

House Bill 4152

Sponsored by Representatives BYNUM, MEEK, Senator MANNING JR, Representative ALONSO LEON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires parties to franchise agreement to deal in good faith and commercially reasonable manner, and specifies required disclosures in franchise sale transaction. Specifies requirements for franchise agreement.

Prohibits certain practices in terminating or refusing to renew franchise agreement. Requires franchisor to purchase covered property from franchisee with which franchisor terminates or refuses to renew franchise agreement, and specifies exemptions from requirement.

Requires franchisor to permit franchisee to sell, assign or transfer to another person franchise, all or substantially all assets of business that operates under franchise agreement with franchisor, or controlling interest or other interest in franchise under specified circumstances.

Prohibits certain other conduct of franchisor. Permits franchisee to bring action for damages and equitable relief for franchisor's violation of provisions of Act.

A BILL FOR AN ACT

1
2 Relating to required conduct among parties to a franchise agreement; creating new provisions; and
3 amending ORS 650.005.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 10 of this 2022 Act are added to and made a part of ORS 650.005**
6 **to 650.100.**

7 **SECTION 2. Except as otherwise provided in ORS 650.120 to 650.170, 650.200 to 650.250 or**
8 **650.300 to 650.480, sections 2 to 10 of this 2022 Act govern all franchises located in this state**
9 **and all franchise agreements into which a franchisor and franchisee enter with respect to a**
10 **franchise located in this state. To the extent that a conflict exists between sections 2 to 10**
11 **of this 2022 Act and a provision of ORS 650.120 to 650.170, 650.200 to 650.250 or 650.300 to**
12 **650.480, the provision within ORS 650.120 to 650.170, 650.200 to 650.250 or 650.300 to 650.480,**
13 **as appropriate, controls over the conflicting provision in sections 2 to 10 of this 2022 Act.**

14 **SECTION 3. (1) A person that offers, negotiates, accepts or enters into a franchise**
15 **agreement must deal with the parties and prospective parties to the franchise agreement in**
16 **good faith and in a commercially reasonable manner.**

17 **(2) A person, in advertising or offering a franchise, may not misrepresent or fail to dis-**
18 **close:**

19 **(a) The business prospects or chances of success of the franchise;**

20 **(b) The financial performance or forecasted financial performance of existing establish-**
21 **ments of the franchise;**

22 **(c) The total investment a franchisee would need to make to establish a business based**
23 **on the franchise;**

24 **(d) The number of a franchisor's existing franchise establishments or the geographic area**
25 **within which existing franchise establishments operate or draw business; or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (e) Any other material fact a reasonable person would consider in determining whether
2 to enter into a franchise agreement.

3 **SECTION 4.** (1) A franchise agreement may not:

4 (a) Limit or condition a franchisee's right to associate with another franchisee for any
5 purpose.

6 (b) Require a franchisee to purchase or lease goods or services, other than the initial
7 inventory necessary to establish a business based on the franchise, from a franchisor or an
8 approved supplier, unless the franchisor certifies in writing that the requirement is reason-
9 ably necessary to further the business purposes of the franchise and does not substantially
10 affect competition for the goods or services.

11 (c) Require a franchisee to pay prices or charges for goods or services that differ mate-
12 rially from the prices or charges another franchisee must pay for the same or substantially
13 similar goods or services.

14 (d) Charge a franchisee more than a fair and reasonable market price for goods or ser-
15 vices from a franchisor or an approved supplier.

16 (e) Require a franchisee to sell goods or services at a loss or at a price that is not rea-
17 sonably acceptable to the franchisee.

18 (f) Require a franchisee to:

19 (A) Resolve a dispute by means of binding arbitration;

20 (B) Limit, waive or forgo any opportunity the franchisee may have to bring an action or
21 claim before a court of this state, an appropriate state agency, board or commission or any
22 other appropriate state or local government body; or

23 (C) Bring an action or claim in a forum outside this state, if the franchisee operates a
24 business under the franchise agreement within this state.

