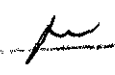


THIRTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
First Regular Session )

SENATE  
OFFICE OF THE SECRETARY

04 AUG -3 P3:25

SENATE  
S.B. No. **1629**

REGISTERED BY: 

Introduced by Senator Miriam Defensor Santiago

#### EXPLANATORY NOTE

The Constitution, Article 2, Section 20, provides:

Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

Franchise businesses represent a large growing segment of the country's retail and service businesses and are rapidly replacing the more traditional forms of small business ownership in our economy.

Franchise businesses involve a joint enterprise between the franchisor and franchisees, in which each party has a vested interest in the franchised business. Most prospective franchisees lack bargaining power and generally invest substantial amounts to obtain a franchise business when they are unfamiliar with operating a business, with the business being franchised, and with industry practices in franchising.

Many franchisees reflect a profound imbalance of contractual power in favor of the franchisor, and fail to give due regard to the legitimate business interests of the franchisee, as a result of the franchisor reserving pervasive contractual rights over the franchise relationship.

Franchisees may suffer substantial financial losses when the franchisor does not provide truthful or complete information regarding the franchise opportunity, or where the franchisor does not act in good faith in the performance of the franchise agreement.

Existing laws have not evolved sufficiently to protect franchisees adequately from fraudulent or unfair practices in the sale and operation of franchise businesses, and significant contractual and procedural restrictions have denied franchisees adequate legal recourse to protect their interests in such businesses.

A franchisee's freedom to contract is greatly limited by the disparity of bargaining power, lack of consistent legal standards, and other factors described above. This bill is necessary to restore freedom to contract and to remove restrictive barriers impeding entry into industries and markets dominated by franchise systems.

*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)  
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RECEIVED BY: *[Signature]*

SENATE  
S.B. No. **1629**

Introduced by Senator Miriam Defensor Santiago

AN ACT  
ESTABLISHING MINIMUM STANDARDS OF FAIR CONDUCT IN  
FRANCHISE SALES AND FRANCHISE BUSINESS RELATIONSHIPS

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. *Short Title.* – This Act shall be known as the “Small Business Franchise Act.”

SECTION 2. *Purpose.* – The purpose of this Act is to promote fair and equitable franchise agreements, to establish uniform standards of conduct in franchise relationships, and to create uniform private remedies for violations of pertinent laws.

SECTION 3. *Definitions.* - For purposes of this Act, the terms:

(1) “good faith” means honesty in fact and the observance of reasonable standards of fair dealing in the trade.

(2) “material” and “material fact” includes –

(A) any fact, circumstance, or set of conditions which a reasonable franchisee or a reasonable prospective franchisee would consider important in making a significant decision relating to entering into, remaining in, or abandoning a franchise relationship; and

(B) any fact, circumstance, or set of conditions which has, or may have, any significant financial impact on a franchisor, franchisee or a prospective franchisee.

(3) "offer" or "offering" means any effort to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

(4) "outlet" means a point of sale, temporary or permanent, fixed or mobile, from which goods or services are offered for sale.

(5) "person" means an individual or any other legal or commercial entity.

(6) "sub-franchise" means a contract or an agreement by which a person pays a franchisor for the right to sell, negotiate the sale, or provide service franchises.

(7) "sub-franchisor" means a person who is granted a sub-franchise.

(8) "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that —

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

#### SECTION 4. *Franchise Sales Practices.* —

(1) IN GENERAL — In connection with the advertising, offering, sale, or promotion of any franchise, it shall be unlawful for any person —

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

(B) to engage in an act, practice, course of business or pattern of conduct which operates or is intended to operate as a fraud upon any prospective franchisee;

(C) to obtain property, or assist others to obtain property, by making an untrue statement of a material fact or any failure to state a material fact;

(D) to discriminate among prospective franchisees on the basis of race, color, sexual orientation, sex, religion, disability, national origin, or age —

(i) in the solicitation, offering, or sale of any franchise opportunity;

or

(ii) in the selection of any site or location for a franchise business.

