

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)



Senate
Office of the Secretary

'14 DEC 15 P2:45

SENATE
S. No. 2514

RECEIVED BY: *J*

Introduced by Senator Miriam Defensor Santiago

AN ACT
ENSURING FAIR FRANCHISING PRACTICES

EXPLANATORY NOTE

The Constitution, Article 2, Section 20 provides:

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

Ranking fifth worldwide in terms of numbers of franchisees, fourth in terms of number of jobs generated by franchising, and 11th in terms of number of brands that can be franchised, according to World Franchising Council, the Philippines has been dubbed as the franchise hub of Southeast Asia.¹

With the franchising industry thriving, it becomes imperative for the Legislature to ensure that entrepreneurs who wish to engage in franchising are protected. Unlike most countries, the Philippines lacks a comprehensive law regulating commercial franchising. The absence of such law permits the proliferation of incidents of franchisees being victimized by fraud and misinformation.

This bill seeks to protect and strengthen the industry by ensuring fair franchising standards, promoting responsible franchising and preventing unscrupulous practices.²

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

¹ <http://www.mb.com.ph/information-philippines-the-franchising-hub-of-asia/>

² This bill is based on the Franchising Code of Conduct of Australia and on the Fair Franchising Standards of the Philippine Franchise Association.

Introduced by Senator Miriam Defensor Santiago

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT
ENSURING FAIR FRANCHISING PRACTICES

SECTION 1. *Short Title.* - This Act shall be known as "The Fair Franchising Act."

SECTION 2. *Declaration of Policy.* - It is the policy of the State to ensure employment generation and economic growth by protecting the interests of enterprises, particularly franchised enterprises. The State shall recognize the need to promote, encourage and support franchised enterprises by:

- (A) adopting fair franchising practices;
- (B) regulating commercial franchising;
- (C) safeguarding against deceptive and unfair sale of franchises; and
- (D) providing necessary information on the franchisor-franchisee relationship.

SECTION 3. *Definition of Terms.* - As used in this Act, the term:

(A) "Dispute Resolution" means any process or mode used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.

1 (B) "Franchise Agreement" means a written, oral and/or implied agreement in
2 which the franchisor grants to the franchisee a licensed right, subject to the agreed-upon
3 requirement and restrictions, to conduct business utilizing the business format and
4 trade/service marks of the franchisor under a system of marketing plan substantially
5 determined, controlled or suggested by the franchisor or an associate of the franchisor

6 (C) "Franchise Disclosure Document" (FDD) means a document disclosing to
7 prospective franchisees franchise and franchisor information, including but not limited to,
8 franchisor details, business experience, litigation, payments, existing franchises,
9 intellectual property, franchise site or territory, supply of goods or services to and by a
10 franchisee, marketing and other cooperative funds, financing, obligations of franchisor
11 and franchisee, summary of other conditions of agreement, obligation to sign related
12 agreements, earnings information, financial details, and other significant information, as
13 may be determined by implementing rules and regulations.

14 (D) "Franchisee" means a person to whom a franchise is granted. For the
15 purpose of this Act, the term shall also refer to a subfranchisee or a franchisee renewing
16 or extending the franchise agreement.

17 (E) "Franchisor" means a person who grants a franchise. For the purpose of this
18 Act, the term shall also refer to a subfranchisor.

19 (F) "Subfranchise" means any contract or agreement between a franchisor and
20 a subfranchisor whereby the subfranchisor is granted the right, for consideration given in
21 whole or in part for that right, to sell or negotiate the sale of franchises in the name or on
22 behalf of the franchisor. A contract or agreement which is a franchise does not become a
23 subfranchise merely because under the latter's terms a person is granted the right to
24 receive compensation for referrals to a franchisor or subfranchisor or to receive
25 compensation for acting as sales representative on their behalf.

1 (G) "Trade secret" means information, including a formula, pattern,
2 compilation, program, device, method, technique or process, that derives independent
3 economic value, actual or potential, from not being generally known to, and not being
4 readily ascertainable by proper means, by other persons who can obtain economic value
5 from its disclosure or use; or is the subject of efforts that are reasonable under the
6 circumstances to maintain its secrecy.

