

# HOUSE BILL No. 4235

February 5, 1997, Introduced by Reps. Schroer, LaForge, Hanley and Gire and referred to the Committee on Regulatory Affairs.

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~~ THE following provisions ~~is~~ ARE  
2 void and unenforceable if contained in any ~~documents~~ DOCUMENT  
3 relating to a franchise:

4       (a) A prohibition on ~~the right of a franchisee~~ A  
5 FRANCHISEE'S RIGHT to join an 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~~ SUBDIVISION DOES not preclude a franchisee, after  
10 entering into a franchise agreement, from settling any and all  
11 claims.

1 (c) A provision that permits a franchisor to terminate a  
2 franchise ~~prior to~~ BEFORE the expiration of its term except for  
3 good cause. Good cause ~~shall include~~ INCLUDES the failure of  
4 the franchisee to comply with any lawful provision of the fran-  
5 chise agreement and to cure ~~such~~ THAT failure after being given  
6 written notice ~~thereof~~ OF THAT FAILURE and a reasonable oppor-  
7 tunity, which in no event need be more than 30 days, to cure  
8 ~~such~~ THAT failure.

9 (d) A provision that permits a franchisor to refuse to renew  
10 a franchise without fairly compensating the franchisee by repur-  
11 chase or other means for the fair market value ~~at the time of~~  
12 ~~expiration~~ of the franchisee's inventory, supplies, equipment,  
13 fixtures, and furnishings AT THE TIME THE FRANCHISE EXPIRES.  
14 Personalized materials ~~which~~ THAT have no value to the franchi-  
15 sor and inventory, supplies, equipment, fixtures, and furnishings  
16 not reasonably required in the conduct of the franchise business  
17 are not subject to compensation. This ~~subsection~~ SUBDIVISION  
18 applies only if BOTH OF THE FOLLOWING APPLY:

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

20 (ii) ~~the~~ THE franchisee is prohibited by the franchise or  
21 other agreement from ~~continuing to conduct~~ CONDUCTING substan-  
22 tially the same business under another trademark, service mark,  
23 trade name, logotype, advertising, or other commercial symbol in  
24 the same area ~~subsequent to the expiration of~~ AFTER the fran-  
25 chise ~~or the~~ EXPIRES.

1       (iii) THE franchisee does not receive at least 6 ~~months~~  
2 MONTHS' advance notice of THE franchisor's intent not to renew  
3 the franchise.

4       (e) A provision that permits the franchisor to refuse to  
5 renew a franchise on terms generally available to other franchi-  
6 sees of the same class or type under similar circumstances. This  
7 ~~section~~ SUBDIVISION does not require a renewal provision.

8       (f) A provision requiring that arbitration or litigation be  
9 conducted outside this state. This ~~shall~~ DOES not preclude the  
10 franchisee from entering into an agreement ~~,~~ at the time of  
11 arbitration ~~,~~ to conduct arbitration at a location outside this  
12 state.

13       (g) A provision ~~which~~ THAT permits a franchisor to refuse  
14 to permit a transfer of ownership of a franchise ~~,~~ except for  
15 good cause. This subdivision does not prevent a franchisor from  
16 exercising a right of first refusal to purchase the franchise.  
17 Good cause ~~shall include~~ INCLUDES, but is not limited to, THE  
18 FOLLOWING:

19       (i) The ~~failure of the~~ proposed transferee FAILS to meet  
20 the franchisor's then current reasonable qualifications or  
21 standards.

22       (ii) The ~~fact that the~~ proposed transferee is a competitor  
23 of the franchisor or subfranchisor.

24       (iii) The ~~unwillingness of the~~ proposed transferee IS  
25 UNWILLING to agree in writing to comply with all lawful  
26 obligations.

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

5 (h) A provision that requires the franchisee to resell to  
6 the 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 AND does ~~this subdivision~~ NOT prohibit a provision that grants  
12 the franchisor the right to acquire the assets of a franchise for  
13 the market or appraised value of ~~such~~ THE assets if the fran-  
14 chisee has ~~breached~~ FAILED TO COMPLY WITH the lawful provisions  
15 of the franchise agreement and has ~~failed to cure the breach~~  
16 NOT CURED THAT FAILURE in the manner provided in subdivision  
17 (c).

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

23 (J) A CHOICE OF LAW PROVISION THAT REQUIRES THE FRANCHISOR'S  
24 AND FRANCHISEE'S RIGHTS UNDER THE FRANCHISE AGREEMENT TO BE  
25 DETERMINED UNDER THE LAWS OF A STATE OTHER THAN THIS STATE.