25 (g) Permit a franchisor to have direct or indirect control of a franchisee's employees or
26 of the day-to-day operations of the franchisee's business.

27 (h) Require or prohibit changes in a franchisee's management unless the franchisor has
28 good cause for the requirement or prohibition and specifies the good cause in writing.

29 (i) Require hours of operation for the franchisee's business that the franchisee deems
30 unprofitable or unsafe or that require the franchisee to conduct operations on a religious
31 holiday.

32 (j) Impose commercially unreasonable standards of performance upon a franchisee.

33 (k) Include in a lease or other agreement that is collateral to a franchise agreement any
34 terms and conditions that conflict with or directly or indirectly violate provisions of the
35 franchise agreement.

36 (2) A term or condition of a franchise agreement that purports to establish a limitation,
37 condition or requirement prohibited under subsection (1) of this subsection is void and
38 unenforceable.

39 **SECTION 5.** (1)(a) Except as provided in paragraph (b) of this subsection, a franchisor
40 may not terminate a franchise agreement before the term of the franchise agreement expires
41 unless:

42 (A) A franchisee fails to substantially comply with the terms and conditions of the fran-
43 chise agreement;

44 (B) The franchisor notifies the franchisee of the franchisee's failure to comply at least
45 60 days before the date on which the franchisor intends to terminate the franchise agree-

1 ment; and

2 (C) The franchisor offers the franchisee a reasonable opportunity to cure the franchisee's
 3 failure to comply during a period of not less than 60 days after the date of the notice de-
 4 scribed in subparagraph (B) of this paragraph and the franchisee does not cure the failure
 5 within the 60-day period.

6 (b) A franchisor may terminate a franchise agreement immediately, without providing a
 7 franchisee with an opportunity to cure a failure to comply with the franchise agreement, if
 8 the franchisee:

9 (A) Has assigned all or substantially all of the franchisee's assets to or for the benefit
 10 of a creditor, the franchisee admits an inability to pay the franchisee's debts as the debts
 11 become due, a court has determined that the franchisee is insolvent or a court has issued
 12 an order for relief in bankruptcy;

13 (B) Fails to operate the franchisee's business under the terms of the franchise agreement
 14 for a period of five consecutive days during which the franchise agreement requires the
 15 franchisee to operate the franchisee's business, or for a shorter period if the franchisor can
 16 conclude from material facts and circumstances related to the failure that the franchisee
 17 does not intend to operate the franchisee's business, unless the failure results from fire,
 18 flood, earthquake, epidemic or pandemic or a similar cause that is beyond the franchisee's
 19 control;

20 (C) Agrees with the franchisor to terminate the franchise agreement immediately;

21 (D) Makes a material misrepresentation that relates to the acquisition or operation of
 22 the franchisee's business or the execution of the franchise agreement;

23 (E) Engages in conduct that reflects materially and unfavorably on the franchise, the
 24 franchisor or the franchisor's marketing plan or system;

25 (F) Violates or fails to comply with an applicable federal, state or local law or regulation,
 26 including laws or regulations related to health, safety, employment, building safety or land
 27 use for a period of 10 days after receiving notification of the violation or failure to comply;

28 (G) Fails to comply with a term or condition of the franchise agreement after curing,
 29 under the circumstances described in paragraph (a) of this subsection, a previous failure of
 30 the same nature, or the franchisee fails to comply with the same material term or condition
 31 of the franchise agreement more than three times in a 12-month period;

32 (H) Loses possession or control of the franchisee's business premises or assets because
 33 a creditor, lienholder or lessor, or a governmental body or government official, acting in
 34 accordance with the governmental body's or government official's lawful duties or responsi-
 35 bilities, seizes, takes control of or forecloses a lien on the franchisee's business premises or
 36 assets;

37 (I) Is convicted of a felony or of criminal misconduct that is materially related to the
 38 operation of the franchisee's business, the franchise or the franchise agreement;

39 (J) Fails to pay franchise fees or other amounts due to the franchisor or an affiliate of
 40 the franchisor within five days after receiving notice that the fees or amounts are overdue;
 41 or

42 (K) Operates the franchisee's business in a manner that presents an imminent danger
 43 to public health or safety.