(2) MISREPRESENTATIONS IN REQUIRED DISCLOSURE – In connection with any disclosure document, notice, or report required by any law, it shall be unlawful for any franchisor, sub-franchisor, or franchise broker, either directly or indirectly through another person –

(A) to make an untrue statement of material facts;

(B) to fail to state a material fact; or

(C) to fail to state any fact which would render any required statement or disclosure either untrue or misleading;

(D) to fail to furnish any prospective franchisee with –

(i) all information required to be disclosed by law at the time and in the manner required; and

(ii) a written statement specifying prominently whether the franchise agreement contains rights to renew such agreement;

(E) to make any claim or representation to a prospective franchisee whether orally or in writing, which is inconsistent with or contradicts such disclosure document.

#### SECTION 5. *Unfair Franchise Practices.* –

(1) DECEPTIVE AND DISCRIMINATORY PRACTICES – In connection with the performance, enforcement, renewal, or termination of any franchise agreement, it shall be unlawful for a franchisor or sub-franchisor, either directly or indirectly through another person –

(A) to engage in an act, practice, course of business, or pattern of conduct which operates as a fraud upon any person;

(B) to discriminate among franchisees on the basis of sexual orientation, sex, religion, disability, national origin, or age;

(C) to hinder, prohibit, or penalize (or threaten to hinder, prohibit, penalize), directly or indirectly, the free association of franchisees for any lawful

purpose, including the formation of or participation in any trade association made up of franchisees or of associations of franchisees; or

(D) to discriminate against a franchisee by imposing requirements not imposed on other similarly situated franchisees or otherwise retaliate, directly or indirectly, against any franchisee for membership or participation in a franchisee association.

(2) TERMINATION WITHOUT GOOD CAUSE –

(A) It shall be unlawful for a franchisor, either directly or indirectly through an affiliate or another person, to terminate a franchise agreement prior to its expiration without good cause for such termination.

(B) For purposes of this subsection, good cause shall exist only where –

(i)(a) the franchisee failed to comply with a material provision of the franchise agreement after receiving notice that specifies the precise basis for the default, each material term of the franchise agreement with which the franchise is not in compliance, and a 30-day period to cure the default; and

(b) if the nature of the default is such that it cannot be cured through reasonably diligent conduct, the franchisee fails to initiate within 30 days, and diligently pursue substantial continuing action to cure the default;

(ii) the franchisee, without the requirement of notice and opportunity to cure –

(a) voluntarily abandons the business licensed by the franchise agreement, except that loss or termination of a leasehold for the business prior to the term of a franchise agreement by reason of eminent domain, foreclosure sale, natural disaster, or other termination not the fault of the franchisee shall not be considered abandonment by the franchisee;

(b) is convicted of a felony, for which imprisonment of one (1) year or more can be imposed, which substantially impairs the good will associated with the franchisor's trademark, service mark, trade name, logo type, advertising, or other commercial symbol;

(c) is repeatedly in default of the same material provision of the franchise agreement, where the enforcement of such provision is substantially similar to enforcement of that provision with other franchisees; or

(d) operates the business licensed by the franchise agreement in a manner that creates an imminent danger to public health or safety; or

(iii) the franchisor withdraws from the marketing area of the business licensed by the franchise agreement and pays the reasonable compensation for damages incurred from the shortened term of the agreement and agrees in writing not to enforce any contractual prohibition against the franchisee continuing to engage in the business at the franchised location.

### (3) POST-TERM RESTRICTIONS ON COMPETITION –

(A) A franchisor shall not prohibit, or enforce a prohibition against, any franchisee from engaging in any business at any location after expiration of a franchise agreement.

(B) Nothing in this sub-section shall be interpreted to prohibit enforcement of any provision of a franchise contract obligating a franchisee after the expiration or termination of a franchise –

(i) to cease or refrain from using a trademark, trade secret, or other intellectual property owned by the franchisor or its affiliate, except that the existence of language in the franchise agreement purporting to determine ownership of a trade mark, trade secret, or other intellectual property shall

not be binding upon any court of forum for purposes of this paragraph, but may be considered by such court or forum as evidence of such ownership;

(ii) to alter the appearance of the business premises so that it is not substantially similar to the standard design, décor criteria, or motif in use by other franchisees using the same name or trademarks within the proximate trade or market area of the business; or

(iii) to modify the manner or mode of business operations so as to avoid any substantial confusion with the manner or mode of operations which are unique to the franchisor and commonly in practice by other franchisees using the same name or trademarks with the proximate trade or market area of the business.

