

HB 1215 – AS INTRODUCED

2014 SESSION

14-2165
05/03

HOUSE BILL **1215**

AN ACT relative to the rights of franchisees.

SPONSORS: Rep. Abrami, Rock 19; Rep. Schlachman, Rock 18

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill regulates the sale and operation of business franchises.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the rights of franchisees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Small Business Investment Protection Act. Amend RSA by inserting after
2 chapter 359-L the following new chapter:

3 CHAPTER 359-M

4 NEW HAMPSHIRE SMALL BUSINESS INVESTMENT PROTECTION ACT

5 359-M:1 Purpose. This chapter shall be liberally construed and applied to promote its
6 underlying remedial purposes and policies. The underlying purposes and policies of this chapter are:

7 I. To promote the compelling interest of the public in fair business relations between
8 franchisees and franchisors.

9 II. To protect franchisees against unfair treatment by franchisors, who inherently have
10 superior economic power and superior bargaining power in the negotiation of the terms and
11 conditions of the franchise relationship.

12 III. To provide franchisees with rights and remedies in addition to those existing by contract
13 or common law.

14 IV. To govern franchise agreements, including any renewals or amendments, to the full
15 extent consistent with the constitutions of the United States and of this state.

16 V. The effect of this chapter may not be varied, waived, or disclaimed by contract or
17 agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent
18 only.

19 359-M:2 Short Title. This chapter may be known and cited as the New Hampshire Small
20 Business Investment Protection Act.

21 359-M:3 Definitions. In this chapter:

22 I. “Affiliate” means an entity controlled by, controlling, or under common control with,
23 another entity.

24 II. “Franchise” means any continuing commercial relationship or arrangement, by whatever
25 it may be called, in which the terms of the offer or contract specify, or the franchise seller promises
26 or represents, orally or in writing, that:

27 (a) The franchisee will obtain the right to operate a business that is identified or
28 associated with the franchisor’s trademark, or to offer, sell, or distribute goods, services, or
29 commodities that are identified or associated with the franchisor’s trademark;

HB 1215 – AS INTRODUCED
- Page 2 -

1 (b) The franchisor will exert or has the authority to exert a significant degree of control
2 over the franchisee's, method of operation, or provide significant assistance in the franchisee's
3 method of operation; and

4 (c) As a condition of obtaining or commencing operation of the franchise, the franchisee
5 makes a required payment or commits to make a required payment to the franchisor or its affiliate.

6 III. "Franchisee" means a person to whom a franchise is granted.

7 IV. "Franchisor" means a person that grants a franchise.

8 V. "Franchise seller" means a person that offers for sale, sells, or arranges for the sale of a
9 franchise. It includes the franchisor and the franchisor's employees, representatives, and agents,
10 and third-party brokers who are involved in franchise sales activities. It does not include existing
11 franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on
12 behalf of the franchisor.

13 VI. "Good cause" means the franchisee's refusal or failure to comply substantially with any
14 material, reasonable and reasonably necessary, express obligation of the franchise agreement,
15 including repeated and intentional nonpayment of royalties or other payments clearly required by
16 the franchise agreement. The burden of proving good cause is on the franchisor.

17 VII. "Good faith" means honesty in fact and the observance of reasonable commercial
18 standards of fair dealing in the trade. As used in this chapter, a duty of good faith shall obligate a
19 party to a franchise to do nothing that will have the effect of destroying or injuring the right of the
20 other party to obtain and receive the expected fruits of the contract and to do everything required
21 under the contract to accomplish such purpose; and require honesty of fact and observance of
22 reasonable standards of fair dealing in the trade.

23 VIII. "Material" or "material fact" means:

24 (a) Any fact, circumstance, or set of conditions which a reasonable franchisee or a
25 reasonable prospective franchisee would consider important in making a significant decision relating
26 to, entering into, remaining in, or abandoning a franchise relationship; and

27 (b) Any fact, circumstance, or set of conditions which has, or may have, any significant
28 financial impact on a franchisor, franchisee, or prospective franchisee.

29 IX. "Offer" or "offering" means any effort to offer or to dispose of, or solicitation of an offer to
30 buy, a franchise or interest in a franchise for value.

