

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1317

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Post Office and Civil Service

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## A BILL

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, 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.**

4 This Act may be cited as the “Federal Franchise  
5 Data and Public Information Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) The Congress makes the following findings:

1           (1) Franchise business relationships represent a  
2 large and growing segment of the Nation's retail and  
3 service businesses and are replacing more traditional  
4 forms of small business ownership in the American  
5 economy.

6           (2) Despite the growing importance of franchis-  
7 ing in the American marketplace, there is little ob-  
8 jective or reliable statistical information available to  
9 the public on the number, ownership, and operation  
10 of franchise businesses; and broad-based, objective  
11 data or investigations of franchise failures are vir-  
12 tually non-existent.

13           (3) While there is a void of reliable statistics,  
14 a large amount of statistical information is routinely  
15 provided in articles and talks about franchising and  
16 in promotional material for franchise opportunities  
17 that seek to represent franchises as uniformly suc-  
18 cessful and virtually risk free.

19           (4) Inaccurate or misleading statistical informa-  
20 tion is routinely attributed to Federal Government  
21 agencies and reports, and data on franchise business  
22 compiled prior to 1987 by the United States Depart-  
23 ment of Commerce continue to be widely cited, mis-  
24 represented or misused.

1           (5) Franchisees may suffer substantial losses  
2           from investment in a franchise business without ac-  
3           curate or reliable information or with expectations  
4           based on false or misleading statistical information  
5           regarding the operation and success of franchise  
6           businesses.

7           (b) It is the purpose of this Act to provide the public  
8           with comprehensive statistical information about franchis-  
9           ing and the performance of franchise systems, to enhance  
10          the reliability of information made available to the public  
11          regarding franchise practices, and to assure that prospec-  
12          tive investors have the information necessary to make an  
13          informed decision on whether to invest in a franchise busi-  
14          ness.

15       **SEC. 3. NATIONAL FILING AND DATA COLLECTION.**

16          (a) Filing of Franchise Disclosure Documents—

17               (1) All persons, partnerships or corporations  
18               engaged in selling or offering for sale any franchise,  
19               or any relationship which is represented either orally  
20               or in writing to be a franchise, whether within a  
21               state or in interstate commerce, shall file with the  
22               United States Department of Commerce (hereafter,  
23               the “Commerce Department”) a copy of the fran-  
24               chise disclosure document or circular for such fran-  
25               chise; and

1           (2) The disclosure document or circular to be  
2 filed under this subsection shall be:

3           (A) the most recent version of such docu-  
4 ment or circular which incorporates information  
5 that is current as of the close of the  
6 franchisor's most recent fiscal year; and

7           (B) the most restrictive version of such  
8 document or circular, and of the franchise  
9 agreement, provided by the franchisor to any  
10 prospective franchisee, in terms of the require-  
11 ments imposed on franchisees and the limita-  
12 tions on the rights and remedies available to  
13 franchisees in the franchise agreement;

14           (3) The disclosure document or circular de-  
15 scribed in paragraph (2) shall be filed annually at a  
16 time and in a manner set forth in regulation by the  
17 Commerce Department;

18           (4) The Commerce Department shall make  
19 available to the Congress, the Federal Trade Com-  
20 mission and other Federal agencies, as requested,  
21 copies of any disclosure documents filed under this  
22 subsection, and shall establish procedures under  
23 which such documents may be viewed by the public;  
24 and

1           (5) It shall be unlawful for a franchisor,  
2           subfranchisor or franchise broker to make any state-  
3           ment or reference in connection with any advertise-  
4           ment or disclosure document, or in any oral or writ-  
5           ten statement or other representation to a prospec-  
6           tive franchisee, that a disclosure document has been  
7           filed with the Commerce Department, or to make  
8           any statement or representation that suggests or im-  
9           plies that the Commerce Department or an other  
10          Federal agency has in any way reviewed the content  
11          of the disclosure document, made any finding with  
12          regard to the content of such document, or has in  
13          any way passed upon the merits of, or given ap-  
14          proval to, the franchise opportunity.

