

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

# H. R. 2596

To strengthen current Federal law and regulation to protect consumers in connection with the representation and sale of franchise businesses; to facilitate increased public disclosure regarding franchise opportunities, to enhance common law remedies for purchasers of franchises, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 1, 1993

Mr. LAFALCE (for himself, Mr. DICKEY, Mr. MFUME, Mr. WYDEN, Ms. DANNER, Mr. TOWNS, Mrs. MEEK, Mr. MCDERMOTT, Mrs. CLAYTON, Mr. TORRES, Mr. OBERSTAR, Mr. ENGLE, Mr. ROMERO-BARCELÓ, Ms. ROYBAL-ALLARD, and Mr. SHAYS) introduced the following bill; which was referred jointly to the Committee on the Judiciary and Energy and Commerce

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## A BILL

To strengthen current Federal law and regulation to protect consumers in connection with the representation and sale of franchise businesses; to facilitate increased public disclosure regarding franchise opportunities, to enhance common law remedies for purchasers of franchises, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Franchise  
3 Disclosure and Consumer Protection Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) The Congress makes the following findings:

6 (1) Franchise business relationships represent a  
7 large and growing segment of the nation’s retail and  
8 service businesses and are replacing more traditional  
9 forms of small business ownership in the American  
10 economy.

11 (2) Because franchising remains a relatively  
12 new form of business relationship, existing law has  
13 not evolved sufficiently to protect prospective  
14 franchisees adequately from misrepresentation in the  
15 sale of franchise businesses or from fraudulent or in-  
16 adequately structured franchise opportunities.

17 (3) Most prospective franchisees lack bargain-  
18 ing power and generally invest substantial amounts  
19 to obtain a franchise business when they are unfa-  
20 miliar with operating a business, with the business  
21 being franchised and with industry practices in fran-  
22 chising.

23 (4) Franchisees may suffer substantial losses  
24 when the franchisor, or the franchisor’s representa-  
25 tive, do not provide truthful or complete information  
26 regarding the franchise opportunity, the prior busi-

1       ness experience of the franchisor or the details of  
2       the franchisor-franchisee relationship.

3           (5) Traditional legal remedies have proven inad-  
4       equate to protect the legitimate interests of pur-  
5       chasers of franchises due to the failure of some  
6       courts to recognize what inducements are material in  
7       the sale of a franchise and what contractual provi-  
8       sions are material in ongoing franchise relationships.

9       (b) It is the purpose of this Act to provide prospective  
10      franchisees with additional information necessary to help  
11      them make an informed decision about the purchase of  
12      a franchise opportunity, to protect prospective franchisees  
13      from fraudulent practices, to broaden the scope and en-  
14      hance the availability and utility of common law remedies,  
15      and to promote more equitable franchise relationships.

16      **SEC. 3. PROHIBITED ACTIONS.**

17      (a) In connection with the advertising, offering, li-  
18      censing, contracting, sale or other promotion in or affect-  
19      ing commerce of any franchise, or any relationship which  
20      is represented either orally or in writing to be a franchise,  
21      it shall be unlawful for any person, partnership or corpora-  
22      tion—

23           (1) to employ a device, scheme, or artifice to  
24      defraud;

1           (2) to engage in an act, practice, course of busi-  
2           ness or pattern of conduct which operates or is in-  
3           tended to operate as a fraud or deceit upon any per-  
4           son;

5           (3) to obtain money or property, or assist oth-  
6           ers to obtain money or property, by means of any  
7           untrue statement of a material fact, any omission to  
8           state a material fact, or any omission to state a ma-  
9           terial fact necessary in order to make the statements  
10          made, in the light of the circumstances under which  
11          they are made, not misleading; or

12          (4) to discriminate among prospective  
13          franchisees on the basis of race, sex, religion, dis-  
14          ability or national origin—

15                (A) in the solicitation, offering or sale of  
16                any franchise opportunity, except that, and  
17                then only to the extent that, any discrimination  
18                between franchisees is reasonable and is related  
19                to a program under which franchises are made  
20                available to a class of persons who may have  
21                been denied franchise opportunities in the past  
22                based on suspect classifications including race,  
23                sex, religion, disability or national origin; or

24                (B) in the selection of any site or location  
25                for a franchise business; or

1           (5) to represent or imply in any manner what-  
2           soever that such franchise has been reviewed, en-  
3           dorsed, recommended or approved by the United  
4           States or any agency or officer thereof.

5           (b) In connection with any disclosure required by this  
6 Act, or any disclosure document, notice or report required  
7 by Federal law or regulation, it shall be unlawful for any  
8 franchisor, subfranchisor or franchise broker, either di-  
9 rectly or indirectly through any officer, employee, agent,  
10 representative or attorney—

11           (1) to make or cause to be made an untrue  
12 statement of material fact, omit to state a material  
13 fact, or omit to state a material fact necessary in  
14 order to make the statements made, in the light of  
15 the circumstances under which they are made, not  
16 misleading;

17           (2) to fail to furnish any prospective franchisee  
18 with all information required to be disclosed by, and  
19 at the time and in the manner required by the Fed-  
20 eral Trade Commission (hereafter “the Commis-  
21 sion”) in its Franchise Rule;

22           (3) to fail to furnish any prospective franchisee  
23 with information which is current as of the close of  
24 the franchisor’s most recent fiscal year, or within

1 ninety days thereof, or which reflects any material  
2 changes since the close of such fiscal year;

3 (4) to fail to furnish any prospective franchisee  
4 at the time disclosure is made copies of all collateral  
5 documents, including manuals, memoranda, operat-  
6 ing procedures and royalty schedules, where and to  
7 the extent that such documents are incorporated by  
8 reference into the franchise agreement, except that  
9 a franchisor may require a confidentiality agreement  
10 as a condition for reviewing confidential materials;  
11 or

12 (5) to make any claim or representation to a  
13 prospective franchisee, whether oral or in writing,  
14 which is inconsistent with or contradicts any infor-  
15 mation provided to the prospective franchisee in any  
16 required disclosure.

17 (c) No provision of subsection (b) imposing any liabil-  
18 ity shall apply to any action, statement or omission done  
19 or made in good faith in conformity with any rule, regula-  
20 tion or order of the Commission, notwithstanding that  
21 such rule, regulation or order may, after such act or omis-  
22 sion, be amended or rescinded by the Commission.