44 (c) If a franchisee operates a motor fuel franchise under the provisions of the federal
 45 Petroleum Marketing Practices Act, 15 U.S.C. 2801 to 2807, and under a franchise agreement

1 with the same franchisor that terminates or refuses to renew another, separate franchise
 2 agreement under paragraph (a) or (b) of this subsection, the franchisor's termination or re-
 3 fusal to renew the other, separate franchise agreement is a termination or refusal to renew
 4 the motor fuel franchise if the motor fuel franchise operates on the same business premises.

5 (2)(a) A franchisor may not refuse to renew a franchise agreement unless:

6 (A) The franchisor gives the franchisee notice of the franchisor's intention not to renew
 7 the franchise agreement at least 365 days before the date on which the franchise agreement
 8 expires and:

9 (i) Allows the franchisee to sell the franchisee's business to a person that meets the
 10 franchisor's requirements for entering into a franchise agreement; or

11 (ii) Offers the franchisee, for a period of at least 30 days, a bona fide right of first refusal
 12 for an offer from another person for the franchisee's business or interest in the franchise;

13 (B) The franchisor certifies in writing that the refusal to renew is not for the purpose
 14 of having the franchisor's employees or agents operate the franchisor's business on the
 15 franchisee's business premises;

16 (C) The franchisor agrees in writing not to enforce any covenant not to compete with the
 17 franchisor or with other franchisees of the franchisor after the franchise agreement termi-
 18 nates;

19 (D) The franchisor has cause under subsection (1) of this section to terminate the fran-
 20 chise agreement;

21 (E) The franchisor and franchisee mutually agree not to renew the franchise agreement;

22 (F) The franchisor and franchisee fail to agree to amendments or additions to the fran-
 23 chise agreement that would make the franchise agreement, upon renewal, substantially
 24 similar to franchise agreements the franchisor is renewing or offering to renew with other
 25 franchisees; or

26 (G) The franchisor sells or otherwise transfers to another person the franchisor's inter-
 27 est in the franchise agreement, in the business premises that the franchisee occupies or in
 28 a trademark, service mark, trade name, logotype, advertisement or other commercial symbol
 29 that the franchisor owns or controls and that the franchisee uses under the terms of the
 30 franchise agreement, except that under the circumstances set forth in this subparagraph:

31 (i) The franchisor shall offer the franchisee for a period of not less than 30 days a right
 32 of first refusal with respect to another person's bona fide offer to purchase the franchisor's
 33 interest in the business premises; or

34 (ii) The person that purchases the franchisor's interest in the franchise agreement or in
 35 a trademark, service mark, trade name, logotype, advertisement or other commercial symbol
 36 that the franchisor owns or controls and that the franchisee uses under the terms of the
 37 franchise agreement shall offer the franchisee in good faith a franchise agreement with the
 38 same terms and conditions the person offers to other franchisees.

39 (b) This subsection does not prevent a franchisor from:

40 (A) Exercising a right of first refusal to purchase a franchisee's business; or

41 (B) Offering or agreeing, before the franchise agreement expires, to extend the franchise
 42 agreement for a limited time.

43 (3) A franchisor shall notify a franchisee that the franchisor will terminate or refuse to
 44 renew a franchise agreement in a written statement that:

45 (a) States the franchisor's intent clearly and gives reasons for terminating or refusing

1 to renew the franchise agreement; and

2 (b) Specifies the effective date on which the franchise agreement will terminate or expire
3 without a renewal.