31 X. "Person" means an individual, a corporation, a partnership, a limited liability company, a
32 joint venture, an association, a joint stock company, a trust, or an unincorporated organization.

33 XI. "Required payment" means all consideration that the franchisee pays to the franchisor or
34 an affiliate, directly or indirectly, either by contract or by practical necessity, as a condition of
35 obtaining or commencing operation, continuing operations of the franchise, or reinstating or
36 renewing the operation of a franchise. A required payment shall not include payments for the
37 purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

HB 1215 – AS INTRODUCED
- Page 3 -

1 359-M:4 Applicability of Chapter. Any person who engages directly or indirectly in purposeful
2 contacts in this state in connection with the offering or advertising for sale or has business dealings
3 with respect to franchises in the state shall be subject to this chapter and shall be subject to the
4 jurisdiction of the courts of this state.

5 359-M:5 Franchise Sales Practices.

6 I. In connection with the advertising, offering, sale, or promotion of any franchise, no person,
7 including a franchise seller, may:

8 (a) Employ a device, scheme, or artifice to defraud;

9 (b) Engage in an act, practice, course of business or pattern of conduct which operates or
10 is intended to operate as a fraud upon any prospective franchisee; or

11 (c) Obtain property, or assist others to obtain property, by making an untrue statement
12 of a material fact or any failure to state a material fact.

13 II. In connection with any disclosure document, notice, or report required by any law, no
14 franchisor, franchise seller, subfranchisor, or franchise broker, either directly or indirectly through
15 another person, may:

16 (a) Make an untrue statement of material fact;

17 (b) Fail to state a material fact;

18 (c) Fail to state any fact which would render any required statement or disclosure either
19 untrue or misleading; or

20 (d) Fail to furnish any prospective franchisee with:

21 (1) All information required to be disclosed by law and at the time and in the manner
22 required; and

23 (2) A written statement specifying, prominently and in not less than 14-point type,
24 whether the franchise agreement involved contains a right to renew such agreement; or

25 (e) Make any claim or representation to a prospective franchisee whether orally or in
26 writing, which is inconsistent with or contradicts such disclosure document.

27 III. In this section, “disclosure document” means either the disclosure statement required by
28 the Federal Trade Commission in Trade Regulation Rule 436, 16 C.F.R. section 436, as amended, or
29 any offering format allowed or required by state law.

30 359-M:6 Unfair Acts and Practices.

31 I. Unfair methods of competition and unfair or deceptive acts or practices are prohibited.

32 II. In construing paragraph I, the courts may be guided by, but are not bound to, the
33 interpretations of the Federal Trade Commission Act, 15 U.S.C. section 45.

34 III. The attorney general may adopt rules under RSA 541-A relative to paragraph I. The
35 rules shall not be inconsistent with the rules, regulations, and decisions of the Federal Trade
36 Commission and the federal courts interpreting the Federal Trade Commission Act, 15 U.S.C.
37 section 45.

1 IV. It shall be an unfair or deceptive act or practice to violate any of the provisions of this
2 chapter.

3 V. A franchisor shall not terminate, cancel, or fail to renew a franchise for the failure or
4 refusal of the franchisee to:

5 (a) Take part in promotional campaigns for the products or services of the franchise
6 which are not reasonable and in good faith expected to promote the profitability of the franchisee's
7 business.

8 (b) Meet sales quotas suggested or required by the franchisor not expressly set forth in
9 the franchise agreement.

10 (c) Sell any products or services at a price suggested or required by the franchisor, an
11 affiliate of the franchisor, or any supplier approved by the franchisor.

12 (d) Keep the franchised premises open and operating during hours which are
13 unprofitable to the franchisee or to preclude the franchisee from establishing its own hours of
14 operation or nonoperation between the hours of 10:00 p.m. and 6:00 a.m.

15 (e) Give the franchisor or any supplier financial records of the operation of the franchise
16 which are not related or unnecessary to the performance of franchisee's express obligations under
17 the franchise agreement.

