

**PROPOSED AMENDMENTS TO
HOUSE BILL 3162**

1 On page 1 of the printed bill, line 2, after “franchisees” insert a period
2 and delete the rest of the line.

3 Delete lines 4 through 30 and delete page 2 and insert:

4 **“SECTION 1. Section 2 of this 2015 Act is added to and made a part**
5 **of ORS 650.005 to 650.100.**

6 **“SECTION 2. (1) A franchise that a franchisor or subfranchisor sells**
7 **or offers to sell to a franchisee in this state must:**

8 **“(a) Require of a franchisor or subfranchisor a duty of good faith**
9 **and fair dealing and an exercise of due care and fairness in adminis-**
10 **tering advertising, rewards programs, marketing funds and all other**
11 **provisions of the franchise;**

12 **“(b) Require a franchisor or subfranchisor to maintain consistent**
13 **operating standards under a specific brand name and uniformly apply**
14 **the standards in a consistent and nondiscriminatory manner;**

15 **“(c) Require a franchisor or subfranchisor to make available to the**
16 **franchisee all records of fees for marketing and rewards programs and**
17 **other fees that franchisees, licensees, vendors and suppliers have paid;**

18 **“(d) Provide that a franchisee may renew the franchise under terms**
19 **that are free from unreasonable costs, fees or stipulations;**

20 **“(e) Provide specific market protection for the franchisee that pre-**
21 **vents a franchisor or subfranchisor from permitting another person**
22 **to operate under a similar or related brand within the franchisee’s**

1 area of operations or otherwise materially affecting the franchisee's
2 business that is subject to the franchise;

3 “(f) Require a franchisor or subfranchisor to provide the franchisee
4 with reasonable written notice of a significant change to the franchise
5 or operations under the franchise, and to permit the franchisee to
6 terminate the franchise without a penalty or liquidated damages and
7 without invoking any noncompetition clause set forth in the franchise,
8 if the change causes the franchisee's business to suffer a substantial
9 and material negative impact or causes the franchisee to undergo
10 substantial financial hardship;

11 “(g) Require a franchisor or subfranchisor, before terminating a
12 franchise, to have good cause and to give the franchisee detailed rea-
13 sons for the termination, to identify the provision or provisions of the
14 franchise that the franchisee breached and to allow a reasonable op-
15 portunity for the franchisee to cure the breach; and

16 “(h) Provide that:

17 “(A) If a franchisor or subfranchisor terminates a franchise, the
18 franchisor or subfranchisor may not compel the franchisee to pay liq-
19 uidated damages or early termination fees;

20 “(B) If a franchisee has not breached a provision of the franchise
21 or cures a breach of the franchise, the franchisee retains all of the
22 franchisee's rights under the franchise; and

23 “(C) A franchisee's breach under one franchise does not constitute
24 a breach under another franchise.

25 “(2) A franchise that a franchisor or subfranchisor sells or offers
26 to sell to a franchisee in this state may not:

27 “(a) Restrict a franchisee's right to join or participate in an asso-
28 ciation of franchisees or in other associations;

29 “(b) Prevent a franchisee from establishing a price for the goods
30 or services the franchisee sells;

1 “(c) Prevent a franchisee or an association of franchisees from
2 purchasing from any vendor goods or services that meet standards
3 that the franchisor publishes or otherwise sets forth in writing;

4 “(d) Terminate the franchise before the expiration of the term set
5 forth in the franchise, unless the franchisee has committed a sub-
6 stantial and material breach of a lawful provision of the franchise, in
7 which event the franchisor or subfranchisor shall allow 30 days for the
8 franchisee to cure the breach before terminating the franchise; or

9 “(e) Require binding arbitration or a resolution of disputes in a fo-
10 rum in a state other than this state.

11 “(3)(a) A franchisor or subfranchisor may not, in a franchise or
12 otherwise, prevent a franchisee from selling, assigning or transferring
13 the franchise or an interest in the franchise to another person that is
14 qualified under the terms of the franchise, or impose unreasonable
15 costs, fees, stipulations or penalties on the sale, assignment or trans-
16 fer.

17 “(b) A franchise may provide that a franchisee may not sell, assign
18 or transfer the franchise without the franchisor’s or subfranchisor’s
19 consent, which the franchisor or subfranchisor may not withhold un-
20 reasonably, and may require the franchisee to notify the franchisor
21 or subfranchisor in writing before selling, assigning or transferring:

22 “(A) The franchise or a controlling interest in the franchise; or

23 “(B) All or substantially all of the franchisee’s assets in a business
24 that is subject to the franchise.

25 “(c) A notice under paragraph (b) of this subsection must include:

26 “(A) The name and address of the person to which the franchisee
27 proposes to sell, assign or transfer the franchise;

28 “(B) A copy of all of the agreements related to the sale, assignment
29 or transfer of the franchise or the assets of the business that is subject
30 to the franchise; and

1 “(C) An application from the person to which the franchisee pro-
2 poses to sell, assign or transfer the franchise to become the successor
3 franchisee, submitted on forms and with materials the franchisor or
4 subfranchisor requires for reviewing prospective franchisees, if the
5 franchisor or subfranchisor ordinarily makes the forms and materials
6 available.

7 “(d) A franchisor or subfranchisor, as soon as practicable after re-
8 ceiving a notice under this subsection, shall notify the franchisee and
9 the person to which the franchisee proposes to sell, assign or transfer
10 the franchise of any forms, materials or other information that is
11 missing from the notice.

12 “(e) A franchisor or subfranchisor, not later than 60 days after re-
13 ceiving a notice under this subsection, or not later than a date to
14 which the franchisor or subfranchisor and the franchisee agree in
15 writing, shall approve or disapprove in writing the franchisee’s pro-
16 posed sale, assignment or transfer of the franchise to another person.
17 If the franchisor or subfranchisor disapproves the sale, assignment or
18 transfer, the franchisor or subfranchisor shall set forth the reasons
19 for the disapproval in writing. The franchisor or subfranchisor shall
20 deliver the approval or disapproval by personal service, by certified
21 mail, return receipt requested, or by guaranteed overnight delivery
22 through a service that verifies delivery. If a franchisor or
23 subfranchisor does not timely deliver a written disapproval in accord-
24 ance with this paragraph, the franchisor or subfranchisor has ap-
25 proved the sale, assignment or transfer.

26 “(4) If a franchisor or subfranchisor does not terminate a franchise
27 or disapprove a franchisee’s proposed sale, assignment or transfer of
28 a franchise to another person in accordance with this section, the
29 franchisor or subfranchisor is liable to the franchisee, at the
30 franchisee’s election, for:

1 “(a) A full reinstatement under the terms of the franchise plus
2 damages that the franchisee suffered as a result of the improper ter-
3 mination or disapproval; or

4 “(b) Payment of the full market value of the franchise and assets
5 of the business that is subject to the franchise, in return for the
6 franchisee’s surrendering the franchise and assets to the franchisor
7 or subfranchisor.

8 “(5) If a franchisor or subfranchisor does not renew a franchise in
9 accordance with this section, the franchisor or subfranchisor shall
10 offer to purchase current inventory from the franchisee:

11 “(a) That meets the franchisor’s or subfranchisor’s current stan-
12 dards and is otherwise capable of resale;

13 “(b) That a franchisee must keep under the terms of the franchise
14 or in the course of commercial practice;

15 “(c) That a franchisee holds for use or sale in the business that is
16 subject to the franchise; and

17 “(d) At the lower of:

18 “(A) The fair wholesale market value of the inventory; or

19 “(B) The price that the franchisee paid for the inventory.

20 “(6)(a) A franchise is voidable to the extent that the franchise does
21 not have the provisions specified in subsection (1) of this section. A
22 condition, stipulation or other provision of a franchise that is prohib-
23 ited under subsection (2) or (3) of this section is void and
24 unenforceable.

25 “(b) A condition, stipulation or other provision of a franchise that
26 purports to bind or otherwise require a person to waive a provision of
27 this section or the implied covenant of good faith and fair dealing is
28 against public policy and is void and unenforceable.

29 “(7)(a) In any action in which a franchisee alleges that a franchisor
30 or subfranchisor unreasonably withheld consent for a sale, assignment

1 or transfer of a franchise, a determination as to whether the
2 franchisor or subfranchisor was unreasonable is a question of fact that
3 a trier of fact shall consider in light of all of the circumstances of the
4 proposed sale, assignment or transfer.

5 “(b) A court may enjoin a violation of this section and may require
6 specific performance under a franchise or provide other equitable
7 remedies that the court deems necessary to effectuate the purposes
8 of this section.

9 “SECTION 3. Section 2 of this 2015 Act applies to franchises that a
10 franchisor or subfranchisor and a franchisee enter into, terminate or
11 renew on or after the effective date of this 2015 Act.”.

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