

IC 23-2-2.7

Chapter 2.7. Deceptive Franchise Practices

IC 23-2-2.7-1

Franchise agreement; unlawful provisions

Sec. 1. It is unlawful for any franchise agreement entered into between any franchisor and a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions:

(1) Requiring goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories, or services of comparable quality are available from sources other than those designated by the franchisor. However, the publication by the franchisor of a list of approved suppliers of goods, supplies, inventories, or service or the requirement that such goods, supplies, inventories, or services comply with specifications and standards prescribed by the franchisor does not constitute designation of a source nor does a reasonable right of the franchisor to disapprove a supplier constitute a designation. This subdivision does not apply to the principal goods, supplies, inventories, or services manufactured or trademarked by the franchisor.

(2) Allowing the franchisor to establish a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement; or, if no exclusive territory is designated, permitting the franchisor to compete unfairly with the franchisee within a reasonable area.

(3) Allowing substantial modification of the franchise agreement by the franchisor without the consent in writing of the franchisee.

(4) Allowing the franchisor to obtain money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator.

(6) Allowing for an increase in prices of goods provided by the franchisor which the franchisee had ordered for private retail

consumers prior to the franchisee's receipt of an official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each order. Price changes applicable to new models of a product at the time of introduction of such new models shall not be considered a price increase. Price increases caused by conformity to a state or federal law, or the revaluation of the United States dollar in the case of foreign-made goods, are not subject to this subdivision.

(7) Permitting unilateral termination of the franchise if such termination is without good cause or in bad faith. Good cause within the meaning of this subdivision includes any material violation of the franchise agreement.

(8) Permitting the franchisor to fail to renew a franchise without good cause or in bad faith. This chapter shall not prohibit a franchise agreement from providing that the agreement is not renewable upon expiration or that the agreement is renewable if the franchisee meets certain conditions specified in the agreement.

(9) Requiring a franchisee to covenant not to compete with the franchisor for a period longer than three (3) years or in an area greater than the exclusive area granted by the franchise agreement or, in absence of such a provision in the agreement, an area of reasonable size, upon termination of or failure to renew the franchise.

(10) Limiting litigation brought for breach of the agreement in any manner whatsoever.

(11) Requiring the franchisee to participate in any:

- (A) advertising campaign or contest;
- (B) promotional campaign;
- (C) promotional materials; or
- (D) display decorations or materials;

at an expense to the franchisee that is indeterminate, determined by a third party, or determined by a formula, unless the franchise agreement specifies the maximum percentage of gross monthly sales or the maximum absolute sum that the franchisee may be required to pay.

As added by Acts 1976, P.L. 116, SEC.1. Amended by P.L. 233-1985, SEC.5; P.L. 11-1987, SEC.27.

IC 23-2-2.7-2

Franchise agreement; unlawful acts and practices

Sec. 2. It is unlawful for any franchisor who has entered into any franchise agreement with a franchisee who is either a resident of Indiana or a nonresident operating a franchise in Indiana to engage in any of the following acts and practices in relation to the agreement:

- (1) Coercing the franchisee to:
 - (i) order or accept delivery of any goods, supplies,

inventories, or services which are neither necessary to the operation of the franchise, required by the franchise agreement, required by law, nor voluntarily ordered by the franchisee;

(ii) order or accept delivery of any goods offered for sale by the franchisee which includes modifications or accessories which are not included in the base price of those goods as publicly advertised by the franchisor;

(iii) participate in an advertising campaign or contest, any promotional campaign, promotional materials, display decorations, or materials at an expense to the franchisee over and above the maximum percentage of gross monthly sales or the maximum absolute sum required to be spent by the franchisee provided for in the franchise agreement; in the absence of such provision for required advertising expenditures in the franchise agreement, no such participation may be required; or

(iv) enter into any agreement with the franchisor or any designee of the franchisor, or do any other act prejudicial to the franchisee, by threatening to cancel or fail to renew any agreement between the franchisee and the franchisor. Notice in good faith to any franchisee of the franchisee's violation of the terms or provisions of a franchise or agreement does not constitute a violation of this subdivision.

(2) Refusing or failing to deliver in reasonable quantities and within a reasonable time after receipt of an order from a franchisee for any goods, supplies, inventories, or services which the franchisor has agreed to supply to the franchisee, unless the failure is caused by acts or causes beyond the control of the franchisor.

(3) Denying the surviving spouse, heirs, or estate of a deceased franchisee the opportunity to participate in the ownership of the franchise under a valid franchise agreement for a reasonable time after the death of the franchisee, provided that the surviving spouse, heirs, or estate maintains all standards and obligations of the franchise.

(4) Establishing a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area. However, a franchisor shall not be considered to be competing when operating a business either temporarily for a reasonable period of time, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the business operation and can reasonably expect to acquire full ownership

of such business on reasonable terms and conditions.

(5) Discriminating unfairly among its franchisees or unreasonably failing or refusing to comply with any terms of a franchise agreement.

(6) Obtaining money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

(7) Increasing prices of goods provided by the franchisor which the franchisee had ordered for retail consumers prior to the franchisee's receipt of a written official price increase notification. Price increases caused by conformity to a state or federal law, the revaluation of the United States dollar in the case of foreign-made goods or pursuant to the franchise agreement are not subject to this subdivision.

(8) Using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business.

As added by Acts 1976, P.L.116, SEC.1. Amended by P.L.233-1985, SEC.6.

IC 23-2-2.7-3

Termination or election not to renew franchise; notice

Sec. 3. Unless otherwise provided in the agreement, any termination of a franchise or election not to renew a franchise must be made on at least ninety (90) day's notice.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-4

Action to recover damages or reform franchise agreement

Sec. 4. Any franchisee who is a party to a franchise agreement entered into or renewed after July 1, 1976 which contains any provision set forth in Section 1 of this chapter or who is injured by an unfair act or practice set forth in Section 2 of this chapter may bring an action to recover damages, or reform the franchise agreement.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-5

Franchise defined

Sec. 5. For the purposes of this chapter, franchise means any franchise as defined in IC 23-2-2.5-1, clauses (a) (1) (2) and (3), and any agreement meeting the provisions of IC 23-2-2.5-1, clauses (a) (1) and (2) which relates to the business of selling automobiles and/or trucks and the business of selling gasoline and/or oil primarily for use in vehicles with or without the sale of accessory items.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-6

Application of chapter

Sec. 6. The provisions of this chapter apply only to agreements entered into or renewed, or act or practice occurring after July 1, 1976.

As added by Acts 1976, P.L.116, SEC.1.

IC 23-2-2.7-7

Limitation of actions

Sec. 7. No action may be brought for a violation of this chapter more than two (2) years after the violation.

As added by Acts 1976, P.L.116, SEC.1.