18 VI. A franchisor, directly or indirectly, through any officer, agent, affiliate, or employee,
19 shall not:

20 (a) Restrict a franchisee from associating with other franchisees or from joining, leading,
21 or otherwise participating in a trade or other association, or retaliate against a franchisee for
22 engaging in these activities.

23 (b) Require or prohibit any change in management of any franchise unless the
24 requirement or prohibition is for good cause, stated in writing by the franchisor, and based on
25 violations of material, reasonable, and reasonably required express provisions of the franchise
26 agreement. Good cause shall include, but not be limited to, requiring that management of the
27 franchise be conducted by personnel who have been trained in the manner required of all franchise
28 managers in the system or are legally eligible for employment in the United States of America.

29 (c) Impose on a franchise by contract, rule, or regulation, whether written or oral, a
30 standard of conduct or performance unless the franchisor, its agents, or representatives, sustain the
31 burden of proving the standard to be reasonable and necessary and uniformly enforced and applied
32 throughout its system of franchisees, franchisor-owned units, and licensees in the same manner.

33 (d) Fail to deal fairly and in good faith or fail to exercise due care with a franchisee or
34 any association or other aggregation or incorporation of franchisees in all matters, including, without
35 limitation, transfer of the franchise, administration of advertising funds, rewards programs,
36 marketing funds, and the interpretation, administration, and performance of franchise and area
37 development or territory agreements.

HB 1215 – AS INTRODUCED
- Page 5 -

1 (e) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair
2 and reasonable price or without the reasonable expectation that the sale or rental of the same will
3 promote the profitability of the franchisee’s business.

4 (f) Discriminate between franchises in the charges offered or made for royalties, goods,
5 services, equipment, rentals, advertising services, or in any other business dealing, unless:

6 (1) That discrimination between franchisees would be necessary to allow a particular
7 franchisee to fairly meet competition in the open market;

8 (2) That discrimination does not adversely affect the business of any existing
9 franchisee; and

10 (3) To the extent that the franchisor satisfies the burden of proving that any
11 classification of or discrimination between franchisees is reasonable, is based on franchises granted
12 at materially different times, and the discrimination is reasonably related to the difference in time or
13 on other proper and justifiable distinctions, and is not arbitrary or intended to be for the benefit of
14 the franchisor at the expense of any franchisee. Nothing in this subparagraph shall be construed to
15 grant a franchisor any right which may be limited by any other state or federal statute.

16 (g) Notify the franchisee of a claimed breach of franchise agreement for good cause later
17 than 180 days from the date good cause arises or 180 days after the franchisor knew or in the
18 exercise of reasonable care should have known of the claimed good cause.

19 (h) Require a franchisee to sell any product or service for a price at a loss or otherwise
20 not reasonably acceptable to the franchisee.

21 (i) Fail to make readily available to franchisees, without charge, true, accurate, and
22 complete copies of all records of marketing, rewards programs, advertising funds, and fees that have
23 been paid by franchisees, vendors, suppliers, and licensees.

24 (j) Coerce a franchisee to assent to a release, assignment, novation, waiver, or estoppel
25 which would prospectively relieve any person from liability imposed by this chapter.

26 (k) Require or demand that a franchisee pay liquidated or other post-termination
27 damages in excess of the average monthly royalty fees paid by the franchisee during the prior 12 full
28 calendar months, or the shorter time that the franchised location has been in the system, multiplied
29 by the lesser of 6 months or the number of months remaining in the term of the franchise agreement.

30 (l) Act to accomplish, either directly or indirectly through any parent company,
31 subsidiary, or agent, what would otherwise be prohibited under this chapter on the part of the
32 manufacturer or distributor.

33 359-M:7 Limited Fiduciary Duty.

34 I. Without regard to whether a fiduciary duty is imposed generally on the franchisor by
35 virtue of a franchise agreement, the franchisor owes a fiduciary duty to its franchisees and is
36 obligated to exercise the highest standard of care for franchisee interests where the franchisor:

HB 1215 – AS INTRODUCED

- Page 6 -

1 (a) Undertakes to perform bookkeeping, collection, payroll, or accounting services on
2 behalf of the franchisee; or

3 (b) Administers, controls or supervises, either directly or through any subsidiary or
4 affiliate, any advertising, marketing, or promotional fund or program to which franchisees are
5 required to, or routinely, contribute.