#### SECTION 6. *Standards of Conduct.* –

##### (1) DUTY OF GOOD FAITH -

(A) A franchise contract imposes on each party thereto a duty to act in good faith in its performance and enforcement.

(B) As used in this sub-section, a duty of good faith shall –

(i) obligate a party to a franchise to do nothing that will have the effect of destroying or injuring the right of the other party to obtain and receive the expected fruits of the contract and to do everything required under the contract to accomplish such purpose; and

(ii) require honesty of fact and observance of reasonable standards of fair dealing in the trade.

(C) No provision of any franchise agreement, express or implied, shall be interpreted or enforced in such a way as to obfuscate a party's duty to act reasonably and in good faith with the other, or otherwise allow a disparate result in the franchise relationship.

##### (2) DUTY OF DUE CARE –



(A) A franchise agreement imposes on the franchisor a duty of due care. Unless a franchisor represents that it has greater skill or knowledge in its undertaking with its franchisees, or conspicuously disclaims that it has skill or knowledge, the franchisor is required to exercise the skill and knowledge normally possessed by franchisors in good standing in the same or similar types of business.

(B) For purposes of this sub-section –

(i) the term “skill or knowledge” means something more than the mere minimum level of skill or knowledge required of any person engaging in a service or business and involves a special level of expertise

(a) which is the result of acquired learning and aptitude developed by special training and experience in the business to be licensed under the franchise agreement, or the result of extensive use and experience with the goods or services or the operating system of such business;

(b) which is the result of acquired learning and aptitude developed by special training and experience in the business to be licensed under the franchise agreement, or the result of extensive use and experience with the goods or services of the operating system of such business;

(c) which a prospective franchisee would expect in reasonable reliance on the written and oral commitments and representatives of the franchisor.

(ii) A franchisor shall be permitted to show that it contracted for, hired, or purchased the expertise necessary to comply with the requirements of this sub-section and that such expertise was incorporated in the franchise or communicated or provided to the franchisee.

(C) The requirement of this sub-section may not be waived by agreement or by conduct, but the franchisor may limit in writing the nature and scope of its skill and knowledge, and of its undertaking with a prospective franchisee, provided that no inconsistent representation, whether written or oral, is made to the prospective franchisee irrespective of any merger or integration clause in the franchise agreement.

### (3) LIMITED FIDUCIARY DUTY –

(A) Without regard to whether a fiduciary duty is imposed generally on the franchisor by virtue of a franchise agreement, the franchisor owes a fiduciary duty to its franchisees and is obligated to exercise the highest standard of care for franchisee interests where the franchisor –

(i) undertakes to perform bookkeeping, collection, payroll, or accounting services on behalf of the franchisee; or

(ii) administers, controls, or supervises (either directly or through any subsidiary or affiliate) any advertising, marketing, or promotional fund or program to which franchisees are required to, or routinely, contribute.

(B) A franchisor that administers or supervises the administration of any fund or program described in paragraph (A)(ii) shall –

(i) keep all moneys contributed to such fund or program in a separate account;

(ii) provide an independent certified audit of such fund within sixty (60) days following the close of the franchisor's fiscal year, which shall include full disclosure of all fees, expenses, or other payments from the account to the franchisor or to any subsidiary, affiliate, or other entity controlled in whole or in part by the franchisor; and

(iii) disclose the source and amount of, and deliver to such fund or program, any discount, rebate, compensation, or payment of any kind from any person or entity with whom such fund or program transacts.

(C) While not limiting the ability of any court to identify other circumstances for which a fiduciary duty may also exist, this sub-section does not create or extend fiduciary duty by implication to other aspects of a franchise.

SECTION 7. *Procedural Fairness.* --

(1) It shall be unlawful for any franchisor, either directly or indirectly through another person, to --

(A) require any term or condition in a franchise agreement, or in any agreement ancillary or collateral to a franchise, which directly or indirectly violates any provision of this Act; or

(B) require a franchisee to assent to any disclaimer, waiver, release, stipulation, or other provision which would purport --

(i) to relieve any person from a duty imposed by this Act, except as part of a settlement of a bona fide dispute; or

(ii) to protect any person against liability to which he would otherwise be subject under this Act by reason of willful misfeasance, bad faith, or gross negligence in the performance of duties, or by reason of reckless disregard of obligations and duties under the franchise agreement;

(C) require a franchisee to assent to any waiver, release, stipulation, or other provision, either as part of any agreement or document relating to the operation of a franchise business, in any agreement or document relating to the termination, cancellation, forfeiture, repurchase, or resale of a franchise business or as a condition for permitting a franchisee to leave the franchise system, which would purport to prevent the franchisee from making any oral or written statement relating to the franchise business, to the operation of the franchise system or to the franchisee's experience with the franchise business.

