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HOUSE BILL NO. 2786

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 18, 2007)

(Patron Prior to Substitute—Delegate Joannou)

A BILL to amend and reenact §§ 13.1-559, 13.1-560, 13.1-561, 13.1-562, and 13.1-572 of the Code of Virginia, relating to the Retail Franchising Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-559, 13.1-560, 13.1-561, 13.1-562, and 13.1-572 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-559. Definitions; applicability of chapter.

A. As used in this chapter, unless the context otherwise requires, the term:

(a) "Commission" means the State Corporation Commission.

"Controlling person" means a natural person who is an officer, director, or partner, or who occupies a similar status or performs a similar function, of a franchisor organized as a corporation, partnership, or other entity, or any person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a franchisor, whether through the ownership of voting securities, by contract, or otherwise.

(b) "Franchise" means a written contract or agreement between two or more persons, by which:

(1). A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in substantial part by a franchisor;

(2). The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

(3). The franchisee is required to pay, directly or indirectly, a franchise fee of \$500 or more.

"Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of goods for resale or (ii) the payment at fair market value for the purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or maintain the business.

(c) "Franchisee" means a person to whom a franchise is granted.

(d) "Franchisor" means a person, including a subfranchisor, who grants or offers to grant a franchise.

(e) "Subfranchisor" means a person who is authorized by a franchisor to grant a franchise within a particular geographic region.

(f) "Place of business" means a building or portion thereof from which the goods or services authorized by the franchise are sold or offered for sale in person by the franchisee or employees or agents of the franchisee, or a truck or van used in the sale of such goods which is of a type designated by the franchisor and is equipped and marked in conformance with requirements of the franchisor.

(g) "Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of goods for resale or (ii) the payment at fair market value for the purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or maintain the business.

(h) "Controlling person" means a natural person who is an officer, director, or partner, or who occupies a similar status or performs a similar function, of a franchisor organized as a corporation, partnership or other entity, or any person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a franchisor, whether through the ownership of voting securities, by contract, or otherwise.

"Preopening obligations" means the franchisor's obligations to provide to the franchisee, prior to the opening of the franchisee's business, real estate, improvements, equipment, inventory, training, or other items to be included in the offering.

"Subfranchisor" means a person who is authorized by a franchisor to grant a franchise within a particular geographic region.

B. This chapter shall apply only to a franchise the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the Commonwealth of Virginia.

A franchise does not include a contract or agreement by which a retailer of goods or services is granted the right either (i) to utilize a marketing plan or system to promote the sale or distribution of goods or services which are incidental and ancillary to the principal business of the retailer (sales under

60 such a plan or system accounting for less than twenty percent of the retailer's gross sales being deemed
61 incidental and ancillary); or (ii) to sell goods or services within, or appurtenant to, a retail business
62 establishment as a department or division thereof provided such retailer is not required to purchase such
63 goods or services from the operator of such establishment.

64 § 13.1-560. Registration required.

65 It shall be unlawful for any person to grant or offer to grant a franchise in this Commonwealth
66 unless the franchise is registered under the provisions of this chapter *or exempted from registration by*
67 *rule or order of the Commission.*

68 § 13.1-561. Procedure for registration; bond; renewal; fee.

69 A. A franchise may be registered after filing with the Commission an application containing such
70 relevant information as the Commission may require. The franchise shall be registered if the
71 Commission finds that the franchisor, including any controlling person of the franchisor, is a person of
72 good character and reputation and that all information required of the applicant by the Commission has
73 been supplied, that none of the grounds for revocation enumerated in § 13.1-562 are applicable to the
74 franchise, and that the required fee has been paid.

75 B. The Commission may require, as a condition of registration or renewal of registration: (i) *the*
76 *escrow or deferral of franchise fees and other funds paid by the franchisee to the franchisor until the*
77 *franchisor's preopening obligations are fulfilled, if the grounds enumerated in clause (i) of subdivision A*
78 *2 of § 13.1-562 exist, or (ii) the filing by a franchisor of a surety bond conditioned upon the payment of*
79 *all criminal and civil penalties provided in this chapter in an amount determined by the Commission to*
80 *be adequate to protect the public and all franchisees of the franchisor, taking into proper account the*
81 *marketing plan or system to be franchised, the goods or services to be offered, whether or not the*
82 *franchisor has a regular place of business in this Commonwealth, and any other facts indicating the*
83 *necessary amount of the bond.*