23 (d) For purposes of this section, an untrue statement  
24 of material fact shall include any statement of fact which  
25 has the intent or effect of misrepresenting the profitability

1 of a franchise opportunity, the rate of success of fran-  
2 chises or franchisees associated with a franchise oppor-  
3 tunity, or the rate of success of franchises generally.

4 **SEC. 4. MATERIAL OMISSIONS DEFINED.**

5 (a) It shall be an omission of material fact for a  
6 franchisor, subfranchisor or franchise broker, either di-  
7 rectly or indirectly through any officer, employee, agent,  
8 representative or attorney, to fail to furnish any prospec-  
9 tive franchisee with the following information at the time  
10 and in the manner set forth by the Commission under the  
11 Franchise Rule:

12 (1) The name and principal place of business of  
13 the franchisor, its predecessor, parent firm, holding  
14 company or other controlling entity of the  
15 franchisor, if any, and the name under which the  
16 franchisor is doing or intends to do business;

17 (2) A statement identifying—

18 (A) any parent or affiliate of the  
19 franchisor or other related entity that is en-  
20 gaged in franchising or providing services or as-  
21 sistance to franchisees; and

22 (B) the name and position held of each of  
23 the franchisor's current general partners or  
24 principal officers (including the chief executive  
25 and chief operating officer, financial, franchise

1 marketing, training and service officers), as ap-  
2 plicable, other executives or subfranchisors who  
3 will have management responsibility in connec-  
4 tion with the operation of the franchisor's busi-  
5 ness relating to the franchise business offered,  
6 and all franchise brokers.

7 (3) A statement disclosing whether the  
8 franchisor or any person identified in subsection  
9 (2)—

10 (A) has, at any time during the previous  
11 ten fiscal years, been convicted of a felony or  
12 pleaded nolo contendere to a felony charge if  
13 the felony involved fraud, embezzlement, fraud-  
14 ulent conversion, misappropriation of property,  
15 restraint of trade, violation of a Federal or  
16 State tax law or violation of a State franchise  
17 statute;

18 (B) has, at any time during the previous  
19 ten years, been held liable in a civil action re-  
20 sulting in a final judgment, or has settled out  
21 of court any claim, including complaints, cross  
22 claims, counterclaims, and third party com-  
23 plaints, in a judicial proceeding and their  
24 equivalents in an arbitration proceeding—

1 (i) involving allegations of fraud, em-  
2 bezzlement, fraudulent conversion, mis-  
3 appropriation of property, restraint of  
4 trade or comparable allegations; or

5 (ii) involving a present or former  
6 franchisee and which involved or involves  
7 the franchisor-franchisee relationship; ex-  
8 cept that such statement may omit ref-  
9 erence to such actions which were dis-  
10 missed by final judgment or settlement  
11 without payment or liability by the  
12 franchisor or entry of an adverse order  
13 against the franchisor in which the  
14 franchisor is bound to obligations which  
15 are material either to the franchisor or  
16 franchisee; and

17 (C) is subject to any currently effective  
18 State or Federal agency or court injunctive or  
19 restrictive order, has been subject to any such  
20 order during the previous ten years, relating to  
21 or affecting franchise activities or the  
22 franchisor-franchisee relationship or involving  
23 fraud, embezzlement, fraudulent conversion  
24 misappropriation of property, restraint of trade  
25 or violation of a Federal or State tax law.

1 Such statement shall set forth the identity and loca-  
2 tion of the court or agency; a description of the na-  
3 ture of the claim; the date of conviction, judgment  
4 or decision; the penalty imposed or the damages as-  
5 sessed; any payments made; the terms of settlement,  
6 order or arbitrator's decision; and the date, nature  
7 and issuer of each such order or ruling.

8 (4) A statement disclosing whether the  
9 franchisor or any person identified in subsection (2)  
10 is a party to any pending administrative, criminal or  
11 material civil action or arbitration involving allega-  
12 tions of fraud, embezzlement, fraudulent conversion,  
13 misappropriation of property, restraint of trade or  
14 comparable allegations, or complaints or counter-  
15 claims involving franchise sales or the franchise rela-  
16 tionship. Such statement shall set forth the identity  
17 and location of the court or forum in which each ad-  
18 ministrative action, civil action or arbitration is filed,  
19 the date of such filing and a summary of the nature  
20 of the allegations. For purposes of this subsection,  
21 a civil action or arbitration is material if such action  
22 or arbitration involves—

23 (A) a significant financial impact on a  
24 franchisee or a former franchisee;

1 (B) any group of civil actions, irrespective  
2 of the financial impact of any single action,  
3 which in the aggregate have a significant im-  
4 pact on the franchise system in seeking fifteen  
5 percent or more of the current assets of the  
6 franchisor or any affiliate of the franchisor;

7 (C) a current or former supplier or lessor  
8 who supplied more than 5 percent of an item to  
9 the franchise system; and

10 (D) claims or counterclaims which a rea-  
11 sonable prospective franchisee would consider  
12 important in making a decision regarding enter-  
13 ing into a franchise relationship.

14 (5) A statement disclosing whether the  
15 franchisor or any person identified in subsection (2)  
16 have at any time during the previous seven fiscal  
17 years filed in bankruptcy, been adjudged bankrupt,  
18 been reorganized due to insolvency, or been a prin-  
19 cipal, director, executive officer, or partner of any  
20 other person that has so filed or was so adjudged or  
21 reorganized, during or within one year after the pe-  
22 riod that such person held such position in such  
23 other person.

24 (6) A statement of the total funds which must  
25 be paid by the franchisee to the franchisor or to any

1 person affiliated with the franchisor, or which the  
2 franchisor or such affiliated person imposes or col-  
3 lects in whole or in part on behalf of a third party.

