

By Mr. Backman, a petition (accompanied by bill, Senate, No. 67) of Jack H. Backman for legislation to prohibit franchise terminations except for good cause. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT TO PROHIBIT FRANCHISE TERMINATION EXCEPT FOR GOOD CAUSE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The Massachusetts General Laws are hereby amended by
2 adding after Chapter 93F the following new chapter: —

3 **CHAPTER 93G.**

4 *Section 1. Franchise: Definitions*

5 As used in sections 1 through 4, inclusive:

6 (a) The term "franchise" means any continuing commer-
7 cial relationship created by any arrangement or arrangements
8 whereby:

9 (1) (i) (A) a person, hereinafter "franchisee", offers, sells,
10 or distributes to any person other than a "franchisor" as
11 hereinafter defined, goods, commodities, or services which
12 are:

13 [1] Identified by a trademark, service mark, trade name,
14 advertising or other commercial symbol designating another
15 person, hereinafter "franchisor"; or

16 [2] Indirectly or directly required or advised to meet the
17 quality standards prescribed by another person, hereinafter
18 "franchisor", where the franchisee operates under a name us-
19 ing the trademark, service mark, trade name, advertising or
20 other commercial symbol designating the franchisor; and

21 (B) [1] The franchisor exerts or has authority to exert a
22 significant degree of control over the franchisee's method of
23 operation, including but not limited to, the franchisee's
24 business, organization, promotional activities, management,
25 marketing plan or business affairs; or

26 [2] The franchisor gives significant assistance to the fran-
27 chisee in the latter's method of operation, including, but not
28 limited to, the franchisee's business organization, manage-
29 ment, marketing plan, promotional activities, or business af-
30 fairs; provided, however, that assistance in the franchisee's
31 promotional activities shall not, in the absence of assistance
32 in other areas of the franchisee's method of operation, con-
33 stitute significant assistance; or

34 (ii) (A) A person, hereinafter "franchisee," offers, sells,
35 or distributes to any person other than a "franchisor", as
36 hereinafter defined, goods, commodities, or service which are:

37 [1] Supplied by another person, hereinafter "franchisor," or

38 [2] Supplied by a third person (e.g., a supplier) with whom
39 the franchisee is directly or indirectly required to do business
40 by another person, hereinafter "franchisor"; or

41 [3] Supplied by a third person (e.g., a supplier) with whom
42 the franchisee is directly or indirectly advised to do business
43 by another person, hereinafter "franchisor" where such third
44 person is affiliated with the franchisor; and

45 (B) The franchisor:

46 [1] Secures for the franchisee retail outlets or accounts for
47 said goods, commodities, or services; or

48 [2] Secures for the franchisee locations or sites for vending
49 machines, rack displays, or any other product sales display
50 used by the franchisee in the offering, sale, or distribution of
51 said goods, commodities, or services; or

52 [3] Provides to the franchisee the services of a person able
53 to secure the retail outlets, accounts, sites or locations refer-
54 red to in paragraph (a) (1) (ii) (B) (1) and [2] above; and

55 (2) The franchisee is required as a condition of obtaining
56 or commencing the franchisee operation to make a payment
57 or a commitment to pay to the franchisor, or to a person af-
58 filiated with the franchisor.

59 (3) Exemptions. The provisions of this part shall not apply
60 to a franchise:

61 (i) Which is a "fractional franchise"; or

62 (ii) Where pursuant to a lease, license or similar agree-
63 ment, a person offers, sells or distributes goods, commodities,
64 or services on or about premises occupied by a retailer-grantor
65 primarily for the retailer-grantor's own merchandising ac-

66 tivities, which goods, commodities, or services are not pur-
67 chased from the retailer-grantor or persons whom the lessee
68 is directly or indirectly (A) required to do business with by
69 the retailer-grantor or (B) advised to do business with by the
70 retailer-grantor where such person is affiliated with the
71 retailer-grantor; or

72 (iii) Where the total of the payments referred to in
73 paragraph (a) (2) of this section made during a period from
74 any time before to within 6 months after commencing opera-
75 tion of the franchisee's business, is less than \$500.

76 (4) Exclusions. The term "franchise" shall not be deemed
77 to include any continuing commercial relationship created
78 solely by:

79 (i) The relationship between an employer and an employee
80 or among general business partners; or

81 (ii) Membership in a bona fide "cooperative association";
82 or

83 (iii) An agreement for the use of a trademark service mark,
84 trade name, seal, advertising, or other commercial symbol
85 designating a person who offers on a general basis, for a fee or
86 otherwise, a bona fide service for the evaluation, testing, or
87 certification of goods, commodities, or services; or

88 (iv) An agreement between a licensor and a single licensee to
89 license a trademark, trade name, service mark, advertising or
90 other commercial symbol where such license is the only one of
91 its general nature and type to be granted by the licensor with
92 respect to that trademark, trade name, service mark, advertising,
93 or other commercial symbol.

94 (5) Any relationship which is represented either orally or
95 in writing to be a franchise (as defined in this paragraph (a)
96 (1) and (2) of this section) is subject to the requirements of
97 this statute.

98 (b) The term "person" means any individual, group,
99 association, limited or general partnership, corporation or any
100 other business entity.

101 (c) The term "franchisor" means any person who par-
102 ticipates in a franchise relationship as a franchisor, as denoted
103 in paragraph (a) of this section.