84 C. *The Commission shall by rule or order prescribe the procedures for filing an application for*
85 *exemption, amendments to the exemption, and when an exemption or renewal becomes effective.*

86 D. All registrations, *exemptions* and renewals thereof shall expire at midnight on the annual date of
87 their effectiveness. *However, the Commission may extend such expiration of an exemption as much as*
88 *45 days.*

89 E. Each application for the registration *or exemption* of a franchise shall be accompanied by a fee
90 of \$500, payable to the Treasurer of Virginia. Each application for the renewal of a franchise
91 registration *or exemption*, including any amendments to the registration *or exemption* application which
92 accompany or are part of the application for renewal, shall be accompanied by a fee of \$250 payable to
93 the Treasurer of Virginia. Unless submitted in connection with an application for renewal, each
94 amendment or group of amendments to a registration *or exemption* application submitted after the
95 application has been granted shall be accompanied by a fee of \$100, payable to the Treasurer of
96 Virginia. If the application for registration, *exemption* or renewal is withdrawn or is not granted, or if
97 the registration *or exemption* application is not amended, the fee shall not be returnable.

98 F. For the purposes of registration, *exemption* or renewal of registration of a franchise, a
99 partnership shall be treated as the same partnership so long as two or more members of the partnership
100 named in the application continue the business without change of location, and if the partnership, within
101 one month after a change in the partnership, files with the Commission a copy of a certificate filed in
102 compliance with § 50-74.

103 § 13.1-562. Revocation of or refusal to renew registration.

104 A. The Commission may, by order entered after a hearing on notice duly served on the defendant not
105 less than thirty days before the date of the hearing, revoke the effectiveness of a franchise registration
106 (or refuse to renew a registration if an application for renewal has been or is to be filed) if it finds that
107 such an order is in the public interest or that the franchisor or any controlling person of the franchisor:

108 (1). Has engaged in any fraudulent transaction;

109 (2). Is insolvent, or in danger of becoming insolvent, either (i) in the sense that his liabilities exceed
110 his assets or (ii) in the sense that he cannot meet his obligations as they mature;

111 (3). Is a person for whom a conservator or guardian has been appointed and is acting;

112 (4). Has been convicted, within or without this Commonwealth, of any misdemeanor involving a
113 franchise, or any felony;

114 (5). Has failed to furnish information requested by the Commission concerning the conduct of his
115 business; or

116 (6). Has violated any of the provisions of this chapter.

117 B. If it appears to the Commission that it is in the public interest and that there exists one or more
118 of the grounds enumerated in subdivisions (1) through (6) of subsection A of this section, the
119 Commission may so notify the franchisor. The franchisor shall have seven business days from the date
120 of the written notice from the Commission within which to file a written response to the matters
121 addressed in the notice. If (i) the Commission notified, or reasonably attempted to notify, the franchisor

in writing, (ii) it appears to be in the public interest, and (iii) either the Commission, after consideration of the franchisor's response, reasonably believes the ground or grounds exist or a response is not filed in a timely manner, the Commission may summarily enter an order suspending the effectiveness of the franchisor's registration pending final determination of any proceeding under this section. The Commission shall promptly send a copy of the suspension order to the franchisor and each of its subfranchisors, if any are known to the Commission. At a minimum, the order shall set forth the basis for the suspension as well as the franchisor's or subfranchisor's right to file a written request for a hearing within twenty-one days after the date of entry of the order. If a hearing is requested in a timely manner, the Commission, after notice and an opportunity for a hearing as soon as practicable, may modify or vacate the suspension order or continue it in effect until final determination of the proceeding under this section. If a hearing is not requested in a timely manner, the suspension order shall remain in effect until it is modified or vacated by the Commission.

§ 13.1-572. Rules and forms.

(a) A. The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter, including, but not limited to rules and forms governing disclosure documents, applications and reports, *escrow and deferral of franchise fees and other funds paid by the franchisee*, and defining accounting, technical and trade terms used in this chapter not inconsistent with the provisions of this chapter. The Commission shall have the authority, for the purpose of this chapter to prescribe the content and form of financial statements and to direct whether they should be certified by independent public or certified accountants. For the purpose of rules and forms, the Commission may classify franchises, persons and matters within its jurisdiction and prescribe different requirements for different classes.

(b) B. All such rules and forms shall be printed or mimeographed and available for distribution at the office of the Commission.