

105TH CONGRESS  
1ST SESSION

# H. R. 2954

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1997

Mr. LAFALCE introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To establish minimum standards of fair conduct in franchise sales and franchise business relationships, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Fair Franchise Practices Act of 1997”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Franchise sales practices.
- Sec. 4. Unfair franchise practices.
- Sec. 5. Standards of conduct.
- Sec. 6. Procedural Fairness.
- Sec. 7. Actions by Private Persons.

Sec. 8. Actions by State Attorneys General.  
Sec. 9. Effect on Other Law.  
Sec. 10. Scope and Applicability.  
Sec. 11. Definitions.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following  
3 findings:

4 (1) Franchise businesses represent a large and  
5 growing segment of the nation’s retail and service  
6 businesses and are rapidly replacing more traditional  
7 forms of small business ownership in the American  
8 economy.

9 (2) Franchise businesses involve a joint enter-  
10 prise between the franchisor and franchisees in  
11 which each party has a vested interest in the fran-  
12 chised business.

13 (3) Most prospective franchisees lack bargain-  
14 ing power and generally invest substantial amounts  
15 to obtain a franchise business when they are unfa-  
16 miliar with operating a business, with the business  
17 being franchised and with industry practices in fran-  
18 chising.

19 (4) Many franchises reflect a profound imbal-  
20 ance of contractual power in favor of the franchisor,  
21 and fail to give due regard to the legitimate business  
22 interests of the franchisee, as a result of the

1 franchisor reserving pervasive contractual rights over  
2 the franchise relationship.

3 (5) Franchisees may suffer substantial financial  
4 losses when the franchisor does not provide truthful  
5 or complete information regarding the franchise op-  
6 portunity, or where the franchisor does not act in  
7 good faith in the performance of the franchise agree-  
8 ment.

9 (6) Traditional common law doctrines have not  
10 evolved sufficiently to protect franchisees adequately  
11 from fraudulent or unfair practices in the sale and  
12 operation of franchise businesses, and significant  
13 contractual and procedural restrictions have denied  
14 franchisees adequate legal recourse to protect their  
15 interests in such businesses.

16 (b) PURPOSE.—It is the purpose of this Act to pro-  
17 mote fair and equitable franchise agreements, to establish  
18 uniform standards of conduct in franchise relationships  
19 and to create uniform private Federal remedies for viola-  
20 tions of Federal law.

21 **SEC. 3. FRANCHISE SALES PRACTICES.**

22 (a) IN GENERAL.—In connection with the advertis-  
23 ing, offering, sale or promotion of any franchise, it shall  
24 be unlawful for any person—

1           (1) to employ a device, scheme, or artifice to  
2 defraud;

3           (2) to engage in an act, practice, course of busi-  
4 ness or pattern of conduct which operates or is in-  
5 tended to operate as a fraud upon any prospective  
6 franchisee;

7           (3) to obtain property, or assist others to obtain  
8 property, by negligently making an untrue statement  
9 of a material fact or any failure to state a material  
10 fact;

11           (4) to discriminate among prospective  
12 franchisees on the basis of race, sex, religion, dis-  
13 ability or national origin—

14           (A) in the solicitation, offering or sale of  
15 any franchise opportunity, unless any distinc-  
16 tion between prospective franchisees is related  
17 to a program under which franchises are made  
18 available to a class of persons who may have  
19 been denied franchise opportunities in the past  
20 based on suspect classifications including race,  
21 sex, religion, disability or national origin; or

22           (B) in the selection of any site or location  
23 for a franchise business.

24           (b) MISREPRESENTATIONS IN REQUIRED DISCLO-  
25 SURE.—

1           (1) In connection with any disclosure document,  
2 notice or report required by any law, it shall be un-  
3 lawful for any franchisor, subfranchisor or franchise  
4 broker, either directly or indirectly through another  
5 person—

6           (A) to make an untrue statement of mate-  
7 rial fact or fail to state a material fact; or

8           (B) to fail to furnish any prospective  
9 franchisee with all information required to be  
10 disclosed by law and at the time and in the  
11 manner required.