4 **SECTION 6.** (1)(a) Except as provided in subsection (2) of this section, a franchisor that
5 makes a lawful decision under section 5 of this 2022 Act to terminate or refuse to renew a
6 franchise agreement with a franchisee and that takes control of the premises at which the
7 franchisee conducted business under the franchise agreement shall, at the franchisee's op-
8 tion, purchase all covered property from the franchisee at the price the franchisee paid for
9 the covered property, less any offset described in paragraph (b) of this subsection and less
10 any applicable depreciation, within 30 days after the latest of:

11 (A) The date on which the franchisor terminates the franchise agreement;

12 (B) The date on which the term of the franchise agreement expires without a renewal;

13 or

14 (C) The date on which the franchisor takes control of the premises on which the
15 franchisee conducted business under the franchise agreement.

16 (b) A franchisor may offset from any payment required under paragraph (a) of this sub-
17 section any amount the franchisee owes the franchisor if:

18 (A) The franchisee agrees to the amount of the offset; or

19 (B) The franchisor has received a final adjudication of the amount the franchisee owes
20 the franchisor under the franchise agreement at the time the franchisor terminated or re-
21 fused to renew the franchise agreement.

22 (c) A franchisee shall convey to a franchisor that purchases covered property under this
23 subsection clear title to the covered property.

24 (2)(a) This section does not apply to a franchisor if:

25 (A) The franchisee declines an offer from the franchisor to renew the franchise, unless
26 the terms of the renewal offer differ substantially from the terms and conditions of the ex-
27 isting franchise agreement with respect to fees or royalties the franchisee must pay, the
28 share of revenue the franchisee retains, the period during which the franchise agreement
29 remains in effect or other material respects;

30 (B) The franchisor permits the franchisee to retain control of the premises on which the
31 franchisee engages in business and assets used in the business;

32 (C) The franchisor and franchisee agree mutually to terminate the franchise agreement;

33 or

34 (D) The franchisor announces publicly a decision to withdraw from all business activity
35 within this state, or within the city or county in which a franchisee conducts business, that
36 involves a trademark, service mark, trade name, logotype, advertisement or other commer-
37 cial symbol that the franchisor owns or controls and that the franchisee uses under the
38 terms of a franchise agreement.

39 (b) A franchisor's obligation to purchase covered property under the circumstances de-
40 scribed in subsection (1) of this section does not apply to covered property that a franchisee
41 sells after the franchisor notifies the franchisee that the franchisor will terminate or refuse
42 to renew the franchise agreement and before the date on which the franchise agreement
43 terminates or expires without a renewal.

44 **SECTION 7.** (1)(a) A franchisor shall permit a franchisee to sell, assign or transfer to
45 another person a franchise, all or substantially all of the assets of a business that operates

1 under a franchise agreement with the franchisor, or a controlling interest or other interest
 2 in the franchise if:

3 (A) The other person satisfies the current qualifications the franchisor requires of a new
 4 franchisee or a franchisee that renews a franchise agreement with the franchisor;

5 (B) The franchisee notifies the franchisor in writing of the franchisee's intent to sell,
 6 assign or transfer the franchise, assets or interest to another person and the notice includes:

7 (i) The other person's name and address;

8 (ii) A copy of all proposed and executed agreements related to the sale, assignment or
 9 transfer of the franchise, assets or interest to the other person; and

10 (iii) A completed application from the other person to become a franchisee under a
 11 franchise agreement with the franchisor, together with all forms, financial disclosures and
 12 other information the franchisor requires to consider and review the application;

13 (C) The franchisor consents in writing to the sale, assignment or transfer;

14 (D) The franchisor approves the other person's application, using the current qualifica-
 15 tions standards the franchisor applies to new applicants for a franchise, to franchisees that
 16 renew a franchise agreement or to other franchisees that conduct business that involves the
 17 same trademark, service mark, trade name, logotype, advertisement or other commercial
 18 symbol that the franchisee uses under the terms of a franchise agreement with the
 19 franchisor; and

20 (E) The franchisee and the other person comply with any conditions set forth in the
 21 franchise agreement that govern a sale, assignment or transfer of the franchise.

