
HOUSE BILL 1698

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Heavey and Wang

Read first time 02/05/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to franchise discrimination; and amending RCW
2 19.100.180 and 49.60.030.

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:

14 (a) Restrict or inhibit the right of the franchisees to join an
15 association of franchisees.

16 (b) Require a franchisee to purchase or lease goods or services of
17 the franchisor or from approved sources of supply unless and to the
18 extent that the franchisor satisfies the burden of proving that such
19 restrictive purchasing agreements are reasonably necessary for a lawful

1 purpose justified on business grounds, and do not substantially affect
2 competition: PROVIDED, That this provision shall not apply to the
3 initial inventory of the franchise. In determining whether a
4 requirement to purchase or lease goods or services constitutes an
5 unfair or deceptive act or practice or an unfair method of competition
6 the courts shall be guided by the decisions of the courts of the United
7 States interpreting and applying the anti-trust laws of the United
8 States.

9 (c) Discriminate between franchisees in the charges offered or made
10 for royalties, goods, services, equipment, rentals, advertising
11 services, or in any other business dealing, unless and to the extent
12 that the franchisor satisfies the burden of proving that any
13 classification of or discrimination between franchisees is: (i)
14 Reasonable, (ii) based on franchises granted at materially different
15 times and such discrimination is reasonably related to such difference
16 in time, or is based on other proper and justifiable distinctions
17 considering the purposes of this chapter, and (iii) is not arbitrary.
18 Discrimination between franchisees on the basis of race, creed, color,
19 national origin, sex, or the presence of any sensory, mental, or
20 physical handicap is presumed to be arbitrary. However, nothing in (c)
21 of this subsection precludes negotiation of the terms and conditions of
22 a franchise at the initiative of the franchisees.

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

25 (e) Obtain money, goods, services, anything of value, or any other
26 benefit from any other person with whom the franchisee does business on
27 account of such business unless such benefit is disclosed to the
28 franchisee.

29 (f) If the franchise provides that the franchisee has an exclusive
30 territory, which exclusive territory shall be specified in the
31 franchise agreement, for the franchisor or subfranchisor to compete
32 with the franchisee in an exclusive territory or to grant competitive
33 franchises in the exclusive territory area previously granted to
34 another franchisee.

35 (g) Require franchisee to assent to a release, assignment,
36 novation, or waiver which would relieve any person from liability
37 imposed by this chapter, except as otherwise permitted by RCW
38 19.100.220.

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

5 (i) Refuse to renew a franchise without fairly compensating the
6 franchisee for the fair market value, at the time of expiration of the
7 franchise, of the franchisee's inventory, supplies, equipment, and
8 furnishings purchased from the franchisor, and good will, exclusive of
9 personalized materials which have no value to the franchisor, and
10 inventory, supplies, equipment and furnishings not reasonably required
11 in the conduct of the franchise business: PROVIDED, That compensation
12 need not be made to a franchisee for good will if (i) the franchisee
13 has been given one year's notice of nonrenewal and (ii) the franchisor
14 agrees in writing not to enforce any covenant which restrains the
15 franchisee from competing with the franchisor: PROVIDED FURTHER, That
16 a franchisor may offset against amounts owed to a franchisee under this
17 subsection any amounts owed by such franchisee to the franchisor.

18 (j) Terminate a franchise prior to the expiration of its term
19 except for good cause. Good cause shall include, without limitation,
20 the failure of the franchisee to comply with lawful material provisions
21 of the franchise or other agreement between the franchisor and the
22 franchisee and to cure such default after being given written notice
23 thereof and a reasonable opportunity, which in no event need be more
24 than thirty days, to cure such default, or if such default cannot
25 reasonably be cured within thirty days, the failure of the franchisee
26 to initiate within thirty days substantial and continuing action to
27 cure such default: PROVIDED, That after three willful and material
28 breaches of the same term of the franchise agreement occurring within
29 a twelve-month period, for which the franchisee has been given notice
30 and an opportunity to cure as provided in this subsection, the
31 franchisor may terminate the agreement upon any subsequent willful and
32 material breach of the same term within the twelve-month period without
33 providing notice or opportunity to cure: PROVIDED FURTHER, That a
34 franchisor may terminate a franchise without giving prior notice or
35 opportunity to cure a default if the franchisee: (i) Is adjudicated a
36 bankrupt or insolvent; (ii) makes an assignment for the benefit of
37 creditors or similar disposition of the assets of the franchise
38 business; (iii) voluntarily abandons the franchise business; or (iv) is
39 convicted of or pleads guilty or no contest to a charge of violating