12           (2) For purposes of this subsection, the term  
13 disclosure document means either the disclosure  
14 statement required by the Federal Trade Commis-  
15 sion in Trade Regulation Rule 436 (16 CFR 436)  
16 as it may be amended, or an offering circular pre-  
17 pared in accordance with Uniform Franchise Offer-  
18 ing Circular guidelines as adopted and amended by  
19 the North American Securities Administrators Asso-  
20 ciation, Inc., or its successor.

21 **SEC. 4. UNFAIR FRANCHISE PRACTICES.**

22           (a) **DECEPTIVE AND DISCRIMINATORY PRACTICES.**—  
23 In connection with the performance, enforcement, renewal  
24 and termination of any franchise agreement, it shall be

1 unlawful for a franchisor or subfranchisor, either directly  
2 or indirectly through another person—

3           (1) to engage in an act, practice, course of busi-  
4 ness, or pattern of conduct which operates as a  
5 fraud upon any person;

6           (2) to discriminate among franchisees on the  
7 basis of race, sex, religion, disability or national ori-  
8 gin;

9           (3) to hinder or prohibit, directly or indirectly,  
10 the free association of franchisees for any lawful  
11 purpose, including the formation of or participation  
12 in any trade association made up of franchisees; and

13           (4) to discriminate against a franchisee by im-  
14 posing requirements not imposed on other similarly  
15 situated franchisees or otherwise retaliate, directly  
16 or indirectly, against any franchisee for membership  
17 or participation in a franchisee association.

18           (b) TERMINATION WITHOUT GOOD CAUSE.—

19           (1) It shall be unlawful for a franchisor, either  
20 directly or indirectly through another person, to ter-  
21minate a franchise agreement prior to its expiration  
22 without good cause for such termination.

23           (2) For purposes of this subsection, good cause  
24 shall exist only where—

1 (A) the franchisee fails to comply with a  
2 material provision of the franchise agreement  
3 after notice specifying the default and a 30-day  
4 period to cure the default, or if the default can  
5 not be cured within 30 days, the franchisee fails  
6 to initiate within 30 days, and diligently pursue  
7 substantial continuing action to cure the de-  
8 fault;

9 (B) the franchisee, without the require-  
10 ment of notice and opportunity to cure—

11 (i) voluntarily abandons the business  
12 licensed by the franchise agreement, except  
13 that loss or termination of a leasehold for  
14 the business prior to the term of a fran-  
15 chise agreement by reason of eminent do-  
16 main, foreclosure sale, natural disaster or  
17 other termination not the fault of the  
18 franchisee shall not be considered abandon-  
19 ment by the franchisee;

20 (ii) is convicted of a felony, for which  
21 imprisonment of one year or more can be  
22 imposed, which substantially impairs the  
23 good will associated with the franchisor's  
24 trade mark, service mark, trade name, log-

1           otype, advertising or other commercial  
2           symbol;

3                   (iii) repeatedly fails to comply with  
4           the same material provision of the fran-  
5           chise agreement, where the enforcement of  
6           such provision is substantially similar to  
7           enforcement of that provision with other  
8           franchisees; or

9                   (iv) operates the business licensed by  
10          the franchise agreement in a manner that  
11          creates a danger to public health or safety;  
12          or

13                (C) the franchisor withdraws from the  
14          marketing area of the business licensed by the  
15          franchise agreement and pays the franchisee  
16          reasonable compensation for damages incurred  
17          from the shortened term of the agreement and  
18          agrees not to enforce any contractual prohibi-  
19          tion against the franchisee continuing to engage  
20          in the business at the licensed location.

21          (c) MANDATORY SOURCING OF SUPPLIES.—

22                (1) It shall be unlawful for a franchisor, either  
23          directly or indirectly through another person, to pro-  
24          hibit a franchisee from obtaining equipment, fix-  
25          tures, supplies or services used in the establishment

1 or operation of the business licensed by the franchise  
2 agreement from sources of the franchisee's choosing,  
3 except that such goods or services may be required  
4 to meet uniform quality standards which are not ar-  
5 bitrarily promulgated or enforced by the franchisor.