6 II. A franchisor that administers or supervises the administration of any fund or program
7 described in subparagraph I(b) shall:

8 (a) Keep all moneys contributed to such fund or program in a separate account;

9 (b) Provide an independent certified audit of such fund within 60 days following the close
10 of the franchisor's fiscal year, which shall include full disclosure of all fees, expenses, or other
11 payments from the account to the franchisor or to any subsidiary, affiliate, or other entity controlled
12 in whole or in part by the franchisor; and

13 (c) Disclose the source and amount of, and deliver to such fund or program, any discount,
14 rebate, compensation, or payment of any kind from any person or entity with whom such fund or
15 program transacts.

16 III. While not limiting the ability of any court to identify other circumstances for which a
17 fiduciary duty may also exist, this section does not create or extend a fiduciary duty by implication to
18 other aspects of a franchise.

19 359-M:8 Good Faith and Fair Dealing; Duty of Due Care.

20 I. For all purposes of this chapter, a franchisor owes a duty of good faith and fair dealing to
21 each of its franchisees. For the purposes of this section, a duty of good faith and fair dealing shall:

22 (a) Obligate the franchisor to do nothing that will have the effect of destroying or injuring
23 the right of the franchisee to obtain and receive the expected fruits of the contract and to do
24 everything required under the contract to accomplish such purpose; and

25 (b) Require honesty of fact and observance of reasonable standards of fair dealing in the
26 trade.

27 II. A franchise agreement imposes on the franchisor a duty of due care. Unless a franchisor
28 represents that it has great skill or knowledge in its undertaking with the franchisees, or
29 conspicuously disclaims that it has skill or knowledge, the franchisor is required to exercise the skill
30 and knowledge normally possessed by franchisors in good standing in the same or similar types of
31 business.

32 III. In this section, term "skill or knowledge" means something more than the mere
33 minimum level of skill or knowledge required of any person engaging in a service or business and
34 involves a special level of expertise:

35 (a) Which is the result of acquired learning and aptitude developed by special training
36 and experience in the business to be licensed under the franchise agreement, or the result of

HB 1215 – AS INTRODUCED
- Page 7 -

1 extensive use and experience with the goods or services or the operating system of such business;
2 and

3 (b) Which is the experience in organizing a franchise system and in providing training,
4 assistance, and services to franchisees; and which a prospective franchisee would expect in
5 reasonable reliance on the written and oral commitments and representations of the franchisor.

6 359-M:9 Encroachment.

7 I. A franchisor that develops a new outlet, location, or any other form of distribution of goods
8 or services which are substantially similar to that offered by existing franchisees and which has a
9 material adverse impact on the gross sales or net profits of an existing franchisee's outlet or location,
10 shall be liable to the affected franchisee for monetary damages, unless any of the following are
11 applicable:

12 (a) The franchisor first offers the new outlet or location to the existing franchisee in good
13 faith with the rational expectation that the offered location will not materially and adversely affect
14 the profitability of the franchisees' existing locations or its planned new locations which have been
15 disclosed to the franchisor in writing; or

16 (b) At the time the new outlet or location is developed, the existing franchisee is not in
17 compliance with the franchisor's current reasonable, material, and reasonably necessary express
18 obligations under the existing franchisee's franchise agreement for the affected location, and the
19 franchisee has been given written notice and an opportunity to cure such noncompliance and the
20 franchisee has failed to cure the same.

21 II. For there to be deemed a material adverse impact on the existing franchisee's annual
22 gross sales, such adverse impact, based on a comparison to the annual gross sales from the existing
23 outlet or location during the 12-month period immediately preceding the opening of the new outlet or
24 location, is determined to have been no less than 10 percent during the first 12 months of operation
25 of the new outlet or location.

26 359-M:10 Transfer of a Franchise.