1 any law relating to the franchise business. Upon termination for good
2 cause, the franchisor shall purchase from the franchisee at a fair
3 market value at the time of termination, the franchisee's inventory and
4 supplies, exclusive of (i) personalized materials which have no value
5 to the franchisor; (ii) inventory and supplies not reasonably required
6 in the conduct of the franchise business; and (iii), if the franchisee
7 is to retain control of the premises of the franchise business, any
8 inventory and supplies not purchased from the franchisor or on his
9 express requirement: PROVIDED, That a franchisor may offset against
10 amounts owed to a franchisee under this subsection any amounts owed by
11 such franchisee to the franchisor.

12 **Sec. 2.** RCW 49.60.030 and 1984 c 32 s 2 are each amended to read
13 as follows:

14 (1) The right to be free from discrimination because of race,
15 creed, color, national origin, sex, or the presence of any sensory,
16 mental, or physical handicap is recognized as and declared to be a
17 civil right. This right shall include, but not be limited to:

18 (a) The right to obtain and hold employment without discrimination;

19 (b) The right to the full enjoyment of any of the accommodations,
20 advantages, facilities, or privileges of any place of public resort,
21 accommodation, assemblage, or amusement;

22 (c) The right to engage in real estate transactions without
23 discrimination;

24 (d) The right to engage in credit transactions without
25 discrimination;

26 (e) The right to engage in franchise investment transactions under
27 chapter 19.100 RCW;

28 (f) The right to engage in insurance transactions or transactions
29 with health maintenance organizations without discrimination:
30 PROVIDED, That a practice which is not unlawful under RCW 48.30.300,
31 48.44.220, or 48.46.370 does not constitute an unfair practice for the
32 purposes of this subparagraph; and

33 ((+f)) (g) The right to engage in commerce free from any
34 discriminatory boycotts or blacklists. Discriminatory boycotts or
35 blacklists for purposes of this section shall be defined as the
36 formation or execution of any express or implied agreement,
37 understanding, policy or contractual arrangement for economic benefit
38 between any persons which is not specifically authorized by the laws of

1 the United States and which is required or imposed, either directly or
2 indirectly, overtly or covertly, by a foreign government or foreign
3 person in order to restrict, condition, prohibit, or interfere with or
4 in order to exclude any person or persons from any business
5 relationship on the basis of race, color, creed, religion, sex,
6 national origin or lawful business relationship: PROVIDED HOWEVER,
7 That nothing herein contained shall prohibit the use of boycotts as
8 authorized by law pertaining to labor disputes and unfair labor
9 practices.

10 (2) Any person deeming himself injured by any act in violation of
11 this chapter shall have a civil action in a court of competent
12 jurisdiction to enjoin further violations, to recover the actual
13 damages sustained by him, or both, together with the cost of suit
14 including a reasonable attorney's fees or any other remedy authorized
15 by this chapter or the United States Civil Rights Act of 1964; and

16 (3) Notwithstanding any other provisions of this chapter, any act
17 prohibited by this chapter related to sex discrimination or
18 discriminatory boycotts or blacklists which is committed in the course
19 of trade or commerce in the state of Washington as defined in the
20 Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair
21 practice within the meaning of RCW 19.86.020 and 19.86.030 and subject
22 to all the provisions of chapter 19.86 RCW as now or hereafter amended.

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