22 (b) A franchisor shall make available to a franchisee in writing, at the franchisee's re-
 23 quest, the current qualifications the franchisor requires of a new franchisee or a franchisee
 24 that renews a franchise agreement with the franchisor, together with all forms, financial
 25 disclosures and other information the franchisor requires to consider and review an appli-
 26 cation for a franchise. The franchisor shall deliver the written qualifications, forms, disclo-
 27 sures and other required information to the franchisee within 15 days after receiving notice
 28 of the intended sale, assignment or transfer from the franchisee. The franchisor shall notify
 29 the franchisee and the other person of any additional information or documentation the
 30 franchisor needs to approve the application as soon as is practicable.

31 (c) A franchisor shall approve or disapprove the sale, assignment or transfer described
 32 in paragraph (a) of this subsection within 60 days after receiving all of the materials required
 33 under paragraph (a) of this subsection or, alternatively, within a period to which the
 34 franchisor and franchisee agree in writing. The franchisor shall communicate and deliver an
 35 approval in writing. If the franchisor disapproves the sale, assignment or transfer, the
 36 franchisor shall communicate the disapproval and state the reasons for the disapproval in
 37 writing. Unless the franchisor disapproves the sale, assignment or transfer as provided in
 38 this paragraph, the franchisor has approved the sale, assignment or transfer.

39 (d) In an action to contest a franchisor's disapproval of a sale, assignment or transfer
 40 under this subsection, a trier of fact shall consider all existing circumstances related to the
 41 sale, assignment or transfer in determining whether the franchisor's disapproval was rea-
 42 sonable. This paragraph does not prohibit summary judgment in the action if determining
 43 whether the franchisor's disapproval was reasonable is a matter of law.

44 (e) Solely for the purposes specified in paragraph (d) of this subsection and
 45 notwithstanding section 4 (1)(f)(A) of this 2022 Act, a franchisor and franchisee may agree

1 in a franchise agreement to binding arbitration and to specify an arbitrator or other impar-
2 tial person or a panel of arbitrators chosen from a list of arbitrators that the American
3 Arbitration Association supplies.

4 (2)(a) A franchisor shall permit a surviving spouse, heir or estate of a franchisee or of
5 the majority shareholder in a franchisee to:

6 (A) Operate and participate in the ownership of a franchise under a valid franchise
7 agreement for a reasonable time after the franchisee or the majority shareholder has died,
8 if the spouse, heir or estate agrees to meet the standards and obligations set forth in the
9 franchise agreement; and

10 (B) Within the reasonable time described in subparagraph (A) of this paragraph:

11 (i) Enter into a franchise agreement with the franchisor if the spouse, heir or estate
12 satisfies the current qualifications the franchisor requires of a new franchisee or a
13 franchisee that renews a franchise agreement with the franchisor; or

14 (ii) Sell, assign or transfer the franchise to another person that satisfies the current
15 qualifications the franchisor requires of a new franchisee or a franchisee that renews a
16 franchise agreement with the franchisor.

17 (b) Paragraph (a) of this subsection does not prohibit a franchisor from exercising a right
18 of first refusal to purchase a franchise set forth in a franchise agreement if the franchisee
19 receives a bona fide offer from another person to purchase the franchise.

20 (3) A franchisor shall make available to a franchisee without charge true, accurate and
21 complete copies of all records of marketing, advertising funds and fees that the franchisee,
22 vendors, suppliers, licensees and other franchisees have paid to or on behalf of the franchisor
23 and rebates, rewards or incentive programs and other payments the franchisor has made to
24 the franchisee, vendors, suppliers, licensees and other franchisees.

25 (4) A franchisor may not restrict a franchisee from issuing, selling or otherwise trans-
26 ferring stock, memberships or other ownership interests in the franchise to an employee of
27 the franchisee or an heir of, or other successor in interest to, the franchisee, if:

28 (a) The franchisee otherwise complies with the franchisor's qualifications for solvency,
29 financing, credit, reserve funds or other evidence of the franchisee's capability to pay the
30 expenses required to operate the franchise; and

31 (b) The issuance, sale or transfer does not result in an actual or de facto sale of more
32 than a 50 percent interest in the franchise.