15          (b) Data Collection and Publication—

16                 (1) The Commerce Department shall, not later  
17                 than two hundred and forty days after the date of  
18                 enactment of this section, establish procedures for  
19                 the compilation, analysis and publication of statis-  
20                 tical information on franchise ownership and na-  
21                 tional franchising practices. For purposes of such  
22                 procedures, the Commerce Department shall:

23                         (A) use as the principal source of statis-  
24                         tical information on franchise ownership and  
25                         practices the disclosure documents for franchise

1 opportunities required to be filed annually  
2 under subsection (a);

3 (B) establish categories of statistical infor-  
4 mation for annual data compilation and analy-  
5 sis, including but not limited to: total numbers  
6 of franchisors and franchise businesses, types of  
7 franchise businesses, number of foreign  
8 franchisors, annual growth in franchisors and  
9 franchise businesses, turnover in franchise own-  
10 ership and numbers of franchise failures;

11 (C) consult with Congress, the Federal  
12 Trade Commission, the North American Securi-  
13 ties Administrators Association and other inter-  
14 ested organizations in identifying additional  
15 categories of statistical information for pur-  
16 poses of data compilation and analysis that:

17 (i) involve issues or information of po-  
18 tential interest to the public, or of specific  
19 concern to Federal and State regulatory  
20 agencies; and

21 (ii) are obtainable from disclosure ma-  
22 terials filed in accordance with subsection  
23 (a) and from other public sources of infor-  
24 mation; and

1           (D) initiate periodic questionnaires of  
2           franchisors or franchisees to obtain statistical  
3           information to supplement information obtain-  
4           able in disclosure documents filed under sub-  
5           section (a), or information in connection with  
6           topics or categories of statistical information  
7           identified under paragraph (C) for which addi-  
8           tional sources of information may be required,  
9           except that no information obtained from such  
10          questionnaires may be used in lieu of informa-  
11          tion otherwise obtainable in a disclosure docu-  
12          ment filed under subsection (a) of this section  
13          or in data available in the Business Census pur-  
14          suant to section 4 of this Act.

15          (2) The Commerce Department shall, not later  
16          than eighteen months after the date of enactment of  
17          this section, and then not less than annually there-  
18          after, publish a report on the information and find-  
19          ings relating to franchise ownership and national  
20          franchising practices required to be complied under  
21          this subsection. Such report shall be transmitted to  
22          the appropriate Committees of the Congress and  
23          shall be made available to the public through the Su-  
24          perintendent of Documents.

1 **SEC. 4. CENSUS DATA ON FRANCHISE BUSINESSES.**

2 (a) The Bureau of the Census of the Department of  
3 Commerce (hereafter, the “Bureau of the Census”) shall  
4 include in its Business Census for 1997, and in each such  
5 succeeding census, statistical information on the number,  
6 ownership and operation of franchise businesses.

7 (b) The Bureau of the Census shall—

8 (1) consult with the Federal Trade Commission  
9 to establish criteria and procedures to identify fran-  
10 chise businesses to be included in the Business Cen-  
11 sus; and

12 (2) consult with the Congress, the Federal  
13 Trade Commission and other interested organiza-  
14 tions in establishing categories of statistical informa-  
15 tion to be collected in the Business Census relating  
16 to the number, ownership and operation of franchise  
17 businesses.

18 (c) Not later than two hundred and eighty days after  
19 the date of enactment of this section, the Bureau of Cen-  
20 sus shall submit a report to the Congress which shall de-  
21 scribe the most cost effective and accurate means to gath-  
22 er and present the statistical information required to be  
23 collected pursuant to this section and identify the cat-  
24 egories of data relating to franchise businesses to be in-  
25 cluded in the Business Census.

