

HOUSE BILL No. 5465

March 8, 2012, Introduced by Rep. MacMaster and referred to the Committee on Regulatory Reform.

A bill to amend 1974 PA 269, entitled "Franchise investment law," by amending section 27 (MCL 445.1527), as amended by 1984 PA 92.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 27. Each of the following provisions is void and
2 unenforceable if **IT IS** contained in any ~~documents~~**DOCUMENT** relating
3 to a franchise:

4 (a) A prohibition on the right of a franchisee to join an
5 association of franchisees.

6 (b) A requirement that a franchisee assent to a release,
7 assignment, novation, waiver, or estoppel ~~which~~**THAT** deprives a
8 franchisee of rights and protections provided in this act. ~~This~~
9 ~~shall~~**HOWEVER, THIS SUBDIVISION DOES** not ~~preclude~~**PREVENT** a
10 franchisee, after entering into a franchise agreement, from

1 settling any and all claims.

2 (c) A provision that permits a franchisor to terminate a
 3 franchise ~~prior to~~ **BEFORE** the expiration of its term except for
 4 good cause. Good cause ~~shall include~~ **INCLUDES** the failure of the
 5 franchisee to comply with any lawful provision of the franchise
 6 agreement and to cure ~~such~~ **THAT** failure after being given ~~THE~~
 7 **FRANCHISEE RECEIVES** written notice ~~thereof~~ **OF IT** and **IS GIVEN** a
 8 reasonable opportunity ~~, which in no event need be more than 30~~
 9 ~~days,~~ to cure ~~such~~ **THAT** failure. **AS USED IN THIS SUBDIVISION,**
 10 **"REASONABLE OPPORTUNITY TO CURE" DOES NOT REQUIRE A TIME PERIOD OF**
 11 **MORE THAN 30 DAYS TO CURE A FAILURE TO COMPLY DESCRIBED IN THIS**
 12 **SUBDIVISION.**

13 (d) A provision that permits a franchisor to refuse to renew a
 14 franchise without fairly compensating the franchisee, by repurchase
 15 or other means, for the fair market value ~~at the time of expiration~~
 16 of the franchisee's inventory, supplies, equipment, fixtures, and
 17 furnishings, **AS DETERMINED AT THE TIME THE FRANCHISE EXPIRES.**
 18 ~~Personalized~~ **HOWEVER, PERSONALIZED** materials ~~which~~ **THAT** have no
 19 value to the franchisor and inventory, supplies, equipment,
 20 fixtures, and furnishings **THAT ARE** not reasonably required in the
 21 conduct of the franchise business are not subject to compensation ~~-~~
 22 ~~This subsection~~ **UNDER THIS SUBDIVISION AND THIS SUBDIVISION** applies
 23 only if **BOTH OF THE FOLLOWING ARE MET:** ~~(i)~~

24 (i) The term of the franchise is less than 5 years. ~~and (ii)~~
 25 ~~the~~

26 (ii) **THE** franchisee is prohibited by the franchise ~~or~~ **AGREEMENT**
 27 **OR ANY** other agreement from continuing to conduct substantially the

1 same business under another trademark, service mark, trade name,
 2 logotype, advertising, or other commercial symbol in the same area
 3 ~~subsequent to~~ **AFTER** the expiration of the franchise or the
 4 franchisee does not receive at least 6 ~~months~~ **MONTHS'** advance notice
 5 of **THE** franchisor's intent not to renew the franchise.

6 (e) A provision that permits the franchisor to refuse to renew
 7 a franchise on terms generally available to other franchisees of
 8 the same class or type under similar circumstances. ~~This section~~
 9 **HOWEVER, THIS SUBDIVISION** does not require a renewal provision **IN A**
 10 **FRANCHISE.**

11 (f) A provision ~~requiring~~ that **REQUIRES THE CONDUCT OF**
 12 arbitration or litigation ~~be conducted~~ **OCCUR** outside this state.
 13 This ~~shall~~ **SUBDIVISION DOES** not preclude ~~the~~ **A** franchisee from
 14 entering into an agreement, at the time of arbitration, to conduct
 15 arbitration at a location outside this state.

