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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 377

01/19/2017 Authored by Thissen The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; regulating franchises; prohibiting disclaimers of violations;
1.3 regulating renewals; amending Minnesota Statutes 2016, sections 80C.13,
1.4 subdivision 2; 80C.14, subdivisions 2, 3, 4, by adding a subdivision; 80C.17,
1.5 subdivision 5; 80C.21.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2016, section 80C.13, subdivision 2, is amended to read:

1.8 Subd. 2. Communications; untrue or omitted material facts. No person may offer or
1.9 sell a franchise in this state by means of any written or oral communication which includes
1.10 an untrue statement of a material fact or which omits to state a material fact necessary in
1.11 order to make the statements made, in the light of the circumstances under which they were
1.12 made, not misleading.

1.13 No person may disclaim a violation of this section through any method or device,
1.14 including, but not limited to, contractual disclaimers or "no representation" clauses or by
1.15 checklists or other forms completed by the franchisee or prospective franchisee.

1.16 Sec. 2. Minnesota Statutes 2016, section 80C.14, subdivision 2, is amended to read:

1.17 Subd. 2. Acts constituting. All franchise contracts or agreements, other than those
1.18 classifications of franchises specifically recognized by the commissioner under subdivision
1.19 1, and any other device or practice of a franchisor must conform to subdivisions 3 and 4. It
1.20 is an unfair and inequitable practice for a person to commit an act specified in subdivisions
1.21 3 to ~~5~~ 6.

2.1 Sec. 3. Minnesota Statutes 2016, section 80C.14, subdivision 3, is amended to read:

2.2 Subd. 3. **Termination or cancellation.** (a) No person may terminate ~~or~~ cancel, or
 2.3 nonrenew a franchise unless: (i) that person has given written notice setting forth all the
 2.4 reasons for the termination ~~or~~ cancellation, or refusal to renew at least 90 days in advance
 2.5 of termination ~~or~~ cancellation, or nonrenewal, and (ii) the recipient of the notice fails to
 2.6 correct the reasons stated for termination ~~or~~ cancellation, or nonrenewal in the notice within
 2.7 60 days of receipt of the notice; except that the notice is effective immediately upon receipt
 2.8 where the alleged grounds for termination ~~or~~ cancellation, or nonrenewal are:

2.9 (1) voluntary abandonment of the franchise relationship by the franchisee;

2.10 (2) the conviction of the franchisee of an offense directly related to the business conducted
 2.11 pursuant to the franchise; or

2.12 (3) failure to cure a default under the franchise agreement which materially impairs the
 2.13 good will associated with the franchisor's trade name, trademark, service mark, logotype
 2.14 or other commercial symbol after the franchisee has received written notice to cure of at
 2.15 least 24 hours in advance thereof.

2.16 (b) No person may terminate ~~or~~ cancel, or nonrenew a franchise except for good cause.
 2.17 "Good cause" means failure by the franchisee to substantially comply with the material and
 2.18 reasonable franchise requirements imposed by the franchisor including, but not limited to:

2.19 (1) the bankruptcy or insolvency of the franchisee;

2.20 (2) assignment for the benefit of creditors or similar disposition of the assets of the
 2.21 franchise business;

2.22 (3) voluntary abandonment of the franchise business;

2.23 (4) conviction or a plea of guilty or no contest to a charge of violating any law relating
 2.24 to the franchise business; or

2.25 (5) any act by or conduct of the franchisee which materially impairs the good will
 2.26 associated with the franchisor's trademark, trade name, service mark, logotype or other
 2.27 commercial symbol.

2.28 Sec. 4. Minnesota Statutes 2016, section 80C.14, subdivision 4, is amended to read:

2.29 Subd. 4. **Failure Right to renew.** ~~Unless the failure to renew a franchise is for good~~
 2.30 ~~cause as defined in subdivision 3, paragraph (b), and the franchisee has failed to correct~~
 2.31 ~~reasons for termination as required by subdivision 3, no person may fail to renew a franchise~~
 2.32 ~~unless (1) the franchisee has been given written notice of the intention not to renew at least~~

3.1 ~~180 days in advance of the expiration of the franchise; and (2) the franchisee has been given~~
 3.2 ~~an opportunity to operate the franchise over a sufficient period of time to enable the~~
 3.3 ~~franchisee to recover the fair market value of the franchise as a going concern, as determined~~
 3.4 ~~and measured from the date of the failure to renew. No franchisor may refuse to renew a~~
 3.5 ~~franchise if the refusal is for the purpose of converting the franchisee's business premises~~
 3.6 ~~to an operation that will be owned by the franchisor for its own account. All franchise~~
 3.7 ~~relationships entered into on or after July 1, 2017, shall be deemed to be contracts of perpetual~~
 3.8 ~~duration that are terminable only for good cause. A franchisor whose franchise agreement~~
 3.9 ~~expires may require that a franchisee enter into the franchisor's then-current franchise~~
 3.10 ~~agreement upon expiration, but the franchisee shall have a statutory right to renew upon~~
 3.11 ~~expiration, even if the franchise agreement at issue contains no renewal right.~~

3.12 Sec. 5. Minnesota Statutes 2016, section 80C.14, is amended by adding a subdivision to
 3.13 read:

3.14 Subd. 6. **Attempting to disclaim violations of the act.** It is an unfair and inequitable
 3.15 practice for a person to attempt to disclaim, by contract, form, or other device, including
 3.16 but not limited to any choice of law clause, liability for any violations of this act, including
 3.17 but not limited to this section or section 80C.13.

3.18 Sec. 6. Minnesota Statutes 2016, section 80C.17, subdivision 5, is amended to read:

3.19 Subd. 5. **Limitation on actions.** No action may be commenced pursuant to this section
 3.20 more than three years after the ~~cause of action accrues~~ violation is discovered by the
 3.21 franchisee.

3.22 Sec. 7. Minnesota Statutes 2016, section 80C.21, is amended to read:

3.23 **80C.21 WAIVERS VOID.**

3.24 Any condition, stipulation or provision, including any choice of law provision, purporting
 3.25 to bind any person who, at the time of acquiring a franchise:

3.26 (1) is a resident of this state, or;

3.27 (2) in the case of a partnership or corporation, is organized or incorporated under the
 3.28 laws of this state, or purporting to bind;

3.29 (3) in the case of a limited liability company or partnership, has a member or partner
 3.30 who is a Minnesota resident; or

4.1 (4) is a person acquiring any franchise to be operated in this state to waive compliance
4.2 or which has the effect of waiving compliance with any provision of sections 80C.01 to
4.3 80C.22 or any rule or order thereunder is void.

4.4 Void waivers include but are not limited to the types of waivers and disclaimers and
4.5 other methods or devices described in section 80C.13, subdivision 2. A person relying upon
4.6 a waiver that is found to be void under this section in a civil action or arbitration proceeding
4.7 is liable to the franchisee for the franchisee's costs, including reasonable attorney fees,
4.8 incurred in defeating the waiver.