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

(3) No stipulation or provision of a franchise agreement, or of an agreement ancillary or collateral to a franchise, shall –

(A) deprive a franchisee of the application and benefits of this Act or of any other relevant law;

(B) deprive a franchisee of the right to commence an action (or, if the franchise provides for arbitration, initiate an arbitration) against the franchisor for violation of this Act, or for breach of the franchise agreement, or for any agreement or stipulation ancillary or collateral to the franchise;

(4) Compliance with this Act or with an applicable law is not waived, excused, or avoided, and evidence of violation of this Act or of such law shall not be excluded, by virtue of an integration clause, any provision of a franchise agreement, or an agreement ancillary or collateral to a franchise, the parol evidence rule, or any other rule of evidence purporting to exclude consideration of matters outside the franchise agreement.

#### SECTION 8. *Transfer of a Franchise.* –

(1) IN GENERAL – A franchisee may assign an interest in a franchised business or in a franchise to a transferee provided the transferee satisfies the reasonable qualifications then generally applied by the franchisor in determining whether or not a current franchisee is eligible for renewal. If the franchisor does not renew a significant number of its franchisees, then the transferee may be required to satisfy the reasonable conditions generally applied to new franchisees. For the purpose of this section, a reasonable current qualification for a new franchisee is a qualification based upon a legitimate business reason. If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor, the franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to the transfer is not arbitrary or capricious and the franchisor states the grounds for its refusal in writing to the franchisee.

(2) NOTICE OF PROPOSED TRANSFER – A franchisee shall give a franchisor not less than thirty (30) days written notice of a proposed transfer of a transferable interest, and

on request shall provide in writing the ownership interests of all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the transfer or the franchisee, as appropriate.

(3) CONSENT TO PROPOSED TRANSFER – A transfer by a franchisee is deemed to have been approved thirty (30) days after the franchisee submits the request for permission to transfer the franchise involved unless, within that time the franchisor refuses to consent to the transfer as evidenced in writing in accordance with sub-section (1). A statement of the grounds for refusal to consent to the transfer is privileged against a claim of defamation.

(4) CONDITIONS OF TRANSFER –

(A) PERMISSIBLE CONDITIONS – A franchisor may require as a condition of a transfer that –

(i) the transferee successfully complete a reasonable training program;

(ii) a reasonable transfer fee be paid to reimburse the franchisor for the franchisor's reasonable and actual expenses directly attributable to the transfer;

(a) the franchisee pay or make reasonable provision to pay any amount due the franchisor or the franchisor's affiliate; or

(b) the financial terms of the transfer at the time of the transfer, comply with the franchisor's current financial requirements for franchisees.

(B) IMPERMISSIBLE CONDITIONS – A franchisor may not condition its consent to a transfer described in paragraph (A) on –

(i) a franchisee's foregoing existing rights other than those contained in the franchise agreement;

(ii) a franchisee's entering into a release of claims broader in scope than a counterpart release of claims offered by the franchisor to the franchisee; or

(iii) requiring the franchisee or transferee to make, agree to make, capital improvements, reinvestments, or purchases in amount greater than the franchisor could have reasonably required under the terms of the franchisee's existing franchise agreement.

(5) ASSIGNMENT – A franchisee may assign the franchisee's interest in the franchise for the unexpired term of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to enter into a franchise agreement that has different material terms or financial requirements as a condition of the transfer.

(6) CONSENT TO PUBLIC OFFERING – A franchisor may not withhold its consent to a franchisee's making a public offering of its securities without good cause if the franchisee, or the owner of the franchisee's interest in the franchise, retains control over more than twenty five percent (25%) of the voting power as the franchisee.

(7) CONSENT TO POOLING INTEREST, OR TO SALE OR EXCHANGE – A franchisor may not withhold its consent to a pooling of interest, to a sale or exchange of assets or securities, or to any other business consolidation amongst its existing franchisees, provided the constituents are each in material compliance with their respective obligations to the franchisor.