27 I. A franchisee may assign an interest in a franchised business or in a franchise to a
28 transferee provided the transferee satisfies the reasonable qualifications then generally applied by
29 the franchisor in the offer and sale of franchises. For the purpose of this section, a reasonable
30 current qualification for a new franchisee is a qualification based upon a legitimate business reason.
31 If the proposed transferee does not meet the reasonable current qualifications of the franchisor, the
32 franchisor may refuse to permit the transfer, provided that the refusal of the franchisor to consent to
33 the transfer is not arbitrary or capricious and the franchisor states the grounds for its refusal in
34 writing to the franchisee.

35 II. A franchisee shall give a franchisor not less than 30 days written notice of a proposed
36 transfer of a transferable interest, and on request shall provide in writing the ownership interests of

HB 1215 – AS INTRODUCED
- Page 8 -

1 all persons holding or claiming an equitable or beneficial interest in the franchise subsequent to the
2 transfer or the franchisee, as appropriate.

3 III. A transfer by a franchisee is deemed to have been approved 30 days after the franchisee
4 submits the request for permission to transfer the franchise involved unless, within that time the
5 franchisor refuses to consent to the transfer as evidenced in writing in accordance with paragraph I.
6 A statement of the grounds for refusal to consent to the transfer is privileged against a claim of
7 defamation.

8 IV. A franchisor may require as a condition of a transfer that:

9 (a) The transferee successfully complete a reasonable training program.

10 (b) A reasonable transfer fee be paid to reimburse the franchisor for the franchisor's
11 reasonable and actual expenses directly attributable to the transfer.

12 (c) The franchisee pay or make reasonable provision to pay any amount due the
13 franchisor or the franchisor's affiliate.

14 (d) The financial terms of the transfer, at the time of the transfer, comply with the
15 franchisor's current financial requirements for franchisees.

16 V. A franchisor may not condition its consent to a transfer described in paragraph I on:

17 (a) The franchisee's forgoing existing rights other than those contained in the franchise
18 agreement;

19 (b) The franchisee's entering into a release of claims broader in scope than a counterpart
20 release of claims offered by the franchisor to the franchisee; or

21 (c) Requiring the franchisee or transferee to make, or agree to make, capital
22 improvements, reinvestments, or purchases in an amount greater than the franchisor could have
23 reasonably required under the terms of the franchisee's existing franchise agreement.

24 VI. A franchisee may assign the franchisee's interest in the franchise for the unexpired term
25 of the franchise agreement, and a franchisor shall not require the franchisee or the transferee to
26 enter into a franchise agreement that has different material terms or financial requirements as a
27 condition of the transfer.

28 VII. A franchisor may not withhold its consent to a franchisee's making a public offering of
29 its securities without good cause if the franchisee, or the owner of the franchisee's interest in the
30 franchise, retains control over more than 25 percent of the voting power as the franchisee.

31 VIII. A franchisor may not withhold its consent to a pooling of interests, to a sale or
32 exchange of assets or securities, or to any other business consolidation amongst its existing
33 franchisees, provided the constituents are each in material compliance with their respective
34 obligations to the franchisor.

35 IX. The following occurrences shall not be considered transfers requiring the consent of the
36 franchisor under a franchise agreement, and a franchisor shall not impose any fees, payments, or
37 charges in excess of a franchisor's cost to review the relevant matter:

HB 1215 – AS INTRODUCED

- Page 9 -

1 (a) The succession of ownership or management of a franchise upon the death or
2 disability of a franchisee, or of an owner of a franchise, to the surviving spouse, heir, or partner
3 active in the management of the franchise unless the successor objectively fails to meet within one
4 year the reasonable current qualifications of the franchisor for franchisees.

5 (b) Incorporation of a proprietorship franchisee, provided that the franchisor may
6 require a personal guarantee by the franchisee of obligations related to the franchise.

7 (c) A transfer within an existing ownership group of a franchise provided that more than
8 50 percent of the franchise is held by persons who meet the franchisor's reasonable current
9 qualifications for franchisees. If less than 50 percent of the franchise would be owned by persons
10 who objectively meet the franchisor's reasonable current qualifications, the franchisor may refuse to
11 authorize the transfer.

12 (d) A transfer of less than a controlling interest in the franchise to the franchisee's
13 spouse or child or children, provided that more than 50 percent of the entire franchise is held by
14 those who meet the franchisor's reasonable current qualifications. If less than 50 percent of the
15 franchise would be owned by persons who objectively meet the franchisor's reasonable current
16 qualifications, the franchisor may refuse to authorize the transfer.