4 Such statement shall include:

5 (A) a description of all funds which must  
6 be paid—

7 (i) to obtain or commence the fran-  
8 chise operation, including, but not limited  
9 to, franchise fees, deposits, down pay-  
10 ments, prepaid rent, and equipment and  
11 inventory purchases, and

12 (ii) to carry on the franchise business,  
13 including, but not limited to, royalty, lease,  
14 advertising, training, insurance, sign rental  
15 fees, and equipment or inventory pur-  
16 chases;

17 (B) a description of any real estate, serv-  
18 ices, supplies, products, inventories, signs, fix-  
19 tures, or equipment relating to the establish-  
20 ment or the operation of the franchise business  
21 which the franchisee is directly or indirectly re-  
22 quired by the franchisor to purchase, lease or  
23 rent, and, if such purchases, leases or rental  
24 are required from specific persons (including

1 the franchisor), the names and address of each  
2 such person;

3 (C) a description of the basis for calculat-  
4 ing, and actual amounts, where available, of  
5 any revenue or other consideration to be re-  
6 ceived by the franchisor, the franchisor's parent  
7 firm, if any, or any person affiliated with the  
8 franchisor, from each such person with whom  
9 the franchisee is required to make such pur-  
10 chases, leases or rentals; and

11 (D) an estimate of the total investment to  
12 be paid by the franchisee, irrespective of the  
13 type of expenditure and to whether payment is  
14 made to the franchisor, to any person affiliated  
15 with the franchisor, or to any third party—

16 (i) to obtain and commence operations  
17 of the franchise business; and

18 (ii) to carry on the franchise business  
19 during the initial twelve-month period fol-  
20 lowing the opening of the franchise busi-  
21 ness, including an estimate of loan repay-  
22 ments, including interest, if part of the  
23 franchisee's initial investment may be fi-  
24 nanced.

1           (7) A statement describing the services and as-  
2           sistance which the franchisor, persons affiliated with  
3           the franchisor, or third parties designated by the  
4           franchisor, are obligated to provide to the franchisee,  
5           under the terms of the franchise agreement or any  
6           agreement ancillary or collateral to a franchise:

7                   (A) to obtain or commence the franchise  
8                   operation; and

9                   (B) to carry on the franchise business.

10           Such statement shall include cautionary lan-  
11           guage stating that the franchisor is not obli-  
12           gated under the franchise agreement, or any  
13           other agreement, to provide any additional serv-  
14           ices or assistance to the franchisee other than  
15           the services disclosed.

16           (8) A statement describing the trade names,  
17           trademarks, service marks, logotypes, advertising or  
18           other commercial symbols (hereafter “trade names  
19           and trademarks”) which are to be licensed to the  
20           prospective franchisee, or which are owned or used  
21           by the franchisor to identify the goods or services to  
22           be offered, sold, or distributed by the prospective  
23           franchisee. Such statement shall indicate whether—

24                   (A) such trade names or trademarks have  
25                   been registered with the United States Patent

1 and Trademark Office, or registered with the  
2 State in which the franchise business is located  
3 or is to be located, and the date and number of  
4 any such registrations;

5 (B) there are any material restrictions on  
6 the franchisor's right to license or the  
7 franchisee's right to use such trade names or  
8 trademarks;

9 (C) there are any pending interference, op-  
10 position or cancellation proceeding, or any  
11 pending material litigation involving such trade  
12 names or trademarks of relevance to the state  
13 in which a franchise is located or will be lo-  
14 cated; and

15 (D) the franchisor is obligated by the fran-  
16 chise agreement to protect the franchisee's  
17 right to use such trade names or trademarks  
18 and to protect the franchisee against claims of  
19 infringement or unfair competition with respect  
20 to such trade names and trademarks.

21 (9) A statement disclosing whether, by the  
22 terms of the franchise agreement, any agreement an-  
23 cillary or corollary to the franchise, or any other de-  
24 vice or practice—

1 (A) the franchisee is to be limited in any  
2 manner—

3 (i) in the goods or services he or she  
4 may offer for sale;

5 (ii) in the customers to whom he or  
6 she may sell such goods or services; or

7 (iii) in the geographic areas in which  
8 he or she may offer for sale or sell goods  
9 or services;

10 (B) the franchisee is granted territorial  
11 protection by the franchisor, by which, with re-  
12 spect to such territory or area, the franchisor—

13 (i) will not establish another, or more  
14 than a fixed number of, franchises or com-  
15 pany-owned outlets either operating under,  
16 or selling, offering, or distributing goods or  
17 services, identified by any trade name or  
18 trademark set forth in subsection (8) of  
19 this section;

20 (ii) will not establish other franchises  
21 or company-owned outlets selling or leasing  
22 the same or similar products or services  
23 under a different trade name or trade-  
24 mark; or

1 (iii) will not otherwise market the  
2 same or similar products or services under  
3 the same, similar or different trade name  
4 or trademark; and

5 (C) the franchisor is marketing, intends to  
6 market, reserves the right to market, or is con-  
7 tractually precluded from marketing, through  
8 arrangements other than a franchise or a com-  
9 pany-owned outlet, the same or similar products  
10 or services to be offered for sale by the  
11 franchisee, whether under the trade name or  
12 trademark set forth in subsection (8) or a dif-  
13 ferent trademark or trade name, in the pro-  
14 tected territory granted to the franchisee or, if  
15 no such territory is granted, within a market  
16 area defined as the larger of—

17 (i) the area in which the franchise is  
18 expected to draw 80 percent of its busi-  
19 ness, or

20 (ii) the area defined in the franchise  
21 agreement for purposes of a  
22 noncompetition covenant.

23 (10) A statement disclosing the existence of any  
24 written agreement or commitment, or any public ex-  
25 pression of intention, made by the franchisor, any

1 officer of the franchisor, or the franchisor's parent  
2 firm or ultimate controlling person, if any, to dis-  
3 pose of the corporation or partnership, or the major-  
4 ity (controlling) interest of such corporation or part-  
5 nership, which is identified in subsection (1) of this  
6 section as the franchisor of the business being of-  
7 fered for sale. Where an agreement or commitment  
8 has been made, such statement shall include the  
9 name and address of the person(s) or corporation  
10 which has committed to purchase the franchisor  
11 company or a majority interest in such company.