(8) NON-INTERFERENCE – The following occurrences shall not be considered transfers requiring the consent of the franchisor under a franchise agreement, and a franchisor shall not impose any fees, payments, or charges in excess of a franchisor's cost to review the relevant matter:

(A) The succession of ownership or management of a franchise upon the death or disability of a franchise, or of an owner of a franchise, to the surviving spouse, heir, or partner active in the management of the franchise unless the successor objectively fails to meet within one (1) year or the then current reasonable qualifications of the franchisor for franchisees.

(B) Incorporation of a proprietorship franchisee, provided that the franchisor may require a personal guarantee by the franchisee of obligations related to the franchise.

(C) A transfer within an existing ownership group of a franchise provided that more than fifty percent (50%) of the franchise is held by persons who meet the franchisor's reasonable current qualifications for franchisees. If less than fifty percent (50%) of the franchise would be owned by persons who objectively meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer.

(D) A transfer of less than a controlling interest in the franchise to the franchisee's spouse or child or children, provided that more than fifty percent (50%) of the entire franchise is held by those who meet the franchisor's reasonable current qualifications. If less than fifty percent (50%) of the franchise would be owned by persons who objectively meet the franchisor's reasonable current qualifications, the franchisor may refuse to authorize the transfer.

(E) A grant or retention of a security interest in the franchised business or its assets, or an ownership interest in the franchisee, if the security agreement establishes an obligation on the part of the secured party enforceable by the franchisor to give the franchisor simultaneously with notice to the franchisee, notice of the secured party's intent to foreclose on the collateral, and a reasonable opportunity to redeem the interest of the secured party and recover the secured party's interest in the franchise or franchised business by satisfying the secured obligation.

(F) A franchisor may not exercise any purported right of first refusal or right to purchase with regard to any franchise, or interest or assets of a franchisee, upon the happening of any event described in paragraphs (1) through (5).

(9) EFFECT OF CERTAIN COVENANTS –

(A) IN GENERAL – After the transfer of a transferor's complete interest in a franchise, a franchisor may not enforce against the transferor any covenant of the franchise purporting to prohibit the transferor from engaging in any lawful occupation or enterprise.

(B) EXCEPTION.— This sub-section shall not limit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights (including protection of trade address) except by agreement with the franchisor.

SECTION 9. *Transfer of Franchise by Franchisor* — A franchisor shall not transfer, by sale or otherwise, its interest in a franchise unless —

(1) the franchisor provides, not less than thirty (30) days before the effectivity date of the transfer, notice to every franchisee of the intent to transfer the franchisor's interest in the franchise or of substantially all of the franchises by the franchisor;

(2) such notice is accompanied by a complete description of the business and financial terms of the proposed transfer or transfers; and

(3) upon the transfer, the entity assuming the franchisor's obligations has the business experience and financial means to perform all of the franchisor's obligations in the ordinary course of business.

SECTION 10. *Independent Sourcing of Goods and Services*. —

(1) IN GENERAL — Except as provided in subsection (5) a franchisor, either directly or indirectly through any affiliate, officer, employee, agent, representative, or attorney, shall not prohibit or restrict a franchisee from obtaining equipment, fixtures, supplies, goods, or services used in the establishment or operation of the franchised business from sources of the franchisee's choosing, except that such goods or services may be required to meet reasonable established uniform system-wide quality standards promulgated or enforced by the franchisor.

(2) APPROVED VENDORS — Without limiting the rights of the franchisee under subsection (1), if the franchisor approves vendors of equipment, fixtures, supplies, goods, or services used in the establishment or operation of the franchised business, the franchisor shall provide and continuously update an inclusive list of approved vendors and shall promptly and objectively evaluate and respond to reasonable requests by franchisees for approval of



competitive sources of supply. The franchisor shall approve not fewer than two (2) vendors for each piece of equipment, each fixture, each supply, good or service.

(3) BENEFITS – A franchisor, and its affiliates, shall fully disclose whether or not it receives any rebates, commissions, payments, or other benefits from vendors as a result of the purchase of goods or services by franchisees. All such rebates, commissions, payments, and other benefits shall be distributed directly to the franchisees.