17 (e) A grant or retention of a security interest in the franchised business or its assets, or
18 an ownership interest in the franchisee, if the security agreement establishes an obligation on the
19 part of the secured party enforceable by the franchisor to give the franchisor simultaneously with
20 notice to the franchisee, notice of the secured party's intent to foreclose on the collateral, and a
21 reasonable opportunity to redeem the interest of the secured party and recover the secured party's
22 interest in the franchise or franchised business by satisfying the secured obligation.

23 (f) A franchisor may not exercise any purported right of first refusal or right to purchase
24 with regard to any franchise, or interest or assets of a franchisee, upon the happening of any event
25 described in subparagraphs (a) through (e).

26 X. After the transfer of a transferor's complete interest in a franchise, a franchisor may not
27 enforce against the transferor any covenant of the franchise purporting to prohibit the transferor
28 from engaging in any lawful occupation or enterprise. This paragraph shall not limit the franchisor
29 from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade
30 secrets or intellectual property rights, including protection of trade dress, except by agreement with
31 the franchisor.

32 359-M:11 Renewal of the Franchise; Notice.

33 I. A franchisor shall not, directly or through an officer, agent, or employee, fail to renew a
34 franchise, except for good cause shown. Good cause shall be based on legitimate business reason
35 which shall include, but not be limited to, the franchisee's refusal or failure to comply substantially
36 with any material, reasonable, and reasonably necessary express obligation of the franchise

1 agreement, including repeated and intentional nonpayment of royalties, advertising or marketing
2 fees clearly required by the franchise agreement.

3 II. Renewals shall not be subject to unreasonable fees. Fees shall not be deemed
4 unreasonable if they do not exceed 50 percent of the amount of the average initial franchise fee then
5 being charged to all franchisees in the state.

6 III. Before nonrenewal of the franchise, the franchisor shall give the franchisee written
7 notice at least 90 days in advance of the nonrenewal. The notice shall state all of the reasons
8 constituting good cause for the nonrenewal and shall provide that the franchisee has 60 days in
9 which to rectify any claimed discrepancy and reinstate its right to renew the franchise.

10 IV. If the franchisor requires that the franchisee sign a new franchise agreement as a
11 condition of renewal, such franchise agreement shall contain the same royalties, advertising fees,
12 and other fees as the expiring agreement, and no new fees and any protected territory in the expiring
13 agreement shall be the same in the renewal franchise.

14 V.(a) A franchisor shall not prohibit, or enforce a prohibition against, any franchisee from:

15 (1) Engaging in any business at any location after expiration of a franchise
16 agreement, or

17 (2) Using the customer list and telephone numbers associated with the franchise
18 business.

19 (b) Nothing in this paragraph shall be interpreted to prohibit enforcement of any
20 provision of a franchise contract obligating a franchisee after expiration or termination of a
21 franchise:

22 (1) To cease or refrain from using a trademark, other trade secret, or other
23 intellectual property owned by the franchisor or its affiliate;

24 (2) To alter the appearance of the business premises so that it is not substantially
25 similar to the standard design, decor criteria, trade dress, or motif in use by other franchisees using
26 the same name or trademarks within the proximate trade or market area of the business; or

27 (3) To modify the manner or mode of business operations so as to avoid any
28 substantial confusion with the manner or mode of operations that are unique to the franchisor and
29 commonly in practice by other franchisees using the same name or trademarks within the proximate
30 trade or market area of the business.

31 359-M:12 Termination; Good Cause; Notice; Opportunity to Cure.

32 I. A franchisor shall not, directly or through an officer, agent, or employee, terminate or
33 cancel a franchise, or substantially change the competitive circumstances of a franchise agreement,
34 except for good cause shown.

35 II. A default under one franchise agreement shall not in and of itself constitute a default
36 under another franchise agreement to which the franchisee or an affiliate of the franchisee is a
37 party.