6 (2) This subsection shall not apply to supplies  
7 or services (including display and sample items) that  
8 the franchisee is required to obtain from the  
9 franchisor or its affiliate, where such goods or serv-  
10 ices are integrally related to a trademark, trade  
11 name, trade secret or patent owned by or licensed to  
12 the franchisor or its affiliate, provided that—

13 (A) the supplies or services required are  
14 not in excess of the amount the franchisee can  
15 reasonably be expected to use or sell in the op-  
16 eration of the business; and

17 (B) the franchisor shall not withhold a  
18 franchisee's right to obtain such goods and  
19 services without providing a notice of default  
20 and a 30-day period to cure the default.

21 (d) POST-TERM RESTRICTIONS ON COMPETITION.—

22 (1) A franchisor shall not prohibit, or enforce  
23 a prohibition against, any franchisee from engaging  
24 in any business at any location after expiration of a  
25 franchise agreement or after termination of the fran-

1       chise agreement prior to its expiration for good  
2       cause.

3               (2) This subsection shall not apply to enforce-  
4       ment of any such prohibition where the franchisor,  
5       not less than ten days before the effective date of  
6       such termination or expiration, offers in writing to  
7       purchase the assets of the business licensed by the  
8       franchise agreement for its fair market value as a  
9       going concern, provided that—

10               (A) the fair market value of such business  
11       be determined as if it were to be resold or re-  
12       newed for a period of years equal to the con-  
13       tract term being offered by the franchisor for  
14       new or renewed franchises;

15               (B) the fair market value of such business  
16       is ascertained by an impartial appraiser, whose  
17       appointment is acceptable to both parties; and

18               (C) any forgiveness of debt shall not be  
19       considered a purchase of assets by the  
20       franchisor for purposes of this section.

21               (3) Nothing in this subsection shall be inter-  
22       preted to prohibit enforcement of any provisions of  
23       a franchise contract obligating a franchisee after ex-  
24       piration or termination of a franchise—

1 (A) to cease or refrain from using a trade-  
2 mark, trade secret or other intellectual property  
3 owned by the franchisor or its affiliate, except  
4 that the existence of language in the franchise  
5 agreement purporting to determine ownership  
6 of a trademark, trade secret or other intellec-  
7 tual property shall not be binding upon any  
8 court or forum for purposes of this paragraph,  
9 but may be considered by such court or forum  
10 as evidence of such ownership; or

11 (B) to alter the appearance of the premises  
12 and the manner of operation of the franchised  
13 business to avoid any likelihood of confusion as  
14 to the affiliation of the business with its former  
15 franchisor.

16 **SEC. 5. STANDARDS OF CONDUCT.**

17 (a) DUTY OF GOOD FAITH.—

18 (1) A franchise contract imposes on each party  
19 thereto a duty to act in good faith in its perform-  
20 ance and enforcement.

21 (2) As used in this subsection, a duty of good  
22 faith shall—

23 (A) obligate a party to a franchise to do  
24 nothing that will have the effect of destroying  
25 or injuring the right of the other party to re-

1           ceive the fruits of the contract and to do every-  
2           thing required under the contract to accomplish  
3           such purpose; and

4                   (B) require honesty of fact and observance  
5           of reasonable standards of fair dealing.

6           (b) DUTY OF DUE CARE.—

7                   (1) A franchise agreement imposes on the  
8           franchisor a duty of due care. Unless a franchisor  
9           represents that it has greater skill or knowledge in  
10          its undertaking with its franchisees, or conspicuously  
11          disclaims that it has skill or knowledge, the  
12          franchisor is required to exercise the skill and knowl-  
13          edge normally possessed by franchisors in good  
14          standing in the same or similar types of business.