(4) REPORTING – A franchisor shall report not less frequently than annually, using generally accepted accounting principles, the amount of revenue and profit it earns from the sale of equipment, fixtures, supplies, goods, or services to the franchisees of the franchisor.

(5) EXCEPTION – Sub-section (1) does not apply to reasonable quantities of equipment, fixtures, supplies, goods, or services, including display and sample items, that the franchisor requires the franchisee to obtain from the franchisor or its affiliate, but only if the equipment, fixtures, supplies, goods, or services are central to the franchised business and incorporate a trade secret, patent, or copyright owned by the franchisor or its affiliate.

#### SECTION 11. *Encroachment.* –

(1) IN GENERAL – A franchisor may not place, or license another to place, one (1) or more new outlets for a franchised business in reasonable proximity to an established outlet of a similar kind of franchised business, if –

(A) the intent or probable effect of establishing the new outlets is to cause a diminution of gross sales by the established outlet of more than five percent (5%) in the twelve (12) months immediately following the establishment of the new outlet; and

(B) the established outlet –

(i) offers goods or services identified by the same trademark as those offered from the new outlet; or

(ii) has premises that are identified by the same trademark as the new outlet.

(2) EXCEPTION — This section shall not apply with respect to an established outlet if, before a new outlet described in sub-section (1) opens for business, a franchisor offers in writing to each franchisee of the franchisor of an established outlet to pay to the franchisee involved an amount equal to fifty percent (50%) of the gross sales (net of sales taxes, returns, and allowances) of the new outlet for the first twenty-four (24) months of operation of the new outlet if the sales of the established outlet decline by more than five percent (5%) in the twelve months (12) immediately following establishment of the new outlet as a consequence of the opening of the new outlet.

(3) BURDEN OF PROOF — A franchisor shall have the burden of proof to show that, or the extent to which, a decline in sales of an established outlet described in sub-section (A) occurred for reasons other than the opening of the new outlet for goods or services concerned —

(A) if the franchisor makes a written offer under sub-section (2); or

(B) in an action or proceeding brought under section 12.

#### SECTION 12. *Right of Action.* -

(1) IN GENERAL — A party to a franchise who is injured by a violation or threatened violation of this Act, shall have a right of action for rescission and restitution, as well as for all damages and injunctive relief, including costs of litigation and reasonable attorney's fees and expert witness fees, against any person found to be liable for such violation.

(2) LIABILITY — Every person who directly or indirectly controls a person liable under subsection (1), every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions and every employee of a person so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be liable hereunder had no knowledge or reasonable grounds to know of the existence of the facts by reason of which the liability is alleged to exist.

(3) ALTERNATIVE DISPUTE RESOLUTION – Except as otherwise provided in subsection (4), nothing contained in this Act shall be construed to limit the right of a franchisor and a franchisee to engage in arbitration, mediation, or other non-judicial resolution of a dispute, either in advance of or after a dispute arises, provided that the standards and protections applied in any binding non-judicial procedure agreed to by the parties are not less than the requirements set forth in this Act.

(4) STATUTE OF LIMITATIONS – No action may be commenced pursuant to this section or this Act more than –

(A) five (5) years after the date on which the violation occurs; or

(B) three (3) years after the date on which the violation is discovered or should have been discovered through the exercise of reasonable diligence.

(5) VENUE – A franchisee may commence a civil action, or arbitration proceedings, to enforce any provision of this Act within the jurisdiction wherein the applicable franchise business is located.

(6) CUMULATIVE RIGHT – The private rights provided for in this section are in addition to and not in lieu of other rights or remedies created by existing laws.

#### SECTION 13. *Scope and Applicability.* –

(1) PROSPECTIVE APPLICATION – Except as provided in subsection (b), the requirements of this Act shall apply to franchise agreements entered into, amended, exchanged, transferred, assigned, or renewed after the date of enactment of this Act.

(2) DELAYED EFFECT – The requirements of section 3 of this Act shall take effect ninety (90) days after the date of enactment of this Act and shall apply only to actions, practices, disclosures, and statements occurring on or after such date.

SECTION 14. *Separability Clause.* - If any provision or part thereof, is held invalid or unconstitutional, the remainder of the law of the provision not otherwise affected shall remain valid and subsisting.

SECTION 15. *Repealing Clause*. - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

SECTION 16. *Effectivity Clause*. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved.