SENATE DOCKET, NO. 1550 FILED ON: 1/21/2011

SENATE . . . . . No. 1843

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act further regulating franchise agreements .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian A. Joyce	*Norfolk, Bristol, and Plymouth*

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SENATE . . . . . No. 1843

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 1843) of Brian A. Joyce for legislation to regulate franchise agreements . Community Development and Small Businesses.

The Commonwealth of Massachusetts

An Act further regulating franchise agreements .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 93 of the General Laws is hereby amended by adding the following 2 sections under the title of "Regulation of Franchise Agreements":-

Section 115. For the purposes of section 116, the following words shall have the following meanings:

"Franchise", a contract or agreement, either expressed or implied, whether oral or written, between 2 or more persons by which: (i) a franchisee is granted the right to engage in the business of offering, selling or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and (ii) the operation of the franchisee's business pursuant to that 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.

"Franchisee", an individual to whom a franchise is granted.

"Franchisor", an individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization that grants a franchise.

Section 116. (a) A franchisor shall not, directly or through an officer, agent or employee, terminate a franchise, except for good cause shown which shall include, but not be limited to, the franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement. For the purposes of termination, "good cause" shall mean: cause based upon legitimate business reason, and shall include the franchisee's failure to comply with any material lawful requirement contained in the franchise agreement.

Prior to termination of the franchise, the franchisor shall give the franchisee written notice of the termination at least 90 days in advance of the termination with the cause stated

23 thereon. The 90 day advanced written notice for termination shall not apply if the reason for
24 termination is because: (1) the alleged grounds were voluntary abandonment by the franchisee of
25 the franchise relationship, in which event, such notice may be given 15 days in advance of the
26 termination, cancellation, or failure to renew; or (2) the alleged grounds are the conviction of the
27 franchisee in a court of competent jurisdiction of an offense punishable by a term of
28 imprisonment in excess of 1 year and directly related to the business conduct pursuant to the
29 franchise, in which event, such notice may be given at any time following the conviction and
30 shall be effective upon delivery and written receipt of the notice.

31 (b) A franchisor shall not, directly or through an officer, agent or employee,
32 fail to renew a franchise, except for good cause shown which shall include, but not be limited to,
33 the franchisee's refusal or failure to comply substantially with any material and reasonable
34 obligation of the franchise agreement. The franchisor is obligated to act in good faith and shall
35 not refuse to renew a franchise for arbitrary or capricious reasons. For the purposes of non-
36 renewal, "good cause" shall meancause based upon legitimate business reason, and includes the
37 franchisee's failure to comply with any material lawful requirement contained in the franchise
38 agreement.

39 Before non-renewal of the franchise, the franchisor shall give the franchisee
40 written notice of the non-renewal at least 90 days in advance of the non-renewal with cause
41 stated thereon.

42 (c) A franchisor that develops a new outlet or location which has an adverse
43 impact on the gross sales of an existing franchisee's outlet or location shall be liable to the
44 affected franchisee for monetary damages, unless any of the following are applicable:

45 (1) the franchisor first offers the new outlet or location to the existing
46 franchisee;

47 (2) at the time the new outlet or location is developed, the existing
48 franchisee is not in compliance with the franchisor's current reasonable criteria for new
49 franchisees.

50 (d) Upon termination of a franchise for whatever cause or reason, except
51 voluntary relinquishment or abandonment of the franchise by the franchisee, the franchisor shall
52 fairly compensate the franchisee or franchisee's estate for the fair market value at the time of
53 termination of the franchise, of the franchisee's inventory, supplies, equipment and furnishing
54 purchased by the franchisee from the franchisor or its approved sources and good will, if any,
55 exclusive of personalized items which have no value to the franchisor and inventory, supplies,
56 equipment and furnishings not reasonably required in the conduct of the franchise business;
57 provided, however, that compensation need not be made to franchisee of good will if: the
58 franchisor agrees in writing not to enforce a covenant which restrains the franchisee from

59 competing with the franchisor; and provided further, that a franchisor may offset against amounts
60 owed to a franchisee under this subsection any amount owed by the franchisee to franchisor.

61 (e) A franchisor shall not terminate or fail to renew a franchise for the failure
62 or refusal of the franchisee to do any of the following:

63 (1) Refusal to take part in promotional campaigns of the franchisor's
64 products.

65 (2) Failure to meet sales quotas suggested by the franchisor.

66 (3) Refusal to sell any products at a price suggested by the franchisor
67 or supplier.

68 (4) Refusal to keep the premises open and operating during those
69 hours which are documented by the franchisee to be unprofitable to the franchisee or to preclude
70 the franchisee from establishing his own hours of operation beyond the hour of 10 p.m. and prior
71 to 6 a.m..

72 (5) Refusal to give the franchisor or supplier of financial records of
73 the operation of the franchise which are not related or unnecessary to the franchisee's obligations
74 under the franchise agreement.

75 (f) A franchisor, directly or indirectly, through any officer, agent, or employee
76 shall not do any of the following:

77 (1) Prohibit, directly or indirectly, the right of free association among
78 franchisees for any lawful purpose.

79 (2) Prohibit the transfer by will of any franchise and the rights of any
80 franchisee.

81 (3) Require or prohibit any change in management of any franchise
82 unless the requirement or prohibition of the change shall be for good cause, which cause shall be
83 stated in writing by the franchisor.

84 (4) Impose unreasonable standards of performance upon a franchisee.

85 (5) Fail to deal in good faith with a franchisee.

86 (6) Sell, rent or offer to sell to a franchisee any product or service for
87 more than a fair and reasonable price.

88 (7) Impose on a franchise by contract, rule or regulation, whether
89 written or oral, a standard of conduct unless the franchisor, his agents or representatives sustain
90 the burden of proving the standard of conduct to be reasonable and necessary.

91 (8) Discriminate between franchises in the charges offered or made
92 for royalties, goods, services, equipment, rentals, advertising services, or in any other business
93 dealing, unless (A) that discrimination between franchisees would be necessary to allow a
94 particular franchisee to fairly meet competition in the open market, or (B) to the extent that the
95 franchisor satisfies the burden of proving that any classification of or discrimination between
96 franchisees is reasonable, is based on franchises granted at materially different times and the
97 discrimination is reasonably related to the difference in time or on other proper and justifiable
98 distinctions, and is not arbitrary. Nothing in this subsection shall be construed as granting to a
99 franchisor any right which may be limited by any other state or federal statute.

100 (9) Notify the franchisee of a claimed breach of franchise agreement
101 for good cause later than 180 days from the date good cause arises or 180 days after the
102 franchisor knew or in the exercise of reasonable care should have known of the claimed good
103 cause.

104 (g) A franchisee or franchisor, upon request, shall have the right to have the
105 question of good cause submitted to arbitration in accordance with the rules of the American
106 Arbitration Association. A franchisee or franchisor, upon the rendering of a decision in
107 arbitration, shall have the right to apply to the superior court in the county wherein the franchisee
108 or franchisor is doing the business or resides for confirmation, modification, correction or
109 vacation of any arbitration decision.

110 (h) A franchisor shall protect and save harmless its franchisee from financial
111 loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or
112 judgment by reason of defect in merchandise or methods or procedures prescribed by franchisor
113 and performed by the franchisee, except for alleged negligence or willful misconduct of the
114 franchisee.

115 (i) A franchisor shall reimburse its franchisee at the prevailing retail price for
116 any services rendered or party supplied by the franchisee in satisfaction of any warranty issued
117 by the franchisor, and a franchisor shall not restrict a franchisee from rendering services or
118 providing parts in accordance with standards of good workmanship in satisfaction of the
119 warranty.