7 SECTION 4. *Obligations of the Franchisor.* – The franchisor shall have the
8 following obligations:

9 (A) to provide the following to the prospective franchisee:

10 (1) copy of this Act; and

11 (2) FDD;

12 (B) to give the prospective franchisee at least 15 days to read, review and
13 understand the copy of this Act and the FDD before the prospective franchisee:

14 (1) enters into a franchise agreement, or agreement to enter into a
15 franchise agreement; or

16 (2) makes a non-refundable payment to the franchisor or associate in
17 connection with the proposed franchise agreement;

18 (C) to not enter into, renew or extend a franchise agreement, or agreement to
19 enter, renew or extend a franchise agreement, nor receive a non-refundable payment from
20 the prospective franchisee in connection with the proposed franchise agreement, unless
21 the franchisor has received from the prospective franchisee a written statement that the
22 latter has received, read and understood this Act and the FDD;

23 (D) to not enter into a franchise agreement unless the prospective franchisee
24 provides signed statements, that the latter has been given advice about the proposed
25 franchise agreement or franchise, by an independent legal adviser, independent business

1 adviser, or independent accountant. Should the prospective franchisee fail to comply, a
2 signed statement by the prospective franchisee that s/he has been given such advice or
3 has been told that such advice should be sought but has decided not to do so, shall
4 suffice;

5 (E) to provide a copy of the agreement to lease and the copy of the lease to the
6 franchisee within one month after the lease or agreement to lease is signed, should the
7 latter leases premises from the franchisor for the purposes of the franchise. If the
8 franchisee occupies, without a lease, premises leased by the franchisor, the latter shall
9 provide the former a copy of the franchisor's lease or agreement to lease, a copy of the
10 documents that give the franchisee rights to occupy the premises, or written details of the
11 conditions of occupation;

12 (F) to provide an Operating Manual to the franchisee before the opening of the
13 franchised outlet but after the franchise agreement has been signed and the fees have been
14 paid;

15 (G) to provide start-up training and on-going training to the franchisee and
16 his/her personnel; and

17 (H) to update the disclosure document every 12 months; and furnish to the
18 existing franchisee should the latter request in writing.

19 SECTION 5. *Obligation of the Franchisee.* – The franchisee shall not disclose to a
20 third party, without the prior written consent of the franchisor, the trade secrets of the
21 franchisor during the duration of the franchise agreement and even after the termination
22 of the franchise agreement, unless the information:

23 (A) is already in or comes into the public domain other than in breach of the
24 Agreement;

1 (B) is required to be disclosed by a court of law, regulatory authority or tribunal
2 of competent jurisdiction; or

3 (C) is information that both parties agree to disclose.

4 SECTION 6. *Disclosure.* –

5 (A) A Franchise Disclosure Document containing information that is material to
6 the running of the franchise, shall be given by the franchisor to a prospective franchisee,
7 or a franchisee proposing to enter into, renew or extend a franchise agreement. It shall aid
8 in making an informed decision regarding the franchise.

9 (B) The FDD shall follow a format set out by the Department of Trade and
10 Industry.

11 (C) The following shall be disclosed to the franchisee within 60 days after the
12 franchisor becomes aware of it:

13 (1) change in ownership or control of the franchisor;

14 (2) proceedings by a public agency, including

15 i. names of parties of the proceedings

16 ii. name of court or tribunal

17 iii. case number

18 iv. nature of the proceedings

19 (3) change in the intellectual property, its control or ownership, of the
20 franchise; and

21 (4) the franchisor becoming an externally-administered body corporate

22 (B) It shall be unlawful, either directly or indirectly

23 (1) to make an untrue statement of material facts;

24 (2) to fail to state a material fact;

- 1 (3) to fail to state any fact which would render any required statement or
2 disclosure either untrue or misleading;
- 3 (4) to fail to furnish any prospective franchisee or franchisee with the
4 required disclosure document;
- 5 (5) to fail to include in the disclosure document all information required
6 to be disclosed by law at the time and in the manner required; or
- 7 (6) to make any claim or representation to a prospective franchisee
8 whether orally or in writing, which is inconsistent with or contradicts such
9 disclosure document.

10 SECTION 7. *Franchise Agreement.* –

11 (A) The franchise agreement shall not contain, or require a franchisee to sign, a
12 general release of the franchisor from liability towards the franchisee. It shall also not
13 contain any provision whereby the franchisee covenants to a waiver of any verbal or
14 written representation made by the franchisor.