12 (11) A statement of a specific level, average or  
13 range of sales, earnings, profit or loss for franchises  
14 of the franchisor, which shall—

15 (A) have a factual basis in operating data  
16 for sales, earnings, profits or losses from fran-  
17 chise or nonfranchise outlets of the franchisor  
18 and/or of its affiliates which offer for sale the  
19 same or similar products and services, and  
20 which are operated under the same trade name  
21 or trademark as set forth in subsection (8), ex-  
22 cept that—

23 (i) a franchisor which has offered/sold  
24 franchises for less than two years, a  
25 franchisor which has not more than ten

1 franchise and nonfranchise outlets, or no  
2 more than five franchise outlets, to provide  
3 a basis for such operating data, or an es-  
4 tablished franchisor offering a new, sepa-  
5 rate franchise concept, for which there are  
6 no more than ten franchise or nonfranchise  
7 outlets to provide a basis for such operat-  
8 ing data, is not required to make such a  
9 statement; and

10 (ii) a franchisor providing representa-  
11 tions limited solely to the actual operating  
12 results of a specific outlet offered for sale  
13 is not required to make such a statement,  
14 provided such representation is in writing,  
15 is given only to potential purchasers of  
16 such outlet, and is accompanied by the  
17 names and last known addresses of each  
18 owner of such outlet during the previous  
19 five years;

20 (B) be derived from the most current in-  
21 formation available to the franchisor, and/or to  
22 its affiliates, pertaining to—

23 (i) gross sales of franchise and  
24 nonfranchise outlets;

1           (ii) operating costs of franchise and  
2 nonfranchise outlets, to the extent that  
3 such costs are known to the franchisor,  
4 can be estimated reasonably by the  
5 franchisor or are discoverable by the  
6 franchisor through exercise of reasonable  
7 diligence, provided that where information  
8 on operating costs of nonfranchise outlets  
9 is used, appropriate adjustment shall be  
10 made to reflect additional costs that will be  
11 incurred by franchisees, to the extent that  
12 such additional costs are known; and

13           (iii) the net profit or net loss of fran-  
14 chises and nonfranchise outlets. At mini-  
15 mum, a franchisor may identify the fiscal  
16 year of such data and whether, on average,  
17 a profit or loss occurred for franchise and  
18 nonfranchised outlets, where such informa-  
19 tion is known to the franchisor, can rea-  
20 sonably be estimated by the franchisor or  
21 is discoverable by the franchisor through  
22 exercise of reasonable diligence; except that  
23 the franchisor must include a statement  
24 describing net losses or average net losses  
25 of franchise and nonfranchised outlets

1           where the franchisor knows or should know  
2           that such losses have occurred.

3           Where information relating to costs and net  
4           profit or loss are not known to the franchisor  
5           or can not be estimated or discovered through  
6           reasonable diligence, the franchisor shall include  
7           a conspicuous statement that such information  
8           cannot be provided to prospective franchisees  
9           and shall describe in detail the information that  
10          is not disclosed, the reasons why such informa-  
11          tion is not known or can not be obtained by the  
12          franchisor, and the actions or procedures un-  
13          dertaken by the franchisor, where applicable, to  
14          obtain such information;

15               (C) have a reasonable basis for all claims  
16               or representations, for which the burden shall  
17               be upon the franchisor to show that it had a  
18               reasonable basis at the time such representa-  
19               tions were made;

20               (D) be included in full in the written dis-  
21               closure document which is provided by the  
22               franchisor to the prospective franchisee at the  
23               time of making disclosure. A franchisor shall  
24               make no additional information or representa-  
25               tions regarding actual or potential sales, costs,

1 income or profits available to the potential  
2 franchisee, or to any agent, attorney or lender  
3 of the prospective franchisee, other than that  
4 contained in such statement or elsewhere in the  
5 disclosure document, except that a supple-  
6 mental statement of actual operating results re-  
7 lating to a specific outlet, or a statement di-  
8 rected to the particular circumstances of a spe-  
9 cific location may be made available to a pro-  
10 spective franchisee interested in such outlet or  
11 location, provided any supplemental statement  
12 be made in writing and explain any departure  
13 from the statement provided in the disclosure  
14 document and the reasons for such departure;

15 (E) include a concise description of the  
16 factual basis and the material assumptions un-  
17 derlying its preparation and presentation. Such  
18 description shall include a statement of whether  
19 the representations made are based on operat-  
20 ing data of franchised or nonfranchised outlets  
21 of the franchisor, the number of such outlets  
22 constituting the basis for such data, and the  
23 number and percentage of franchised outlets of  
24 the franchisor in operation during the period

1 covered by such representation that are known  
2 to have attained or surpassed the results stated;

3 (F) be updated at least annually by the  
4 franchisor and amended as necessary to reflect  
5 changed material facts or to incorporate  
6 changes which the franchisor knows, or should  
7 have known, make such statement no longer ac-  
8 curate or reflective of the operating experience  
9 of franchised units; and

10 (G) include a statement that substan-  
11 tiation of the data used in preparing the state-  
12 ment shall be made available to the prospective  
13 franchisee upon request.

14 (12) A statement disclosing, with respect to the  
15 franchisor and as to the particular named business  
16 being offered:

17 (A) the names, addresses, and telephone  
18 numbers of—

19 (i) all franchisees in the State in  
20 which the proposed franchise is to be lo-  
21 cated, provided that there are at least  
22 twenty-five such franchisees;

23 (ii) all franchisees in the State in  
24 which the proposed franchise is to be lo-  
25 cated and all franchisees in States geo-

1 graphically contiguous to such State, pro-  
2 vided that there are at least twenty-five  
3 franchisees in such States; or

4 (iii) all franchisees of the franchisor.

5 Where the number of franchisees to be disclosed  
6 under this subparagraph exceeds fifty, such list-  
7 ing may be in a separate document presented to  
8 the franchisee with the disclosure document,  
9 provided that the existence of such separate  
10 document is disclosed in the disclosure docu-  
11 ment.

12 (B) the number of franchisees with outlets  
13 in the following categories that, within the  
14 three-year period immediately before the close  
15 of the franchisor's most recent fiscal year,  
16 have—

17 (i) been canceled or terminated by the  
18 franchisor;

19 (ii) not been renewed by the  
20 franchisor;

21 (iii) been reacquired through purchase  
22 by the franchisor;

23 (iv) been otherwise reacquired by the  
24 franchisor; and

1 (v) left the franchise system or ceased  
2 to do business under the franchise agree-  
3 ment;

4 (C) the name, last known address and tele-  
5 phone number and location of franchise(s) of  
6 every franchisee who voluntarily or involuntarily  
7 left the franchise system or ceased doing busi-  
8 ness under the franchise agreement during the  
9 five-year period immediately before the close of  
10 the franchisor's most recent fiscal year.  
11 Franchisors subject to the requirements of this  
12 section upon the effective date of this Act, and  
13 franchisors which shall commence franchising  
14 after such date, may make disclosure pursuant  
15 to this paragraph for the franchisor's most re-  
16 cent fiscal year only, or for the franchisor's first  
17 complete fiscal year only, and shall make appro-  
18 priate disclosure following each succeeding fis-  
19 cal year so that, after the close of the  
20 franchisor's fourth fiscal year following such  
21 date of enactment, or after the close of a  
22 franchisor's fifth fiscal year of operation, disclo-  
23 sure shall be provided for not less than five  
24 years thereafter;