1 **SEC. 5. RULES, REGULATIONS AND FEES.**

2 (a) The Secretary of Commerce (hereafter, the “Sec-  
3 retary”) is authorized to make such rules and regulations  
4 as are necessary and appropriate to implement the provi-  
5 sions of this Act. Any rules, regulations, or orders issued  
6 pursuant to this authority may be established in such form  
7 or manner, may contain such classifications or differentia-  
8 tions, and may provide for such adjustments and reason-  
9 able exceptions as in the judgement of the Secretary are  
10 necessary or proper to effectuate the purposes of this Act,  
11 or to prevent circumvention or evasion of any rule, regula-  
12 tion, or order issued hereunder.

13 (b) The Secretary is further authorized to collect a  
14 filing fee or other reasonable charge from any person,  
15 partnership or corporation subject to the filing require-  
16 ment of section 3(a) of this Act for purposes of defraying  
17 costs incurred by the Commerce Department in connection  
18 with such filing.

19 **SEC. 6. DEFINITIONS.**

20 For purposes of this Act:

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

1           (2) The term “disclosure document” means ei-  
2           ther the disclosure statement required by the Com-  
3           mission in Trade Regulation Rule 436 (16 CFR  
4           436) as it may be amended, or an offering circular  
5           prepared in accordance with Uniform Franchise Of-  
6           fering Circular guidelines as adopted and amended  
7           by the North American Securities Administrators  
8           Association, Inc., or its successor.

9           (3) The term “franchise” means—

10           (A) any continuing commercial relationship  
11           created by a contract or agreement, whether ex-  
12           press or implied, oral or written, where—

13           (i) one person (the franchisor) grants  
14           to another person (the franchisee) the  
15           right to engage in the business of offering,  
16           selling or distributing goods or services, in  
17           which—

18           (a) the goods or services offered,  
19           sold or distributed by the franchisee  
20           are substantially associated with the  
21           trademark, service mark, trade name,  
22           logotype, advertising, or other com-  
23           mercial symbol owned or used by the  
24           franchisor; or

1 (b) the franchisee must conform  
2 to quality standards established by  
3 the franchisor for the goods or serv-  
4 ices to be offered, sold or distributed,  
5 and operate under a name that in-  
6 cludes, in whole or in part, the  
7 franchisor's trademark, service mark,  
8 trade name, logotype, advertising, or  
9 other commercial symbol;

10 (ii) the franchisor—

11 (a) communicates to the  
12 franchisee knowledge, experience, ex-  
13 pertise, knowhow, trade secrets or  
14 other non-patented information, re-  
15 gardless of whether it is proprietary  
16 or confidential;

17 (b) provides significant assistance  
18 in the franchisee's method of oper-  
19 ation; or

20 (c) exercise significant controls  
21 over the franchisee's method of oper-  
22 ation of the business; and

23 (iii) the franchisee, as a condition for  
24 obtaining or commencing operation of a  
25 franchise, is required to make, or to com-

1           mit to make, payment or other consider-  
2           ation to the franchisor, or an affiliate of  
3           the franchisor, other than payment for  
4           commercially reasonable quantities of  
5           goods for resale at a bona fide wholesale  
6           price.

7           (B) a subfranchise; or

8           (C) any commercial relationship entered  
9           into in reasonable reliance on representations,  
10          whether oral or written, that the criteria of sub-  
11          section (A) will be met.

12          (4) The term “franchisee” means a person to  
13          whom a franchise is granted.

14          (5) The term “franchisor” means a person who  
15          grants a franchise or a subfranchise.

16          (6) The term “person” means a natural person  
17          or any legal entity recognized in law.

18          (7) The term “subfranchise” means a contract  
19          or an agreement by which a person pays a  
20          franchisor for the right to sell, offer for sale or ar-  
21          range the sale of franchises, or to provide goods or  
22          services to franchisees.

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