33 (5) This section does not prohibit a franchisor from:

34 (a) Exercising a contractual right of first refusal to purchase a franchise, all or sub-
35 stantially all of the assets of a franchise or an interest in a franchise after receiving a bona
36 fide offer from another person to purchase the franchise, the assets or the interest, except
37 that the franchisor shall offer the seller payment that is at least equal to the amount of the
38 other person's bona fide offer; or

39 (b) Declining to exercise a contractual right of first refusal.

40 SECTION 8. (1) As used in this section, "material adverse effect on a franchisee's gross
41 revenues or net profits" means a decrease of 10 percent or more in a franchisee's gross re-
42 venues or net profits compared with the franchisee's gross revenues or net profits in the
43 12-month period before the date on which the comparison is made.

44 (2) Except as provided in subsection (3) of this section, a franchisor is liable to a
45 franchisee for the franchisee's actual damages if:

1 (a) The franchisor develops or operates a business location that is within close ge-
 2 ographical proximity to a franchisee’s business location or the franchisor distributes goods
 3 or services that are the same as or substantially similar to the goods or services that a
 4 franchisee distributes; and

5 (b) The franchisor’s actions under paragraph (a) of this subsection cause or result in a
 6 material adverse effect on a franchisee’s gross revenues or net profits.

7 (3) A franchisor may take an action described in subsection (2)(a) of this section if:

8 (a) Before taking the action, the franchisor in good faith and with the rational expecta-
 9 tion that the action will not have a material adverse effect on a franchisee’s gross revenues
 10 or net profits first offers to the franchisee the new business location or the right to dis-
 11 tribute the goods or services; or

12 (b) The franchisee has failed to comply with the express, material and reasonably neces-
 13 sary terms and conditions of a franchise agreement between the franchisor and the
 14 franchisee at the time the franchisor takes the action, and the franchisee’s failure has con-
 15 tinued after the franchisor has given to the franchisee notice of and an opportunity to cure
 16 the failure.

17 **SECTION 9.** A franchisor may not:

18 (1) Obtain money, goods, services or any other benefit or item of value from another
 19 person with which a franchisee transacts business if the money, goods, services, benefit or
 20 item of value results from or is related to a business relationship or transactions between
 21 the other person and the franchisee, unless the franchisor discloses the transaction with the
 22 other person to the franchisee in advance and in writing.

23 (2) Violate, or cause or permit a director, officer or agent of the franchisor to violate,
 24 section 5(a) of the Federal Trade Commission Act in the course of operating the franchisor’s
 25 business.

26 (3) Require a franchisee to agree to a release, assignment, novation, waiver, estoppel or
 27 disclaimer that relieves a person of liability under sections 2 to 10 of this 2022 Act or to
 28 employ a checklist or other device as a method for avoiding liability under sections 2 to 10
 29 of this 2022 Act.

30 **SECTION 10.** (1)(a) A franchisee may bring an action against a franchisor that fails to
 31 comply with sections 2 to 10 of this 2022 Act for:

32 (A) The franchisee’s actual damages, costs and reasonable attorney fees including, but
 33 not limited to, the fair market value of the franchise and the franchisee’s assets in the
 34 business that the franchisee conducts under the terms of the franchise agreement; or

35 (B) Equitable relief including, but not limited to, an injunction against the franchisor’s
 36 actual or threatened failure to comply with sections 2 to 10 of this 2022 Act.

37 (b) The remedies described in paragraph (a) of this subsection are in addition to and not
 38 in lieu of any other remedy the franchisee may have for a franchisor’s termination of or
 39 failure to renew a franchise agreement.

40 (c) A court may award a franchisee in an action under this section not less than twice
 41 and not more than three times the franchisee’s actual damages if the franchisee proves that
 42 the franchisor acted knowingly or willfully in failing to comply with the requirements set
 43 forth in sections 2 to 10 of this 2022 Act.

44 (d) A franchisor may offset amounts that a franchisee owes to the franchisor under a
 45 franchise agreement or other agreement against a franchisee’s recovery under this section.