1 III. Prior to termination or cancellation of the franchise, the franchisor shall give the
2 franchisee written notice at least 90 days in advance of the termination. The notice shall state all of
3 the reasons constituting good cause for termination or cancellation and shall provide that the
4 franchisee has 60 days in which to rectify any claimed defaults.

5 IV. The requirement for 90 days advance written notice for termination shall not apply if the
6 reason for termination is because:

7 (a) The alleged grounds are voluntary abandonment by the franchisee of the franchise
8 relationship, in which event, such notice may be given 15 days in advance of the termination or
9 cancellation; or

10 (b) Conviction of the franchisee in a court of competent jurisdiction of an offense
11 punishable by a term of imprisonment in excess of one year; directly related to the business conduct
12 pursuant to the franchise; which materially impairs the goodwill value of the franchise or the
13 franchised trademark mark; and which is no longer appealable. In that event, such notice may be
14 given at any time following the date on which the conviction is no longer appealable and shall be
15 effective upon delivery and written receipt of the notice. In no event shall any franchisor collect any
16 financial penalty or fee, however delineated, as a consequence of such conviction.

17 V. If the reason for termination or cancellation is nonpayment of sums due under the
18 franchise agreement, the franchisee shall be entitled to written notice of such default, and shall have
19 15 days in which to cure such default from the date of such notice. A franchisee has the right to cure
20 3 times in any 12 month period during the period of the franchise agreement.

21 VI. If the reason for termination or cancellation is violation of any law or regulation relating
22 to an imminent danger to public health or safety, the franchisee shall be entitled to immediate
23 written notice and shall have 24 hours following receipt of such notice to cure such violation.

24 VII. A franchisee may terminate a franchise agreement without penalty or fees in the event
25 of changes to the franchise system or the competitive circumstances of the franchise business that
26 would cause substantial negative impact or substantial financial hardship to the franchisee in the
27 operation of its franchise.

28 359-M:13 Transfer of Franchise by Franchisor. A franchisor shall not transfer, by sale or
29 otherwise, its interest in a franchise system unless:

30 I. The franchisor provides, not less than 30 days before the effective date of transfer, notice
31 to every franchisee of the intent to transfer the franchisor's interest in the franchise or of
32 substantially all of the franchises held by the franchisor;

33 II. Such notice is accompanied by a complete description of the business and financial terms
34 of the proposed transfer or transfers; and

35 III. Upon the transfer, the entity assuming the franchisor's obligations has the business
36 experience and financial means to perform all of the franchisor's obligations in the ordinary course of
37 business.

1 359-M:14 Effect of Termination.

2 I. Upon termination of a franchise for whatever cause or reason, except voluntary
3 relinquishment or abandonment of the franchise by the franchisee, the franchisor shall fairly
4 compensate the franchisee or franchisee’s estate for the fair market value at the time of termination
5 of the franchise, of the franchisees inventory, supplies, equipment, and furnishings purchased by the
6 franchisee from the franchisor or its approved sources and the fair market value of good will, if any,
7 exclusive of personalized items which have no value to the franchisor and inventory, supplies,
8 equipment, and furnishings not reasonably required in the conduct of the franchise business;
9 provided, however, that:

10 (a) Compensation need not be made to the franchisee of good will if the franchisor agrees
11 in writing not to enforce a covenant which restrains the franchisee from competing with the
12 franchisor in the same or substantially similar business in the same or substantially similar manner
13 at the same location using the same property except the franchisor’s registered trademark or trade
14 name; and

15 (b) A franchisor may offset against amounts owed to a franchisee under this section any
16 amount mutually agreed upon and owed by the franchisee to franchisor which is not the subject of a
17 good faith dispute by the franchisee.

18 II. The provisions of this section shall not be construed to permit the termination or
19 nonrenewal of any franchise agreement except in accordance with the express terms of the franchise
20 agreement and this chapter.

21 359-M:15 Warranties; Indemnification.

22 I. A franchisor shall indemnify and hold harmless its franchisee from financial loss and
23 expense, including legal fees and costs, arising out of any claim, demand, suit, or judgment by reason
24 of a defect in merchandise, products, equipment, supplies, methods, or procedures prescribed by the
25 franchisor and required to be performed or purchased by the franchisee, except for the negligent act
26 or willful misconduct of the franchisee that causes the loss or expense.

