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HOUSE BILL NO. 1506

Offered January 19, 2024

A BILL to amend and reenact §§ 13.1-559 and 13.1-563 of the Code of Virginia, relating to retail franchise agreements; governing law; competition restrictions.

Patron—Wyatt

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-559 and 13.1-563 of the Code of Virginia are amended and reenacted as follows: § 13.1-559. Definitions; applicability of chapter.

A. As used in this chapter, unless the context otherwise requires:

"Commission" means the State Corporation Commission.

"Controlling person" means a natural person who is an officer, director, or partner, or who occupies a similar status or performs a similar function, of a franchisor organized as a corporation, partnership, or other entity, or any person who possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a franchisor, whether through the ownership of voting securities, by contract, or otherwise.

"Franchise" means a written contract or agreement between two or more persons, by which:

1. A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services at retail under a marketing plan or system prescribed in substantial part by a franchisor;

2. The operation of the franchisee's business pursuant to such 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; and

3. The franchisee is required to pay, directly or indirectly, a franchise fee of \$500 or more.

"Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not including: (i) the payment of a bona fide wholesale price for starting and continuing inventory of goods for resale or (ii) the payment at fair market value for the purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or maintain the business.

"Franchisee" means a person to whom a franchise is granted or sold.

"Franchisor" means a person, including a subfranchisor, who grants or sells, or offers to grant or sell, a franchise.

"Offer" or "offer to sell" includes every attempt to offer to dispose of or grant, and every solicitation of an offer to buy, a franchise or an interest in a franchise for value.

"Place of business" means a building or portion thereof from which the goods or services authorized by the franchise are sold or offered for sale in person by the franchisee or employees or agents of the franchisee, or a truck or van used in the sale of such goods which is of a type designated by the franchisor and is equipped and marked in conformance with requirements of the franchisor.

"Preopening obligations" means the franchisor's obligations to provide to the franchisee, prior to the opening of the franchisee's business, real estate, improvements, equipment, inventory, training, or other items to be included in the offering.

"Sale" or "sell" includes every contract or agreement of sale or grant of, contract to sell, or disposition of a franchise or interest in a franchise for value.

"Subfranchisor" means a person who is authorized by a franchisor to grant a franchise within a particular geographic region.

B. This chapter shall apply only to a franchise the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the Commonwealth of Virginia.

C. A franchise does not include a contract or agreement by which a retailer of goods or services is granted the right either (i) to utilize a marketing plan or system to promote the sale or distribution of goods or services which are incidental and ancillary to the principal business of the retailer (sales under such a plan or system accounting for less than 20 percent of the retailer's gross sales being deemed incidental and ancillary); or (ii) to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof provided such retailer is not required to purchase such goods or services from the operator of such establishment.

D. Any franchise contract or agreement offered or entered into pursuant to the terms of this chapter shall be governed by the laws of the Commonwealth.

§ 13.1-563. Unlawful offers.

INTRODUCED

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59 It shall be unlawful for any person, in connection with the sale or offer to sell a franchise in ~~this~~ *the*  
60 Commonwealth, directly or indirectly:

- 61 1. To employ any device, scheme, or artifice to defraud;
- 62 2. To make any untrue statement of a material fact or to omit to state a material fact necessary in  
63 order to avoid misleading the offeree;
- 64 3. To engage in any transaction, practice, or course of business that operates or would operate as a  
65 fraud or deceit upon the franchisee; ~~or~~
- 66 4. *To offer or enter into a franchise agreement (i) that restricts the right of a franchisee to engage*  
67 *in the business of offering, selling, or distributing goods or services at retail after termination or*  
68 *expiration of the franchise agreement or (ii) in which a restriction on the franchisee's right to do*  
69 *business is part of the settlement of a controversy, except where such restriction is approved by a court*  
70 *of competent jurisdiction; or*
- 71 5. To fail to provide the franchisee a copy of (i) the franchise agreement and (ii) such disclosure  
72 document as may be required by rule or order of the Commission.