1 (D) the number of all previous owners of  
2 a specific franchise outlet to be resold, or the  
3 number of previous owners of franchise busi-  
4 nesses or outlets of the same franchise system  
5 who conducted business during the previous  
6 seven years in the protected market area to be  
7 granted to a franchise, or within the same mar-  
8 ket area in which a franchise business is to be  
9 located. The franchisor shall—

10 (i) provide such number in a supple-  
11 mental written statement to potential pur-  
12 chasers of such outlet, or to potential pur-  
13 chasers of franchises in such market area;

14 (ii) maintain updated listings of all  
15 such previous owners, which shall include  
16 the name, last known addresses, business  
17 locations, dates of ownership and reasons  
18 for terminating the franchise relationship  
19 for each owner; and

20 (iii) disclose that such listing shall be  
21 made available to prospective franchisees  
22 upon request; and

23 (E) the identity of any association, associa-  
24 tions, advisory councils or other organizations  
25 of franchise owners of the business being of-

1           ferred that are organized to promote the inter-  
2           ests of franchises in their relationship with the  
3           franchisor, and the name, current address and  
4           telephone number of any officer or designated  
5           contact person for such association, associa-  
6           tions, advisory council or other organizations  
7           from whom a prospective franchisee may seek  
8           additional information. The franchisor shall  
9           identify all such organizations affiliated with, or  
10          recognized by the franchisor and independent  
11          associations or organizations not affiliated with,  
12          or directed in any manner by the franchisor,  
13          and shall indicate for each such association or  
14          organization whether it is affiliated with, or  
15          independent of the franchisor, except that, the  
16          franchisor shall identify only organizations  
17          which have identified themselves to the  
18          franchisor and which—

19                   (i) have been in operation not less  
20                   than one hundred eighty days prior to the  
21                   time disclosure is made; and

22                   (ii) represent not less than the lesser  
23                   of either fifty franchisees, or 25 percent of  
24                   the franchise outlets of the franchise  
25                   system.

1           (13) A balance sheet for the franchisor for the  
2 most recent fiscal year, and an income statement  
3 and statement of changes in financial position for  
4 the franchisor for the most recent three fiscal years,  
5 which shall:

6           (A) have been examined in accordance with  
7 generally accepted auditing standards by an  
8 independent certified or licensed public account-  
9 ant, except that, unaudited statements may be  
10 used only to the extent that audited statements  
11 cannot be prepared under generally accepted  
12 auditing standards, are prepared by an inde-  
13 pendent certified or licensed public accountant,  
14 and are accompanied by a clear and conspicu-  
15 ous disclosure that they are unaudited; and

16           (B) include a separate, concise and con-  
17 spicuous summary, prepared by an independent  
18 certified or licensed public accountant, of the  
19 sources of revenues of the franchisor for each  
20 the franchisor's most recent three fiscal years,  
21 stated in terms of the percentage of total an-  
22 nual revenues of such franchisor attributed to  
23 each of the following categories or sources of  
24 revenue—

25           (i) pre-opening fees;

1 (ii) royalty payments;

2 (iii) pre-opening purchases by  
3 franchisees of equipment, inventory or sup-  
4 plies;

5 (iv) net rental income from real estate  
6 leases or rental of real estate, fixtures or  
7 equipment;

8 (v) post-opening purchases by  
9 franchisees of equipment, inventory of sup-  
10 plies, including goods and services sold to  
11 franchisees for resale and payments to the  
12 franchisor by suppliers with whom  
13 franchisees are required to purchase goods  
14 or services;

15 (vi) nonfranchised or company-owned  
16 outlets; and

17 (vii) sales of goods and services to the  
18 public through means of distribution other  
19 than franchise and nonfranchised outlets,  
20 whether under the same, similar or dif-  
21 ferent trade name or trademark.

22 A franchisor may substitute, in lieu of the bal-  
23 ance sheet and income statements under sub-  
24 paragraph (A), the consolidated financial state-  
25 ments of the franchisor's parent company which

1 include the franchisor's financial results, pro-  
2 vided such parent company guarantees the  
3 franchisor's financial performance and, provided  
4 further, that such financial statement shall in-  
5 clude a separate summary of the revenue  
6 sources of the franchisor pursuant to subpara-  
7 graph (B).

8 (b) Standards of material omissions set forth in sub-  
9 section (a) are in addition to other facts, circumstances,  
10 or sets of conditions which may be material under Federal  
11 or State law or regulation.

12 (c) Each disclosure required in paragraphs (1)  
13 through (13) of subsection (a) shall be commented upon  
14 either positively or negatively in required disclosure docu-  
15 ments by use of a clearly and concisely written statement  
16 which fully incorporates all information required to be dis-  
17 closed.

18 (d) Information required to be disclosed in supple-  
19 mental statements in subsections (a)(11)(A)(ii) and  
20 (a)(12)(D) of this section, and which relate to specific  
21 franchise outlets or market areas offered for sale, shall  
22 be presented to the prospective franchisee at the time of  
23 making disclosure, as defined by the Commission in sub-  
24 section 436.2(g) of the Franchise Rule.

1 (e) Information required to be presented to prospec-  
2 tive franchisees upon request, pursuant to subsections  
3 (a)(11)(F) and (a)(12)(C)(iii) of this section, where such  
4 request is made in timely fashion, shall be made available  
5 at the time the prospective franchisee is presented with  
6 a copy of the franchisor's completed franchise and related  
7 agreements to be executed by the parties, or not later than  
8 five business days prior to the date that such agreements  
9 are to be executed and the prospective franchisee is re-  
10 quired to pay any consideration in connection with the sale  
11 or proposed sale of the franchise.

