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HOUSE BILL 2898

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State of Washington                      52nd Legislature                      1992 Regular Session

By Representatives Heavey, Prentice, Rasmussen, Grant, Ludwig, Nelson, Jacobsen and Wang

Read first time 01/31/92. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to discrimination for franchise relations; amending  
2 RCW 19.100.180; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 19.100.180 and 1991 c 226 s 11 are each amended to  
5 read as follows:

6            Without limiting the other provisions of this chapter, the  
7 following specific rights and prohibitions shall govern the relation  
8 between the franchisor or subfranchisor and the franchisees:

9            (1) The parties shall deal with each other in good faith.

10           (2) For the purposes of this chapter and without limiting its  
11 general application, it shall be an unfair or deceptive act or practice  
12 or an unfair method of competition and therefore unlawful and a  
13 violation of this chapter for any person to:

1 (a) Restrict or inhibit the right of the franchisees to join an  
2 association of franchisees.

3 (b) Require a franchisee to purchase or lease goods or services of  
4 the franchisor or from approved sources of supply unless and to the  
5 extent that the franchisor satisfies the burden of proving that such  
6 restrictive purchasing agreements are reasonably necessary for a lawful  
7 purpose justified on business grounds, and do not substantially affect  
8 competition: PROVIDED, That this provision shall not apply to the  
9 initial inventory of the franchise. In determining whether a  
10 requirement to purchase or lease goods or services constitutes an  
11 unfair or deceptive act or practice or an unfair method of competition  
12 the courts shall be guided by the decisions of the courts of the United  
13 States interpreting and applying the anti-trust laws of the United  
14 States.

15 (c) Discriminate between franchisees in the charges offered or made  
16 for royalties, goods, services, equipment, rentals, advertising  
17 services, or in any other business dealing, unless and to the extent  
18 that the franchisor satisfies the burden of proving that any  
19 classification of or discrimination between franchisees is: (i)  
20 Reasonable, (ii) based on franchises granted at materially different  
21 times and such discrimination is reasonably related to such difference  
22 in time, or is based on other proper and justifiable distinctions  
23 considering the purposes of this chapter, and (iii) is not arbitrary.  
24 However, nothing in (c) of this subsection precludes negotiation of the  
25 terms and conditions of a franchise at the initiative of the  
26 franchisees.

27 (d) Sell, rent, or offer to sell to a franchisee any product or  
28 service for more than a fair and reasonable price.

29 (e) Obtain money, goods, services, anything of value, or any other  
30 benefit from any other person with whom the franchisee does business on

1 account of such business unless such benefit is disclosed to the  
2 franchisee.

3 (f) If the franchise provides that the franchisee has an exclusive  
4 territory, which exclusive territory shall be specified in the  
5 franchise agreement, for the franchisor or subfranchisor to compete  
6 with the franchisee in an exclusive territory or to grant competitive  
7 franchises in the exclusive territory area previously granted to  
8 another franchisee.

9 (g) Require franchisee to assent to a release, assignment,  
10 novation, or waiver which would relieve any person from liability  
11 imposed by this chapter, except as otherwise permitted by RCW  
12 19.100.220.

13 (h) Impose on a franchisee by contract, rule, or regulation,  
14 whether written or oral, any standard of conduct unless the person so  
15 doing can sustain the burden of proving such to be reasonable and  
16 necessary.

17 (i) Refuse to renew a franchise without fairly compensating the  
18 franchisee for the fair market value, at the time of expiration of the  
19 franchise, of the franchisee's inventory, supplies, equipment, and  
20 furnishings purchased from the franchisor, and good will, exclusive of  
21 personalized materials which have no value to the franchisor, and  
22 inventory, supplies, equipment and furnishings not reasonably required  
23 in the conduct of the franchise business: PROVIDED, That compensation  
24 need not be made to a franchisee for good will if (i) the franchisee  
25 has been given one year's notice of nonrenewal and (ii) the franchisor  
26 agrees in writing not to enforce any covenant which restrains the  
27 franchisee from competing with the franchisor: PROVIDED FURTHER, That  
28 a franchisor may offset against amounts owed to a franchisee under this  
29 subsection any amounts owed by such franchisee to the franchisor.

