

**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) Permit a franchisee to rescind a franchise agreement with a**
16 **term of 10 years or more within three days after executing the fran-**
17 **chise agreement;**

18 **“(d) Provide that a franchisee may terminate a franchise agreement**
19 **with a term of 10 years or more before the term expires and:**

20 **“(A) Avoid paying a prorated portion of the fees, charges or other**
21 **valuable consideration due to the franchisor or subfranchisor under**
22 **the franchise agreement; or**

1 **“(B) Receive a refund of a prorated portion of the fees, charges or**
2 **other valuable consideration the franchisee paid the franchisor or**
3 **subfranchisor under the franchise agreement;**

4 **“(e) Require a franchisor or subfranchisor to make available to the**
5 **franchisee all records of fees for marketing and rewards programs and**
6 **other fees that franchisees, licensees, vendors and suppliers have paid**
7 **and a description of where and the purposes for which the franchisor**
8 **or subfranchisor directed the fees;**

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

11 **“(g) Provide specific market protection for the franchisee that pre-**
12 **vents a franchisor or subfranchisor from operating or permitting an-**
13 **other person to operate under a similar or related brand or brand**
14 **extension within the franchisee’s area of operations or otherwise**
15 **materially affecting the franchisee’s business that is subject to the**
16 **franchise;**

17 **“(h) Require a franchisor or subfranchisor to provide the franchisee**
18 **with reasonable written notice of a significant change to the franchise**
19 **or operations under the franchise, and to permit the franchisee to**
20 **terminate the franchise without a penalty or liquidated damages and**
21 **without invoking any noncompetition clause set forth in the franchise,**
22 **if the change causes the franchisee’s business to suffer a substantial**
23 **and material negative impact or causes the franchisee to undergo**
24 **substantial financial hardship;**

25 **“(i) Require a franchisor or subfranchisor, before terminating a**
26 **franchise, to have good cause and to give the franchisee detailed rea-**
27 **sons for the termination, to identify the provision or provisions of the**
28 **franchise that the franchisee breached and to allow a reasonable op-**
29 **portunity for the franchisee to cure the breach;**

30 **“(j) Limit the duration of any restrictive covenants or noncompeti-**

1 tion clauses to not longer than three years with a geographic scope
2 that is coterminous with the territory specified in the franchise
3 agreement; and

4 “(k) Provide that:

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

8 “(B) If a franchisee has not breached a provision of the franchise
9 or cures a breach of the franchise, the franchisee retains all of the
10 franchisee’s rights under the franchise; and

11 “(C) A franchisee’s breach under one franchise does not constitute
12 a breach under another franchise.

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

15 “(a) Restrict a franchisee’s right to create, join or participate in an
16 association of franchisees or other associations;

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

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

22 “(d) Discriminate among the franchisor’s or subfranchisor’s
23 franchisees in administering advertising, rewards programs, market-
24 ing funds and all other provisions of the franchise or on the basis of
25 the franchisee’s membership in a minority group or other protected
26 class;

27 “(e) Terminate the franchise before the expiration of the term set
28 forth in the franchise, unless the franchisee has committed a sub-
29 stantial and material breach of a lawful provision of the franchise, in
30 which event the franchisor or subfranchisor shall allow 60 days for the

1 franchisee to cure the breach before terminating the franchise; or

2 “(f) Require binding arbitration or a resolution of disputes in a fo-
3 rum in a state other than this state.

4 “(3)(a) A franchisor or subfranchisor may not, in a franchise or
5 otherwise, prevent a franchisee from selling, assigning or transferring
6 the franchise or an interest in the franchise to another person that is
7 qualified under the terms of the franchise, or impose unreasonable
8 costs, fees, stipulations or penalties on the sale, assignment or trans-
9 fer.

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

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

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

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

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

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

24 “(C) An application from the person to which the franchisee pro-
25 poses to sell, assign or transfer the franchise to become the successor
26 franchisee, submitted on forms and with materials the franchisor or
27 subfranchisor requires for reviewing prospective franchisees, if the
28 franchisor or subfranchisor ordinarily makes the forms and materials
29 available.

30 “(d) A franchisor or subfranchisor, as soon as practicable after re-

1 ceiving a notice under this subsection, shall notify the franchisee and
2 the person to which the franchisee proposes to sell, assign or transfer
3 the franchise of any forms, materials or other information that is
4 missing from the notice.

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

19 “(4) If a franchisor or subfranchisor does not terminate a franchise
20 or disapprove a franchisee’s proposed sale, assignment or transfer of
21 a franchise to another person in accordance with this section, the
22 franchisor or subfranchisor is liable to the franchisee, at the
23 franchisee’s election, for:

24 “(a) A full reinstatement under the terms of the franchise plus
25 damages, attorney fees and costs that the franchisee suffered as a re-
26 sult of the improper termination or disapproval; or

27 “(b) Payment of the full market value of the franchise and assets
28 of the business that is subject to the franchise, along with any attor-
29 ney fees and costs the franchisee incurs in vindicating the franchisee’s
30 rights, determining the market value of the franchise or resolving

1 other disputes with the franchisor or subfranchisor under this para-
2 graph, in return for the franchisee's surrendering the franchise and
3 assets to the franchisor or subfranchisor.

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

7 “(a) That meets the franchisor's or subfranchisor's current stan-
8 dards and is otherwise capable of resale;

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

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

13 “(d) At the lower of:

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

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

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

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

25 “(7)(a) In any action in which a franchisee alleges that a franchisor
26 or subfranchisor unreasonably withheld consent for a sale, assignment
27 or transfer of a franchise, a determination as to whether the
28 franchisor or subfranchisor was unreasonable is a question of fact that
29 a trier of fact shall consider in light of all of the circumstances of the
30 proposed sale, assignment or transfer.

1 **“(b) A court may enjoin a violation of this section and may require**
2 **specific performance under a franchise or provide other equitable**
3 **remedies that the court deems necessary to effectuate the purposes**
4 **of this section.**

5 **“(c) A court may award attorney fees and costs to a prevailing party**
6 **in an action a franchisee brings under this subsection, but may not**
7 **award fees and costs solely to a prevailing defendant or a prevailing**
8 **plaintiff.**

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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