104 (d) The term "franchisee" means any person (1) who par-
105 ticipates in a franchise relationship as a franchisee, as denoted

106 in paragraph (a) of this section, or (2) to whom an interest
107 in a franchise is sold.

108 (e) The term "fractional franchise" means any relation-
109 ship, as denoted by paragraph (a) of this section, in which the
110 person described therein as a franchisee, or any of the cur-
111 rent directors or executive officers thereof, has been in the
112 type of business represented by the franchise relationship of
113 more than 2 years and the parties anticipated, or should have
114 anticipated, at the time the agreement establishing the fran-
115 chise relationship was reached, that the sales arising from the
116 relationship would represent no more than 20 percent of the
117 sales in dollar volume of the franchisee.

118 (f) The term "affiliated person" means a person (as defined
119 in paragraph (b) of this section):

120 (1) Which directly or indirectly controls, is controlled by,
121 or is under common control with, a franchisor; or

122 (2) Which directly or indirectly owns, controls, or holds with
123 power to vote, 10 percent or more of the outstanding voting
124 securities of a franchisor; or

125 (3) Which has, in common with a franchisor, one or more
126 partners, officers, directors, trustees, branch managers, or
127 other persons occupying similar status or performing similar
128 functions.

129 (g) A "cooperative association" is either (1) an association
130 of producers of agricultural products authorized by section 1
131 of the Capper-Volstead Act, 7 U.S.C. 291; or (2) an organiza-
132 tion operated on a cooperative basis by and for independent
133 retailers which wholesales goods or furnishes services
134 primarily to its member-retailers.

135 *Section 2. Termination, cancellation or failure to renew*
136 *franchise*

137 (a) No franchisor shall, directly, or through any officer,
138 agent or employee, terminate, cancel or fail to renew a fran-
139 chise, except for objective good cause which shall include, but
140 not be limited to the franchisee's refusal or failure to comply
141 substantially with any material and reasonable obligation of
142 the franchise agreement or for the reasons stated in subsec-
143 tion (d) of this section. The franchisor shall give the franchisee
144 written notice of such termination, cancellation or intent not
145 to renew, at least sixty days in advance of such termination,

146 cancellation or failure to renew with the cause stated thereon;
147 provided, in the event the franchisor elects not to renew a fran-
148 chise pursuant to subsection (d) of this section, the franchisor
149 shall give the franchisee written notice of such intent not to
150 renew at least six months prior to the expiration of the cur-
151 rent franchise agreement. The notice provisions of this sec-
152 tion shall not apply:—

153 (1) where the alleged grounds are voluntary abandonment
154 by the franchisee of the franchise relationship, in which event,
155 such notice may be given fifteen days in advance of such ter-
156 mination, cancellation, or failure to renew, or

157 (2) where the alleged grounds are the conviction of the fran-
158 chisee in a court of competent jurisdiction of an offense
159 punishable by a term of imprisonment in excess of one year
160 and directly related to the business conducted pursuant to the
161 franchise, in which event, such notice may be given at any
162 time following such conviction and shall be effective upon
163 delivery and written receipt of such notice.

164 (b) Upon termination of any franchise, the franchise shall
165 be paid fair and reasonable compensation by the franchisor
166 for the franchisee's inventory, supplies, equipment and fur-
167 nishings purchased by the franchisee from the franchisor or its
168 approved sources and costs and expenses paid to the fran-
169 chisor under the terms of the franchise or any ancillary or col-
170 lateral agreement; provided no compensation shall be allowed
171 for personalized items which have no value to the franchisor.

172 (c) Notwithstanding any other provision of the general laws,
173 no franchise entered into or renewed on or after the effective
174 date of this act, whether oral or written, shall be for a term
175 of less than three years and for successive terms of not less
176 than three years thereafter unless cancelled, terminated, or
177 not renewed pursuant to subsection (a) and (d) of this section.

178 (d) A franchisor may elect not to renew a franchise which
179 involves the lease by the franchisor to the franchisee of real
180 property and improvements in the event the franchisor:

181 (1) sells or leases such real property and improvements to
182 other than a subsidiary or affiliate of the franchisor for any
183 use; or

184 (2) sells or leases such real property to a subsidiary or af-

185 filiate of the franchisor, except such subsidiary or affiliate
186 shall not use such real property for the operation of the same
187 business as the franchisee; or

188 (3) converts such real property and improvements to a use
189 not covered by the franchise agreement; or

190 (4) has leased such real property from a person not the fran-
191 chisee and such lease from such person is terminated or not
192 renewed;

193 *Section 3.* This act shall apply to all existing franchise
194 agreements and to any amendment, extension, modification
195 or addition thereto. It shall also apply to the opening of a fran-
196 chised business at a new or different location than the original
197 site. Any waiver of the rights of a franchisee under this chapter
198 which is contained in any franchise agreement, or otherwise
199 shall be void.

200 *Section 4.* Action for violation

201 Any franchisee may bring an action for violation of sections
202 1 through 4 inclusive, in the superior court to recover damages
203 sustained by reason of such violation and punitive damages
204 in the court's discretion. Such action shall be privileged in
205 respect to its assignment for trial and, where appropriate, any
206 franchisee may apply for injunctive relief as provided in
207 chapter 93A. Such franchisee, if successful, shall be entitled
208 to costs, including but not limited to reasonable attorneys' fees
209 and expert witness fees.

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