1 (j) Terminate a franchise prior to the expiration of its term  
2 except for good cause. Good cause shall include, without limitation,  
3 the failure of the franchisee to comply with lawful material provisions  
4 of the franchise or other agreement between the franchisor and the  
5 franchisee and to cure such default after being given written notice  
6 thereof and a reasonable opportunity, which in no event need be more  
7 than thirty days, to cure such default, or if such default cannot  
8 reasonably be cured within thirty days, the failure of the franchisee  
9 to initiate within thirty days substantial and continuing action to  
10 cure such default: PROVIDED, That after three willful and material  
11 breaches of the same term of the franchise agreement occurring within  
12 a twelve-month period, for which the franchisee has been given notice  
13 and an opportunity to cure as provided in this subsection, the  
14 franchisor may terminate the agreement upon any subsequent willful and  
15 material breach of the same term within the twelve-month period without  
16 providing notice or opportunity to cure: PROVIDED FURTHER, That a  
17 franchisor may terminate a franchise without giving prior notice or  
18 opportunity to cure a default if the franchisee: (i) Is adjudicated a  
19 bankrupt or insolvent; (ii) makes an assignment for the benefit of  
20 creditors or similar disposition of the assets of the franchise  
21 business; (iii) voluntarily abandons the franchise business; or (iv) is  
22 convicted of or pleads guilty or no contest to a charge of violating  
23 any law relating to the franchise business. Upon termination for good  
24 cause, the franchisor shall purchase from the franchisee at a fair  
25 market value at the time of termination, the franchisee's inventory and  
26 supplies, exclusive of (i) personalized materials which have no value  
27 to the franchisor; (ii) inventory and supplies not reasonably required  
28 in the conduct of the franchise business; and (iii), if the franchisee  
29 is to retain control of the premises of the franchise business, any  
30 inventory and supplies not purchased from the franchisor or on his

1 express requirement: PROVIDED, That a franchisor may offset against  
2 amounts owed to a franchisee under this subsection any amounts owed by  
3 such franchisee to the franchisor.

4 (k) Discriminate against any franchisee by refusing to sell or  
5 refusing to allow the sale of a franchise to a franchisee on the basis  
6 of race, creed, color, national origin, alienage, sex, or the presence  
7 of any sensory, mental, or physical handicap.

8 (l) Discriminate against any franchisee with respect to the  
9 conditions of a franchise agreement or the offering price of a  
10 franchise on the basis of race, creed, color, national origin,  
11 alienage, sex, or the presence of any sensory, mental, or physical  
12 handicap.

13 Any person deeming himself or herself injured by any act in  
14 violation of (k) or (l) of this subsection shall have a civil action in  
15 a court of competent jurisdiction to seek specific performance of the  
16 franchise agreement, to recover the monetary damages sustained by him  
17 or her, or both, together with the cost of the suit including  
18 reasonable attorneys' fees. If the court finds a violation of (k) of  
19 this subsection, the measure of monetary damages shall be no less than  
20 twenty percent and no more than one hundred percent of the fair market  
21 value of the franchise. A violation of a court order requiring  
22 specific performance under (k) of this subsection may be punished by  
23 the court by holding the party in contempt of court. In an action  
24 based upon an alleged violation of (k) or (l) of this subsection a  
25 rebuttable presumption lies in favor of the party alleging unlawful  
26 discrimination, if the complainant establishes that he or she belongs  
27 to the protected class of persons. The presumption may be rebutted  
28 only by proof that the action complained of was reasonably based on a  
29 factor or factors other than race, creed, color, national origin,  
30 alienage, sex, or the presence of any sensory, mental, or physical

1 handicap.