15 (B) If the franchisee breaches a franchise agreement, the franchisor shall:

- 16 (1) notify the franchisee that the franchisor proposes to terminate the
17 franchise agreement due to the breach;
- 18 (2) notify the franchisee of actions that may be done to remedy the
19 breach; and
- 20 (3) allow the franchisee to remedy the breach within thirty (30) days

21 (C) The franchisor cannot terminate a franchise agreement before expiration,
22 unless the franchisee:

- 23 (1) fails to comply with a material provision of the franchise agreement;
- 24 (2) becomes bankrupt, insolvent under administration, or an externally-
25 administered body corporate;

- 1 (3) voluntarily abandons the franchise;
- 2 (4) is convicted of a serious offense;
- 3 (5) operates the franchise in a way that endangers public health or
- 4 safety;
- 5 (6) is fraudulent in connection with operation of the franchise; or
- 6 (7) agrees to the termination of the franchise.

7 (D) If the franchisor terminates the franchise agreement without just cause, the
8 franchisee may rescind the agreement and hold the franchisor liable for damages.

9 SECTION 8. *Dispute Resolution.* –

10 (A) A statement that the parties agree to undergo dispute resolution before
11 resorting to court action shall be included in the franchise agreement.

12 (B) There shall be a mediation adviser appointed by the complainant and
13 approved by the respondent.

14 (C) The complainant shall notify the respondent in writing:

- 15 (1) the nature of the dispute;
- 16 (2) the outcome the complainant wants; and
- 17 (3) the action the complainant thinks shall settle the dispute.

18 (B) The parties shall agree on the resolution of the dispute. Should they fail to
19 do this within three weeks, either party shall refer to a mediator. Should they fail to agree
20 on who shall be the mediator, either party shall request the mediation adviser to appoint a
21 mediator. The mediation adviser shall appoint a mediator within 14 days after the request.

22 (C) The mediation shall terminate if:

- 23 (1) the dispute has not been resolved after 30 days since the start of
24 mediation;
- 25 (2) either party asks the mediator to terminate the mediation; or

1 (3) the mediator terminates the mediation.

2 (D) If the mediation is terminated by the mediator, the mediator shall issue a
3 certificate, to the mediation adviser and each party of the dispute, stating:

4 (1) the names of the parties;

5 (2) the nature of the dispute;

6 (3) that the mediation has finished; and

7 (4) that the dispute has not been resolved

8 (E) The parties are equally liable for the costs of mediations, unless they agree
9 otherwise.

10 (F) Each party may take legal proceedings under the franchise agreement.

11 SECTION 9. *Access to books, accounts and records.* – The franchisor and
12 franchisee have reciprocal duties to maintain a complete set of books, records and
13 accounts pertaining to the operations of the franchise and give the other access to view
14 the same upon prior notice and during reasonable business hours.

15 SECTION 10. *Effect of Violation on the Agreement.* – A party to a franchise
16 agreement who is injured by a violation or threatened violation of this Act shall have a
17 right of action for rescission and restitution, as well as for all damages and injunctive
18 relief, including costs of litigation and reasonable attorney's fees, against any person
19 found to be liable for such violation.

20 SECTION 11. *Penalties.* – Without prejudice to civil, administrative and criminal
21 liabilities under existing laws, any person who directly or indirectly violates the
22 provisions of this Act or abets in the violation thereof shall be punished with

1 imprisonment not exceeding three years or punished with a fine not exceeding Five
2 Hundred Thousand Pesos (P500,000.00) or both.

3 SECTION 12. *Promulgation of Rules and Regulations, Administration and*
4 *Enforcement of this Act.* – The Department of Trade and Industry is hereby authorized to
5 promulgate rules and regulations necessary to carry out the provisions of this Act within
6 six months from its approval. It shall also have the primary responsibility for the
7 administration and enforcement of this Act.

8 SECTION 13. *Separability Clause.* – If any part or provision of this Act shall be
9 held unconstitutional or invalid, other provisions, which are not affected thereby, shall
10 continue to be in full force and effect.

11 SECTION 14. *Repealing Clause.* – All laws, presidential decrees, executive order,
12 rules and regulations or parts thereof which are inconsistent with the provisions of this
13 Act are hereby repealed, amended or modified accordingly.

14 SECTION 15. *Effectivity.* – This Act shall take effect after 15 days following its
15 publication in two newspapers of general circulation.

Approved,

/tmdp4Dec2014