15                   (2) For purposes of this subsection—

16                           (A) the phrase “skill or knowledge” means  
17           something more than the mere minimum level  
18           of skill or knowledge required of any person en-  
19           gaging in a service or business and involves a  
20           special level of expertise—

21                                   (i) which is the result of acquired  
22           learning and aptitude developed by special  
23           training and experience in the business to  
24           be licensed under the franchise agreement,  
25           or the result of extensive use and experi-

1                   ence with the products or services or the  
2                   operating system of such business;

3                   (ii) which is the result of experience in  
4                   organizing a franchise system and in pro-  
5                   viding training, assistance and services to  
6                   franchisees; and

7                   (iii) which a prospective franchisee  
8                   would expect in reasonable reliance on the  
9                   written and oral commitments and rep-  
10                  resentations of the franchisor; and

11                  (B) a franchisor shall be permitted to show  
12                  that it contracted for, hired or purchased the  
13                  expertise necessary to comply with the require-  
14                  ments of this subsection and that such expertise  
15                  was incorporated in the franchise or commu-  
16                  nicated or provided to the franchisee.

17                  (3) The requirement of this subsection may not  
18                  be waived by agreement or by conduct, but the  
19                  franchisor may limit in writing the nature and scope  
20                  of its skill and knowledge, and of its undertaking  
21                  with a prospective franchisee, provided that no in-  
22                  consistent representation, whether written or oral, is  
23                  made to the prospective franchisee.

24                  (c) LIMITED FIDUCIARY DUTY.—

1           (1) Without regard to whether a fiduciary duty  
2 is imposed generally on the franchisor by virtue of  
3 a franchise agreement, the franchisor owes a fidu-  
4 ciary duty to its franchisees and is obligated to exer-  
5 cise the highest standard of care for franchisee in-  
6 terests where the franchisor—

7           (A) undertakes to perform bookkeeping,  
8 collection, payroll or accounting services on be-  
9 half of the franchisee; or

10          (B) requires franchisees to make contribu-  
11 tions to any pooled advertising or promotional  
12 fund to be administered or supervised by the  
13 franchisor.

14          (2) A franchisor that administers or supervises  
15 the administration of any pooled fund described in  
16 paragraph (1)(B) shall—

17          (A) keep all such pooled funds in a seg-  
18 regated account that shall not be subject to the  
19 claims of creditors of the franchisor; and

20          (B) provide an independent certified audit  
21 of such pooled funds within sixty (60) days fol-  
22 lowing the close of the franchisor's fiscal year,  
23 which shall include full disclosure of all fees, ex-  
24 penses or other payments from the fund to the  
25 franchisor or to any subsidiary, affiliate or

1           other entity controlled in whole or in part by  
2           the franchisor.

3           (3) While not limiting the ability of any court  
4           to identify other circumstances for which a fiduciary  
5           duty may also exist, this subsection does not create  
6           or extend a fiduciary duty by implication to other  
7           aspects of a franchise.

8   **SEC. 6. PROCEDURAL FAIRNESS.**

9           (a) It shall be unlawful for any franchisor, either di-  
10          rectly or indirectly through another person, to—

11           (1) require any term or condition in a franchise  
12          agreement, or in any agreement ancillary or collat-  
13          eral to a franchise, which directly or indirectly vio-  
14          lates any provision of this Act; or

15           (2) require a franchisee to assent to any dis-  
16          claimer, waiver, release, stipulation or other provi-  
17          sion which would purport—

18           (A) to relieve any person from a duty im-  
19          posed by this Act, except as part of a settle-  
20          ment of a bona fide dispute; or

21           (B) to protect any person against any li-  
22          ability to which he would otherwise be subject  
23          under the Act by reason of willful misfeasance,  
24          bad faith, or gross negligence in the perform-  
25          ance of duties, or by reason of reckless dis-

1 regard of obligations and duties under the fran-  
2 chise agreement; or

3 (3) require a franchisee to assent to any waiver,  
4 release, stipulation or other provision, either as part  
5 of any agreement or document relating to the oper-  
6 ation of a franchise business, in any agreement or  
7 document relating to the termination, cancellation,  
8 forfeiture, repurchase or resale of a franchise busi-  
9 ness or as a condition for permitting a franchisee to  
10 leave the franchise system, which would purport to  
11 prevent the franchisee from making any oral or writ-  
12 ten statement relating to the franchise business, to  
13 the operation of the franchise system or to the  
14 franchisee's experience with the franchise business;  
15 except that, and only to the extent that, such waiver  
16 or release is required as part of the settlement of a  
17 bona fide dispute and relates only to the terms of  
18 such settlement and to the negotiation of such set-  
19 tlement.

20 (b) Any condition, stipulation, provision, or term of  
21 any franchise agreement, or any agreement ancillary or  
22 collateral to a franchise, which would purport to waive or  
23 restrict any right granted under this Act shall be void and  
24 unenforceable.

1 (c) No stipulation or provisions of a franchise agreee-  
2 ment or of an agreement ancillary or collateral to a fran-  
3 chise shall—

4 (1) deprive a franchisee of the application and  
5 benefits of this Act or of any Federal law or the law  
6 of the state in which the franchisee’s principal place  
7 of business is located;

8 (2) deprive a franchisee of the right to com-  
9 mence an action (or, if the franchise provides for ar-  
10 bitration, initiate an arbitration) against the  
11 franchisor for violation of the Act, or for breach of  
12 the franchise agreement or of any agreement or stip-  
13 ulation ancillary or collateral to the franchise, in a  
14 court (or arbitration forum) in the state of the  
15 franchisee’s principal place of business; or

16 (3) exclude collective action by franchisees to  
17 settle like disputes arising from violation of this Act  
18 either by civil action or arbitration.

19 (d) Compliance with this Act or with an applicable  
20 state franchise law is not waived, excused or avoided, and  
21 evidence of violation of this Act or of such state law shall  
22 not be excluded, by virtue of an integration clause, any  
23 provision of a franchise agreement or an agreement ancil-  
24 lary or collateral to a franchise, the parol evidence rule,

1 or any other rule of evidence purporting to exclude consid-  
2 eration of matters outside the franchise agreement.

3 **SEC. 7. ACTIONS BY PRIVATE PERSONS.**

4 (a)(1) Any person injured by a violation of any provi-  
5 sion or standard of this Act shall have a right of action  
6 for all damages caused by the violation, including costs  
7 of litigation and reasonable attorney's fees, against any  
8 person found to be liable for such violation.

9 (2) An action may be brought, without regard to the  
10 amount in controversy, in any United States district court,  
11 in any State court, or in any other court of competent  
12 jurisdiction, before the later of—

13 (A) 5 years after the date on which the viola-  
14 tion occurred; or

15 (B) 3 years after the date on which the viola-  
16 tion was discovered or should have been discovered  
17 through exercise of reasonable diligence.

18 (b) Any person injured by a violation of this Act, or  
19 threatened with injury by an impending violation of this  
20 Act, may bring an action in a United States district court,  
21 in any State court or in any other court of competent ju-  
22 risdiction to obtain a declaratory judgment that an act or  
23 conduct constitutes or would constitute a violation of this  
24 Act and to enjoin a person who has violated, is violating,  
25 or who is otherwise likely to violate any provision of this

1 Act. In such actions, the court may issue a temporary re-  
2 straining order or preliminary injunction to protect the  
3 public interest by halting a recurring or likely violation  
4 of this Act, prior to a final determination on the merits,  
5 in conformity with the principles governing the granting  
6 of preliminary relief in other civil actions, except that no  
7 showing of special or irreparable damage to such person  
8 shall have to be made.

9 (c)(1) Except as otherwise provided in paragraph (2)  
10 of this subsection, nothing contained in this Act shall limit  
11 the right of a franchisor and a franchisee to agree to arbi-  
12 tration, mediation or other nonjudicial resolution of a dis-  
13 pute, either in advance or after a dispute arises, provided  
14 that the standards and protections applied in any binding  
15 nonjudicial procedure agreed to by the parties are not less  
16 than the requirements set forth in this Act.

17 (2) Any stipulation or provision of a franchise agree-  
18 ment requiring use of arbitration or other nonjudicial res-  
19 olution to resolve disputes arising under the agreement  
20 shall not apply to bar an action brought in a United States  
21 district court or in any other court of competent jurisdic-  
22 tion pursuant to this section involving a request for dam-  
23 ages and/or equitable relief for an alleged violation of any  
24 provision of this Act, except where such request is frivo-  
25 lous or insubstantial. A determination of whether a re-

1 quest for damages and/or equitable relief is frivolous or  
2 insubstantial shall be made by the court in which the ac-  
3 tion is filed at any hearing at which all parties are present  
4 or represented by counsel.

5 (d) The private rights provided in this section are in  
6 addition to, and not in lieu of other rights or remedies  
7 created by Federal or State law or regulation.

8 **SEC. 8. ACTIONS BY STATE ATTORNEYS GENERAL.**

9 (a) Whenever an attorney general of any State has  
10 reason to believe that the interests of the residents of that  
11 State have been or are being threatened or adversely af-  
12 fected because any person has engaged or is engaging in  
13 a pattern or practice which violates any provision of this  
14 Act, the State, as *parens patriae*, may bring a civil action  
15 on behalf of its residents in an appropriate district court  
16 of the United States to enjoin such violations, to obtain  
17 damages, restitution or other compensation on behalf of  
18 residents of such State or to obtain such further and other  
19 relief as the court may deem appropriate.

20 (b) For purposes of bringing any civil action under  
21 subsection (a), nothing in this Act shall prevent an attor-  
22 ney general from exercising the powers conferred on the  
23 attorney general by the laws of such State to conduct in-  
24 vestigations or to administer oaths or affirmations or to

1 compel the attendance of witnesses or the production of  
2 documentary and other evidence.

3 (c) Any civil action brought under subsection (a) in  
4 a district court of the United States may be brought in  
5 the district in which the defendant is found, is an inhab-  
6 itant, or transacts business or wherever venue is proper  
7 under section 1391 of title 28, United States Code. Proc-  
8 ess in such action may be served in any district in which  
9 the defendant is an inhabitant or in which the defendant  
10 may be found.

11 (d) Nothing contained in this section shall prohibit  
12 an authorized State official from proceeding in State court  
13 on the basis of an alleged violation of any civil or criminal  
14 statute of such State.

15 **SEC. 9. EFFECT ON OTHER LAW.**

16 (a) This Act preempts State law only to the extent  
17 that State law is inconsistent with any provision of this  
18 Act, in terms of providing less protection to the franchisee  
19 than provided by this Act, and then only to the extent  
20 of such inconsistency.

21 (b) Nothing in this Act shall be interpreted—

22 (1) to alter or relieve any franchisor or  
23 subfranchisor from the obligation to comply with the  
24 laws or any State, except to the extent that such

1 laws are inconsistent with any provision of this Act;  
2 or

3 (2) to preclude a State from enacting any law  
4 or regulation that affords a greater level or broader  
5 range of protections to franchisees.

6 **SEC. 10. SCOPE AND APPLICABILITY.**

7 (a) Except as provided in subsection (b), the require-  
8 ments of this Act shall apply to franchise agreements en-  
9 tered into, amended, exchanged or renewed after the date  
10 of enactment of this Act.

11 (b) The requirements of section 3 of this Act shall  
12 take effect 90 days after the date of enactment of this  
13 Act and shall apply only to actions, practices, disclosures  
14 and statements occurring on or after such date.

15 **SEC. 11. DEFINITIONS.**

16 For purposes of this Act:

17 (1) The term “advertisement” means a commu-  
18 nication circulated generally by mail, or print media  
19 or electronic media, or otherwise disseminated gen-  
20 erally to the public, in connection with an offer or  
21 sale of a franchise.

22 (2) The term “affiliate” means a natural or  
23 legal person controlling, controlled by, or under com-  
24 mon control with a franchisor.

25 (3) The term “franchise” means—

1 (A) any continuing commercial relationship  
2 created by a contract or agreement, either ex-  
3 pressed or implied, whether oral or written,  
4 where—

5 (i) one person (the franchisor) grants  
6 to another person (the franchisee) the  
7 right to engage in the business of offering,  
8 selling or distributing goods or services, in  
9 which—

10 (I) the goods and services of-  
11 fered, sold or distributed by the  
12 franchisee are substantially associated  
13 with the trademark, service mark,  
14 trade name, logotype, advertising, or  
15 other commercial symbol owned or  
16 used by the franchisor (hereafter “the  
17 franchisor’s mark”); or

18 (II) the franchisee must conform  
19 to quality standards established by  
20 the franchisor with respect to the  
21 goods and services being distributed,  
22 and operate under a name that in-  
23 cludes, in whole or in part, the  
24 franchisor’s mark;

25 (ii) the franchisor—

1 (I) communicates to the  
2 franchisee knowledge, experience, ex-  
3 pertise, know-how, trade secrets or  
4 other non-patented information, re-  
5 gardless of whether it is proprietary  
6 or confidential;

7 (II) provides significant assist-  
8 ance to the franchisee in areas relat-  
9 ing to the franchisee's method of op-  
10 eration; or

11 (III) exercises significant controls  
12 over the franchisee's method of oper-  
13 ation of the business; and

14 (iii) the franchisee, as a condition for  
15 obtaining or commencing operation of a  
16 franchise, is required to make, or to com-  
17 mit to make, payment or other consider-  
18 ation to the franchisor, or an affiliate of  
19 the franchisor, other than payment for  
20 commercially reasonable quantities of  
21 goods for resale at a bona fide wholesale  
22 price;

23 (B) a subfranchise; or

24 (C) any commercial relationship entered  
25 into in reasonable reliance on representations,

1           either oral or written, that the criteria of para-  
2           graph (A) of this subsection will be met.

3           (4) The term “franchise broker” means a per-  
4           son, other than a franchisor or franchisee, who sells,  
5           offers for sale or arranges for the sale of a fran-  
6           chise.

7           (5) The term “franchisee” means a person to  
8           whom a franchise is granted.

9           (6) The term “franchisor” means a person who  
10          grants a franchise or a subfranchise.

11          (7) The term “good faith” means honesty in  
12          fact and the observance of reasonable standards of  
13          fair dealing in the trade.

14          (8) The terms “material” and “material fact”  
15          includes—

16                (A) any fact, circumstance, or set of condi-  
17                tions which a reasonable franchisee or a reason-  
18                able prospective franchisee would consider im-  
19                portant in making a significant decision relat-  
20                ing to entering into, remaining in, or abandon-  
21                ing a franchise relationship; and

22                (B) any fact, circumstance, or set of condi-  
23                tions which has, or may have, any significant fi-  
24                nancial impact on a franchisor, franchisee or a  
25                prospective franchisee.

1           (9) The term “offer” or “offering” means any  
2 effort to offer or to dispose of, or solicitation of an  
3 offer to buy, a franchise or interest in a franchise  
4 for value.

5           (10) The term “outlet” means a place of busi-  
6 ness, temporary or permanent, fixed or mobile, from  
7 which products or services are offered for sale.

8           (11) The term “person” means an individual or  
9 any other legal or commercial entity.

10          (12) The term “State” means a State, the Dis-  
11 trict of Columbia, and any territory or possession of  
12 the United States.

13          (13) The term “subfranchise” means a contract  
14 or an agreement by which a person pays a  
15 franchisor for the right to sell, negotiate the sale, or  
16 provide service franchises.

17          (14) The term “subfranchisor” means a person  
18 who is granted a subfranchise.

19          (15) The term “trade secret” means informa-  
20 tion, including a formula, pattern, compilation, pro-  
21 gram, device, method, technique, or process, that—

22               (A) derives independent economic value,  
23 actual or potential, from not being generally  
24 known to, and not being readily ascertainable  
25 by proper means by, other persons who can ob-

1           tain economic value from its disclosure or use,  
2           and

3                   (B) is the subject of efforts that are rea-  
4           sonable under the circumstances to maintain its  
5           secrecy.

○