12 (f) The franchisor shall exercise diligent efforts to  
13 collect all relevant information relating to sales, costs and  
14 operating profits and/or losses of franchise and/or  
15 nonfranchise outlets from its own files and databases,  
16 franchisees, subsidiaries, affiliates, employees, suppliers  
17 and any other source from which such information is avail-  
18 able to permit disclosure pursuant to subsection (a)(11)  
19 of this section and to establish procedures for timely col-  
20 lection of such information. The Commission shall set  
21 forth in regulation the criteria with which it may consider  
22 granting full or partial exemption from disclosure under  
23 this subsection. Except where exempted under subsection  
24 (a)(11)(A), or otherwise exempted by the Commission, a  
25 franchisor shall be deemed to have made an omission of

1 material fact under this Act where disclosure pursuant to  
2 subsection (a)(11) is not provided to prospective  
3 franchisees, either in full or in part with appropriate ex-  
4 planations relating to required disclosures under sub-  
5 sections (a)(11)(B)(ii) and (a)(11)(B)(iii), within two hun-  
6 dred and forty days following the date of enactment of  
7 this section. Not later than ninety days after the end of  
8 the franchisor's first complete fiscal year following the ef-  
9 fective date of this Act, the franchisor, except as otherwise  
10 exempted, shall comply fully with subsection (a)(11) and  
11 shall be required to exercise reasonable diligence to obtain  
12 and/or discover the information relating to sales, costs,  
13 profits or losses of franchise and/or nonfranchise outlets  
14 necessary to establish a reasonable basis for disclosure  
15 under such subsection.

16 **SEC. 5. ACCOUNTS AND RECORDS.**

17 (a) It shall be unlawful for any franchisor or  
18 subfranchisor, either directly or indirectly through any of-  
19 ficer, employee, broker, agent or attorney, except as per-  
20 mitted by rule, regulation or order of the Commission,  
21 willfully to destroy, mutilate or alter any disclosure docu-  
22 ment, account, book, record, receipt or other document re-  
23 quired to be maintained and preserved pursuant to sub-  
24 section (b) of this section.

1 (b) A franchisor, subfranchisor or franchise broker,  
2 where applicable, shall maintain and preserve for such pe-  
3 riod or periods as the Commission may prescribe by rule  
4 or regulation, such disclosure documents, account, books,  
5 records, receipts or other documents pertaining to any in-  
6 formation required to be disclosed pursuant to section 4  
7 of this Act, or which are necessary and appropriate to con-  
8 stitute—

9 (1) the record of any transaction involving the  
10 offering, negotiation, sale or resale of a franchise, or  
11 of any relationship which is represented by the  
12 franchisor to be a franchise; and

13 (2) the record forming the basis for any finan-  
14 cial statement and any earnings representation re-  
15 quired to be disclosed under section 4.

16 (c) The Commission shall set forth by regulation, as  
17 appropriate, the manner in which all documents, accounts  
18 and records are to be maintained and the period or periods  
19 for which such documents, accounts and records are to  
20 be preserved, except that no account, record or document  
21 required to be maintained and preserved pursuant to this  
22 section shall be preserved for a period of less than seven  
23 years.

24 (d) All accounts, books, records and other documents  
25 required to be maintained and preserved by any person

1 pursuant to subsection (b) shall be subject to examination  
2 by the Commission, or any member or representative  
3 thereof, either upon written request of the Commission or  
4 upon subpoena as part of any enforcement action under-  
5 taken by the Commission pursuant to section 6 of this  
6 Act.

7 **SEC. 6. ENFORCEMENT.**

8 (a) Enforcement by Federal Trade Commission:

9 (1) The Commission is authorized and directed  
10 to prevent any person from violating the provisions  
11 of this Act in the same manner, by the same means,  
12 and with the same jurisdiction, powers, and duties  
13 as though all applicable terms and provisions of the  
14 Federal Trade Commission Act (15 U.S.C. 41 et  
15 seq.) were incorporated into and made a part of this  
16 Act.

17 (2) Any person who violates the provisions of  
18 this Act, or any rule of the Commission under this  
19 Act, shall be subject to the penalties and entitled to  
20 the privileges and immunities provided in the Fed-  
21 eral Trade Commission Act in the same manner, by  
22 the same means, and with the same jurisdiction,  
23 power and duties as though all applicable terms and  
24 provisions of the Federal Trade Commission Act  
25 were incorporated into and made a part of this Act.

1           (3)(A) For purposes of section 3(b) of this Act,  
2           the Commission shall have the authority to enforce  
3           compliance with disclosure standards by means of  
4           the disclosure statement required by the Commission  
5           in its Franchise Rule or the Uniform Franchise Of-  
6           fering Circular of the North American Securities Ad-  
7           ministrators Association, Inc.

8           (B) Where the guidelines for preparation of the  
9           Uniform Franchise Offering Circular are amended  
10          by the North American Securities Administrators'  
11          Association, or its successor, disclosures prepared in  
12          compliance with the amended guidelines shall be pre-  
13          sumed to comply with the requirements of the Com-  
14          mission's Franchise Rule unless, within one hundred  
15          and eighty days of formal notification of such  
16          amendments by the North American Securities Ad-  
17          ministrators' Association, or its successor, the Com-  
18          mission responds in writing that it has determined  
19          that the amended requirements do not provide equal  
20          or greater protection to prospective franchisees than  
21          the Commission's Franchise Rule.

22          (b) Civil actions by the Commission:

23                  (1) Except as otherwise provided in subsection  
24                  (2), the Commission may commence a civil action in  
25                  a district court of the United States or in any court

1 of competent jurisdiction of a State to recover a civil  
2 penalty or obtain appropriate relief against any per-  
3 son, partnership, or corporation which violates any  
4 provision of this Act, or any rule of the Commission  
5 under this Act, in the same manner, by the same  
6 means, and with the same jurisdiction, powers, and  
7 duties as provided in sections 5(m), 13(b) and 19 of  
8 the Federal Trade Commission Act (15 U.S.C.  
9 45(m), 53(b) and 57b).

10 (2) Notwithstanding the three-year statute of  
11 limitations provisions of section 19b of the Federal  
12 Trade Commission Act (15 U.S.C. 57b(d)), any civil  
13 action arising from a violation of this Act, or any  
14 rule of the Commission under this Act, shall be  
15 brought by the Commission before the later of—

16 (A) five years after the date on which such  
17 violation occurred; or

18 (B) three years after the date on which the  
19 violation was discovered or should have been  
20 discovered through exercise of reasonable dili-  
21 gence.

22 (c) The powers, duties, remedies and procedures set  
23 forth in this section shall be in addition to, and not in  
24 limitation of, any other powers, duties, remedies and pro-

1 cedures otherwise provided the Commission by the Federal  
2 Trade Commission Act and other laws.

