure and settlement exceptions.--A franchisor need not  
7 provide an opportunity under subsection (b)(2) if any of the  
8 following apply:

9 (1) The franchisee:

10 (i) is declared bankrupt;

11 (ii) is judicially determined to be insolvent; or

12 (iii) makes an assignment for the benefit of

13 creditors.

14 (2) The franchisee voluntarily abandons the franchised  
15 business for five consecutive days. This paragraph shall not  
16 apply if the abandonment is the result of a natural disaster  
17 or other cause beyond the control of the franchisee.

18 (3) After reasonable notice, the franchisee operates the  
19 franchised business in a manner which imminently endangers  
20 the public health and safety.

21 (4) The franchisee:

22 (i) is sentenced for a felony which materially and  
23 adversely affects the operation, maintenance and goodwill  
24 of the franchised business in the relevant market; and

25 (ii) within 90 days of sentencing, does not transfer  
26 the franchise under section 917 (relating to transfer of  
27 franchise system).

28 § 917. Transfer of franchise system.

29 (a) Authority.--

30 (1) A franchisor may transfer its interest in a

1 franchise to an entity with the business experience and  
2 financial means to perform all of the franchisor's  
3 obligations in the ordinary course of business.

4 (2) A franchisor must provide at least 30 days' advance  
5 notice to every franchisee of the intent to transfer its  
6 interest in the franchise. The notice must be accompanied by  
7 a complete description of the business and financial terms of  
8 the proposed transfer or transfers.

9 (b) Assignment.--If a franchisor transfers all or a major  
10 portion of the franchise system to another person, all of the  
11 following apply:

12 (1) The transferee shall:

13 (i) assume the franchisor's obligations to the  
14 franchisee; or

15 (ii) renegotiate in good faith the franchisor's  
16 obligations to the franchisee.

17 (2) The transferee shall be liable for the obligations  
18 of the franchisor.

19 (c) Noncompliance.--If a transferee fails to comply with  
20 subsection (b)(1), the franchisee may rescind the franchise  
21 contract if the franchisee:

22 (1) ceases from using the franchisor's trademarks,  
23 logotypes and other express identification; and

24 (2) alters the appearance of the premises and the manner  
25 of operation of the franchised business to avoid the  
26 likelihood of confusion as to the affiliation of the business  
27 with the franchise system.

28 § 918. Remedies.

29 (a) Relief.--A person that violates this chapter or a  
30 regulation of the department shall be liable to the franchisee

1 for legal and equitable relief.

2 (b) Costs and attorney fees.--A court may award costs and  
3 attorney fees to a prevailing franchisee under subsection (a).

4 § 919. Penalties.

5 (a) Civil.--A person that violates this chapter or a  
6 regulation under this chapter shall be liable to the injured  
7 person for a civil penalty of at least \$2,500 for each  
8 violation, which shall be assessed and recovered in a civil  
9 action brought in any court of competent jurisdiction.

10 (b) Criminal.--A person that intentionally violates this  
11 chapter commits a misdemeanor of the first degree.

12 Section 2. The addition of 12 Pa.C.S. Ch. 9 shall apply to  
13 franchise contracts initiated or renewed on or after the  
14 effective date of this section.

15 Section 3. This act shall take effect in 60 days.