

LEGISLATIVE BILL 202

Approved by the Governor April 5, 1978

Introduced by Simon, 31

AN ACT relating to franchise arrangements; to provide regulation of franchise arrangements as prescribed.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds and declares that distribution and sales through franchise arrangements in the state vitally affect the general economy of the state, the public interest and public welfare. It is therefore necessary in the public interest to define the relationship and responsibilities of franchisors and franchisees in connection with franchise arrangements.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Franchise shall mean a written arrangement for a definite or indefinite period, in which a person grants to another person for a franchise fee a license to use a trade name, trade mark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of beer or nonalcoholic beverages at wholesale, retail, or otherwise. Franchise shall not include any arrangement, agreement, or contract, either expressed or implied, for the sale, distribution, or marketing of petroleum products at wholesale, retail, or otherwise;

(2) Person shall mean every natural person, firm, copartnership, association, or corporation;

(3) Franchisor shall mean a person who grants a franchise to another person;

(4) Franchisee shall mean a person to whom a franchise is offered or granted;

(5) Franchise fee shall include any payment made by the franchisee to the franchisor other than a payment for the purchase of goods or services, for a surety bond, for a surety deposit or for security for payment of debts

due;

(6) Sale, transfer, or assignment shall mean any disposition of a franchise or any interest therein, with or without consideration, to include but not limited to bequest, inheritance, gift, exchange, lease, or license;

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

(8) Good cause for terminating, canceling, or failure to renew a franchise shall be limited to failure by the franchisee to substantially comply with the requirements imposed upon him by the franchise.

Sec. 3. This act applies only to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of Nebraska, (2) when gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded thirty-five thousand dollars for the twelve months next preceding the institution of suit pursuant to this act, and (3) when more than twenty per cent of the franchisee's gross sales are intended to be or are derived from such franchise.

Sec. 4. It shall be a violation of this act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (1) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (2) when the alleged grounds are (a) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (b) insolvency, the institution of bankruptcy or receivership proceedings, (c) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (d) falsification of records or reports required by the franchisor, (e) the existence of an

imminent danger to public health or safety, or (f) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of this act for a franchisor to terminate, cancel or fail to renew a franchise without good cause. This section shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.

Sec. 5. It shall be a violation of this act for any franchisee to transfer, assign or sell a franchise or interest therein to another person unless the franchisee shall first notify the franchisor of such intention by written notice by certified mail setting forth in the notice of intent the prospective transferee's name, address, statement of financial qualification and business experience during the previous five years. The franchisor shall within sixty days after receipt of such notice either approve in writing to the franchisee such sale to the proposed transferee, or by written notice advise the franchisee of the unacceptability of the proposed transferee setting forth material reasons relating to the character, financial ability or business experience of the proposed transferee. If the franchisor does not reply within the specified sixty days, his approval is deemed granted. No such transfer, assignment or sale shall be valid unless the transferee agrees in writing to comply with all the requirements of the franchise then in effect.

Sec. 6. It shall be a violation of this act for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices:

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

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

(3) To require or prohibit any change in management of any franchisee unless such requirement or prohibition of change shall be for good cause, which cause shall be stated in writing by the franchisor;

(4) To restrict the sale of any equity or debenture issue or the transfer of any securities of any franchisee or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to employees, personnel of the franchisee, or heirs of the principal owner, as long as basic financial requirements of the franchisor are complied with and any such sale, transfer, or issuance does not have the effect of accomplishing a sale of the franchise;

(5) To impose unreasonable standards of performance upon a franchisee; and

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

Sec. 7. This act shall not apply to franchises which are subject to any other statute of this state.

Sec. 8. It shall be a defense for a franchisor, to any action brought under this act by a franchisee, if it be shown that such franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto.

Sec. 9. Any franchisee may bring an action against its franchisor for violation of this act to recover damages sustained by reason of any violation of this act and, when appropriate, shall be entitled to injunctive relief. The prevailing party in any action brought pursuant to this section shall be entitled to the costs of the action including but not limited to reasonable attorney's fees.

Sec. 10. This act shall be known and may be cited as the Franchise Practices Act.