27 II. No franchisee, franchisee association, or cooperative of franchisees shall be liable for the
28 negligence or misconduct of any supplier or distributor of products or services prescribed by the
29 franchisor, or for the failure of any product or service prescribed by the franchisor which are not fit
30 for the particular purpose for which they were prescribed or any purpose related thereto, and any
31 contractual provisions to the contrary shall be void as against public policy.

32 III. A franchisor shall reimburse its franchisee at the prevailing retail price for any services
33 rendered or parts supplied by the franchisee in satisfaction of any warranty issued by the franchisor
34 or any warranty issued by the franchisee which is mandated by the franchisor, and a franchisor shall
35 not restrict a franchisee from rendering services or providing parts in accordance with standards of
36 good workmanship in satisfaction of the warranty.

37 359-M:16 Enforcement.

1 I. If a franchisor violates a provision of this chapter, a franchisee may bring an action
2 against the franchisor in a court of competent jurisdiction of this state for damages sustained by the
3 franchisee as a consequence of the franchisor’s violation, together with the actual costs of the action,
4 including reasonable attorney’s fees, and the franchisee also may be granted injunctive relief against
5 unlawful termination, cancellation, or nonrenewal, or any act or practice prohibited by this chapter.
6 If the court or other tribunal finds for the franchisee, recovery shall be in the amount of actual
7 damages; or up to 3, but not less than 2, times such amount if the court finds that the unfair method
8 of competition or the act or practice in violation of this chapter was a willful or knowing violation.

9 II. Notwithstanding any term or provision of a franchise agreement to the contrary:

10 (a) The laws of this state shall govern the interpretation of the franchise agreement of a
11 franchise located in the state and the performance of the parties thereunder, and

12 (b) The courts of this state and the federal courts with jurisdiction over cases filed in the
13 state shall have exclusive jurisdiction with respect to any action brought under this chapter or any
14 action brought by a franchisor concerning a franchise located in this state.

15 III. Upon the written request of a franchisor or a franchisee, the attorney general may
16 enforce compliance with this chapter.

17 IV. The remedies in this section are not exclusive, but are in addition to all other existing
18 common law and statutory remedies that may be available to a franchisee.

19 359-M:17 Void Provisions; Arbitration; Mediation; Class Action.

20 I. A clause or provision in a franchise agreement requiring the parties to submit to
21 arbitration shall be enforceable only if the parties have voluntarily entered into an agreement to
22 submit to arbitration after the dispute has arisen and the proceeding is conducted at a location
23 within this state reasonably convenient to the franchisee; provided, however, that the provisions of
24 this section shall not prohibit the enforceability of a clause or provision in a franchise agreement
25 which requires the parties to submit to nonbinding mediation conducted at a location within this
26 state reasonably convenient to the franchisee.

27 II. No provision in a franchise agreement shall deprive the franchisee from participating as
28 a member of a class or in a consolidated action permitted under the federal rules of civil procedure or
29 the New Hampshire court rules.

30 359-M:18 Time Limitations; Cause of Action.

31 I. Actions arising out of this chapter shall be commenced within 4 years after the cause of
32 action becomes known or is knowable, whichever is later. Any provision in a franchise agreement
33 that requires a party to a franchise agreement to commence an action within a shorter period than
34 provided in this section shall be void as against public policy.

35 II. If a cause of action accrues during the pendency of any civil, criminal, or administrative
36 proceeding against a person brought by the United States or any of its agencies under the antitrust
37 laws, the Federal Trade Commission Act, or any other federal act, or brought by this state or any of

1 its political subdivisions under the laws of this state related to antitrust laws or to franchising, the
2 actions may be commenced within one year after the final disposition of the civil, criminal, or
3 administrative proceeding.

4 359-M:19 Severability. If any provision or clause of this chapter or any application of this
5 chapter to any person or circumstances is held invalid, such invalidity shall not affect other
6 provisions or applications of the chapter that can be given effect without the invalid provision or
7 application, and to this end the provisions of this chapter are declared to be severable.

8 2 Effective Date. This act shall take effect January 1, 2015.