3 (d) The Commission is authorized to make such rules  
4 and regulations as are necessary and appropriate to imple-  
5 ment the provisions of this Act.

6 **SEC. 7. ACTIONS BY PRIVATE PERSONS.**

7 (a)(1) Any person injured by a violation of any provi-  
8 sion of this Act, or any rule or order of the Commission  
9 under this Act, shall have a right of action for all damages  
10 caused by the violation, including costs of litigation and  
11 reasonable attorney's fees, against any person found to be  
12 liable for such violation.

13 (2) An action may be brought, without regard to the  
14 amount in controversy, in any United States district court  
15 or in any other court of competent jurisdiction before the  
16 later of—

17 (A) five years after the date on which the viola-  
18 tion occurred; or

19 (B) three years after the date on which the vio-  
20 lation was discovered or should have been discovered  
21 through exercise of reasonable diligence.

22 (3) Nothing in this Act or the Federal Trade Com-  
23 mission Act shall be construed as creating any obligation  
24 on the part of any injured person to seek relief from the  
25 Commission prior to bringing an action under this section.

1           (b) Any person injured by a violation of this Act, or  
2 threatened with injury by an impending violation of this  
3 Act, may bring an action in a United States district court  
4 to obtain a declaratory judgment that an act, omission or  
5 conduct constitutes or would constitute a violation of this  
6 Act and to enjoin a person who has violated, is violating,  
7 or who is otherwise likely to violate any provision of this  
8 Act. In such actions, the court may issue a temporary re-  
9 straining order or preliminary injunction to protect the  
10 public interest by halting a recurring or likely violation  
11 of this Act, prior to a final determination on the merits,  
12 in conformity with the principles governing the granting  
13 of preliminary relief in other civil actions, except that no  
14 showing of special or irreparable damage to such person  
15 shall have to be made.

16           (c) In any action brought under subsections (a) or  
17 (b) of this section, a court shall have the power to inter-  
18 pret any benefit conferred, duty imposed, or restriction ap-  
19 plied in favor of or against any party to a franchise agree-  
20 ment as reciprocal and equally applicable to the other  
21 party to the agreement and to provide an identical or simi-  
22 lar benefit, impose an identical or similar duty, or apply  
23 an identical or similar restriction on such other party, pro-  
24 vided that such reciprocal application is consistent with

1 the laws of the State in which the franchise business is  
2 located.

3 (d)(1) Except as otherwise provided in paragraph (2)  
4 of this subsection, nothing contained in this Act shall limit  
5 the right of a franchisor and a franchisee to agree to arbi-  
6 tration, mediation, or other nonjudicial resolution of a dis-  
7 pute, either in advance or after a dispute arises, provided  
8 that the standards and protections applied in any binding  
9 nonjudicial procedure agreed to by the parties are not less  
10 than the requirements set forth in this Act; and

11 (2) Any stipulation or provision of a franchise agree-  
12 ment requiring use of arbitration to resolve disputes aris-  
13 ing under the agreement shall not apply to bar any action  
14 brought in a United States district court or in any other  
15 court of competent jurisdiction pursuant to this section  
16 involving a request for damages and/or equitable relief  
17 caused by a violation of section 3 of this Act.

18 (e) The private rights provided in this section are in  
19 addition to, and not in lieu of other rights or remedies  
20 created by Federal or State law or regulation.

21 **SEC. 8. PROHIBITION ON WAIVER OF RIGHTS AND LIABIL-**  
22 **ITY.**

23 (a) It shall be unlawful for any franchisor or  
24 subfranchisor, either directly or indirectly through any of-  
25 ficer employee, agent, representative or attorney to—

1           (1) Require any term or condition in a fran-  
2           chise agreement, or in any agreement ancillary or  
3           collateral to a franchise, which directly or indirectly  
4           violates any provision of this Act, and rule of the  
5           Commission under this Act, or any provision of the  
6           Franchise Rule; or

7           (2) Require a franchise to assent to any dis-  
8           claimer, waiver, release or other provision of a fran-  
9           chise agreement, or in any document relating to the  
10          sale of a franchise, which would purport—

11                 (A) to relieve any person from a duty im-  
12                 posed by this Act, any rule of the Commission  
13                 under this Act, or any provision of the Fran-  
14                 chise Rule; or

15                 (B) to protect any person against any li-  
16                 ability to which he would otherwise be subject  
17                 under the Act, or any rule of the Commission  
18                 under the Act, either by reason of willful mis-  
19                 feasance, bad faith, or gross negligence in the  
20                 performance of disclosure and other duties, or  
21                 by reason of reckless disregard of obligation  
22                 and duties under the franchise agreement.

23          (b) Any condition, stipulation, provision, or term of  
24          any franchise agreement, or any agreement ancillary or  
25          collateral to a franchise, which would purport to waive or

1 restrict any right granted under this Act shall be void and  
2 unenforceable.

3 (c) No stipulation or provision of a franchise agree-  
4 ment or of an agreement ancillary or collateral to a fran-  
5 chise shall—

6 (1) deprive a franchise of the application and  
7 benefits of this Act or of a law of the State in which  
8 the franchisee's principal place of business is located  
9 by purporting to designate the law of another juris-  
10 diction as governing or interpreting the franchise or  
11 disclosure relating to such franchise;

12 (2) deprive a franchisee of the right to com-  
13 mence an action against the franchisor for violation  
14 of this Act, any rule of the Commission under this  
15 Act, in a court or forum in the state of the  
16 franchisee's principal place of business; and

17 (3) exclude collective action by franchisees to  
18 settle like disputes arising from violations of this  
19 Act, or any rule of the Commission under this Act.

20 (d) Compliance with this Act is not waived, excused  
21 or avoided, and evidence of a violation of this Act or of  
22 any rule of the Commission under this Act shall not be  
23 excluded, by virtue of an integration clause, any provision  
24 of a franchise agreement or an agreement ancillary or col-  
25 lateral to a franchise, the parol evidence rule, or any other

1 rule of evidence purporting to exclude consideration of  
2 matters outside the franchise agreement.

3 (e) The requirements of this section shall apply to  
4 franchise agreements entered into, amended or renewed  
5 on or after the date of enactment of this Act.

6 **SEC. 9. EFFECT ON STATE LAW.**

7 (a) This Act preempts State law only to the extent  
8 that State law is inconsistent with any provision of this  
9 Act, in terms of providing less protection to prospective  
10 franchisees than provided by this Act, and then only to  
11 the extent of such inconsistency.