16 (g) A provision ~~which~~ **THAT** permits a franchisor to refuse to
 17 permit a transfer of ownership of a franchise, except for good
 18 cause. This subdivision does not prevent a franchisor from
 19 exercising a right of first refusal to purchase the franchise. ~~Good~~
 20 **AS USED IN THIS SUBDIVISION, "GOOD cause" shall include, INCLUDES,**
 21 but is not limited to, **ANY OF THE FOLLOWING:**

22 (i) The failure of the proposed transferee to meet the
 23 franchisor's then current reasonable qualifications or standards.

24 (ii) ~~The fact that~~ **THAT** the proposed transferee is a competitor
 25 of the franchisor or subfranchisor.

26 (iii) The unwillingness of the proposed transferee to agree in
 27 writing to comply with all **OF A FRANCHISEE'S** lawful obligations.

1 (iv) The failure of the franchisee or proposed transferee to
2 pay any ~~sums~~**MONEY** owing to the franchisor or to cure any default
3 in the franchise agreement ~~existing~~**THAT EXISTS** at the time of the
4 proposed transfer.

5 (h) A provision that requires the franchisee to resell to the
6 franchisor items that are not uniquely identified with the
7 franchisor. This subdivision does not prohibit a provision that
8 grants to a franchisor a right of first refusal to purchase the
9 assets of a franchise on the same terms and conditions as a bona
10 fide third party willing and able to purchase those assets, nor
11 does this subdivision prohibit a provision that grants the
12 franchisor the right to acquire the assets of a franchise for the
13 market or appraised value of ~~such~~**THOSE** assets if the franchisee
14 has breached the lawful provisions of the franchise agreement and
15 has failed to cure the breach in the manner provided in subdivision
16 (c).

17 (i) A provision ~~which~~**THAT** permits the franchisor to directly
18 or indirectly convey, assign, or otherwise transfer its obligations
19 to fulfill contractual obligations to the franchisee unless
20 provision ~~has been~~**IS** made for providing the required contractual
21 services.

22 **(J) A PROVISION THAT PERMITS A FRANCHISOR TO REFUSE TO ALLOW A**
23 **FRANCHISEE TO OBTAIN EQUIPMENT, FIXTURES, SUPPLIES, OR SERVICES**
24 **USED IN THE ESTABLISHMENT AND OPERATION OF THE FRANCHISE BUSINESS**
25 **FROM SOURCES OF THE FRANCHISEE'S CHOOSING, IF THAT EQUIPMENT OR**
26 **THOSE FIXTURES, SUPPLIES, OR SERVICES MEET STANDARDS CONCERNING THE**
27 **NATURE AND QUALITY OF EQUIPMENT, FIXTURES, SUPPLIES, OR SERVICES**

1 ESTABLISHED BY THE FRANCHISOR. THIS SUBDIVISION DOES NOT APPLY TO A
2 PROVISION THAT REQUIRES THAT THE FRANCHISEE OBTAIN REASONABLE
3 QUANTITIES OF INVENTORY GOODS OR SERVICES, INCLUDING DISPLAY AND
4 SAMPLE ITEMS, FROM THE FRANCHISOR OR AN AFFILIATE OF THE
5 FRANCHISOR, BUT ONLY IF THOSE GOODS OR SERVICES ARE CENTRAL TO THE
6 FRANCHISE BUSINESS, AND THE GOODS OR SERVICES ARE ACTUALLY
7 MANUFACTURED OR PRODUCED BY THE FRANCHISOR OR AFFILIATE OR
8 INCORPORATE A TRADE SECRET OF THE FRANCHISOR OR AFFILIATE.