12 (b) Nothing in this Act shall—

13 (1) alter or relieve any franchisor or other per-  
14 son subject to the provisions of this Act from the ob-  
15 ligation to comply with the laws of any State with  
16 respect to franchise disclosure and registration, ex-  
17 cept to the extent that such laws are inconsistent  
18 with any provision of this Act; and

19 (2) preclude a State from enacting any law or  
20 regulation that affords a greater level or broader  
21 range of protections to franchisees and prospective  
22 franchisees.

23 **SEC. 10. STUDY OF NEED FOR ADDITIONAL PROTECTIONS.**

24 (a) The Commission shall conduct an ongoing study  
25 of the need to develop and implement additional provisions

1 to prevent evasions or violations of the requirements of  
2 this Act or to strengthen disclosure of pertinent informa-  
3 tion to prospective franchisees. In examining such addi-  
4 tional provisions, the Commission shall consider the extent  
5 to which such additional provisions may be implemented  
6 under the Commission’s rulemaking authority.

7 (b) The Commission shall submit to the Congress,  
8 not later than eighteen months after the date of enactment  
9 of this Act, a report reviewing the implementation of this  
10 Act, which shall include the results of the study required  
11 by subsection (a). The Commission shall submit such addi-  
12 tional reports to the Congress as are merited by later find-  
13 ings of such study.

14 **SEC. 11. EFFECTIVE DATE.**

15 Except as otherwise provided, the provisions of this  
16 Act shall take effect one hundred and eighty days after  
17 the date of enactment of this Act.

18 **SEC. 12. DEFINITIONS.**

19 For purposes of this Act—

20 (1) the term “affiliate” means a person control-  
21 ling, controlled by, or under common control with a  
22 franchisor;

23 (2) the term “advertisement” means a commu-  
24 nication circulated generally by mail, or print media  
25 or electronic media, or otherwise disseminated gen-

1 erally to the public, in connection with an offer or  
2 sale of a franchise;

3 (3) the term “commerce” has the same mean-  
4 ing as in section 4 of the Federal Trade Commission  
5 Act (15 U.S.C. 44);

6 (4) the term “Commission” means the Federal  
7 Trade Commission; and

8 (5) the term “disclosure document” means ei-  
9 ther the disclosure statement required by the Com-  
10 mission in Trade Regulation Rule 436 (16 CFR s  
11 436) as it may be amended, or an offering circular  
12 prepared in accordance with Uniform Franchise Of-  
13 fering Circular guidelines as adopted and amended  
14 by the North American Securities Administrators  
15 Association, Inc., or its successor.

16 (6) The term “franchise” means—

17 (A) any continuing commercial relationship  
18 created by a contract or agreement, whether ex-  
19 press or implied, oral or written, where—

20 (i) one person (the franchisor) grants  
21 to another person (the franchisee) the  
22 right to engage in the business of offering,  
23 selling or distributing goods or services, in  
24 which—

1 (I) the goods or services offered,  
2 sold or distributed by the franchisee  
3 are substantially associated with the  
4 trademark, service mark, trade name,  
5 logotype, advertising, or other com-  
6 mercial symbol owned or used by the  
7 franchisor; or

8 (II) the franchisee must conform  
9 to quality standards established by  
10 the franchisor for the goods or serv-  
11 ices to be offered, sold or distributed,  
12 and operate under a name that in-  
13 cludes, in whole or in part, the  
14 franchisor's trademark, service mark,  
15 trade name, logotype, advertising, or  
16 other commercial symbol;

17 (ii) the franchisor—

18 (I) communicates to the  
19 franchisee knowledge, experience, ex-  
20 pertise, know-how, trade secrets or  
21 other nonpatented information, re-  
22 gardless of whether it is proprietary  
23 or confidential;

1 (II) provides significant assist-  
2 ance in the franchisee's method of op-  
3 eration; or

4 (III) exercises significant controls  
5 over the franchisee's method of oper-  
6 ation of the business; and

7 (iii) the franchisee, as a condition for  
8 obtaining or commencing operation of a  
9 franchise, is required to make, or to com-  
10 mit to make, payment or other consider-  
11 ation to the franchisor, or an affiliate of  
12 the franchisor, other than payment for  
13 commercially reasonable quantities of  
14 goods for resale at a bona fide wholesale  
15 price.

16 (B) a subfranchise; or

17 (C) any commercial relationship entered  
18 into in reasonable reliance on representations,  
19 whether oral or written, that the criteria of sub-  
20 section (A) will be met.

21 (7) The term "franchise broker" means a per-  
22 son, other than a franchisor or franchisee, who sells,  
23 offers for sale or arranges for the sale of a fran-  
24 chise.

1           (8) The term “franchisee” means a person to  
2 whom a franchise is granted.

3           (9) The term “Franchise Rule” means Trade  
4 Regulation Rule 436 (16 CFR 436) as promulgated  
5 and amended by the Federal Trade Commission.

6           (10) The term “franchisor” means a person  
7 who grants a franchise or a subfranchise.

8           (11) The terms “material” and “material fact”  
9 includes—

10           (A) any fact, circumstance, or set of condi-  
11 tions which a reasonable franchisee or a reason-  
12 able prospective franchisee would consider im-  
13 portant in making a significant decision relat-  
14 ing to entering into, remaining in, or abandon-  
15 ing a franchise relationship; and

16           (B) any fact, circumstance, or set of condi-  
17 tions which has, or may have, any significant fi-  
18 nancial impact on a franchisor, franchisee or a  
19 prospective franchisee.

20           (12) The term “offer” or “offering” means any  
21 effort to offer or to dispose of, or solicitation of an  
22 offer to buy, a franchise or interest in a franchise  
23 for value.

1           (13) The term “outlet” means a place of busi-  
2           ness, temporary or permanent, fixed or mobile, from  
3           which products or services are offered for sale.

4           (14) The term “person” means a natural per-  
5           son or any legal entity recognized in law.

6           (15) The term “State” means a State, the Dis-  
7           trict of Columbia, and any territory or possession of  
8           the United States.

9           (16) The term “subfranchise” means a contract  
10          or an agreement by which a person pays a  
11          franchisor for the right to sell, offer for sale or ar-  
12          range the sale of franchises, or to provide goods or  
13          services to franchisees.

14          (17) The term “subfranchisor” means a person  
15          who is granted a subfranchise.

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