1 **(2)(a) The laws of this state govern the interpretation of a franchise agreement and the**
 2 **performance of the parties to the franchise agreement if the franchisee is located in or**
 3 **transacting business in this state, notwithstanding any provision of the franchise agreement**
 4 **to the contrary.**

5 **(b) The circuit courts of this state and the federal courts with jurisdiction over actions**
 6 **brought in this state have exclusive jurisdiction over any action brought with respect to a**
 7 **franchise that is located in this state.**

8 **SECTION 11.** ORS 650.005 is amended to read:

9 650.005. As used in ORS 650.005 to 650.100[, *unless the context requires otherwise:*]

10 [(1) *“Area franchise” means a contract or agreement between a franchisor and a subfranchisor*
 11 *whereby the subfranchisor is granted the right, for a valuable consideration, to sell or negotiate the sale*
 12 *of franchises in the name or on behalf of the franchisor.*]

13 **(1) “Approved supplier” means a vendor, supplier or other source of goods or services**
 14 **that a franchisor identifies in a franchise agreement as a required or optional vendor, sup-**
 15 **plier or other source or that supplies an item of covered property in accordance with a**
 16 **specification described in a franchise agreement or other agreement between a franchisor**
 17 **and a franchisee.**

18 **(2) “Area franchise” means a right to negotiate or enter into a franchise agreement in**
 19 **a franchisor’s name or on a franchisor’s behalf that the franchisor grants to a subfranchisor**
 20 **in return for valuable consideration.**

21 [(2)] **(3) “Control” means the possession, directly or indirectly, of the power to direct or cause**
 22 **the direction of the management and policies of a person, whether through the ownership of voting**
 23 **securities, by contract, or otherwise.**

24 **(4) “Covered property” means inventory, supplies, equipment, fixtures and furnishings:**

25 **(a) That a franchisee purchased or paid for under the terms of a franchise agreement**
 26 **or a contract or agreement with an approved supplier;**

27 **(b) That the franchisee possesses or uses in connection with a franchise, and that are**
 28 **reasonably required to conduct business under the franchise agreement, at the time at which**
 29 **the franchisor terminates or refuses to renew the franchise agreement;**

30 **(c) To which the franchisee has and can transfer clear title and possession to the**
 31 **franchisor on the date on which the franchisor pays the franchisee for the inventory, sup-**
 32 **plies, equipment, fixtures and furnishings; and**

33 **(d) That are not personalized.**

34 [(3) *“Director” means Director of the Department of Consumer and Business Services.*]

35 [(4) *“Franchise” means a contract or agreement, whether oral or written, by which:*]

36 [(a) *A franchisee is granted the right to engage in the business of offering, selling or distributing*
 37 *goods or services under a marketing plan or system prescribed in substantial part by a franchisor;*]

38 [(b) *The operation of the franchisee’s business pursuant to such plan or system is substantially*
 39 *associated with the franchisor’s trademark, service mark, trade name, logotype, advertising or other*
 40 *commercial symbol designating the franchisor of such plan or system; and]*

41 [(c) *The franchisee is required to give to the franchisor a valuable consideration for the right to*
 42 *transact business pursuant to the plan or system. Payment for trading stamps in itself is not consid-*
 43 *eration for the right to transact business pursuant to a plan or system.*]

44 [(5) *“Franchisee” means a person to whom a franchise is sold by a franchisor.*]

45 [(6) *“Franchisor” means a person, including a subfranchisor, who sells a franchise for \$100 or*

1 *more to a franchisee or subfranchisor.]*

2 (5) **“Franchise” means an arrangement under which a franchisor, in return for valuable**
3 **consideration other than payment for trading stamps, grants to a subfranchisor or**
4 **franchisee the right to:**

5 (a) **Engage in the business of offering, selling or distributing goods or services under a**
6 **marketing plan or system that the franchisor recommends or prescribes in substantial part;**
7 **and**

8 (b) **Operate the franchisee’s business using, or in association with, a trademark, service**
9 **mark, trade name, logotype, advertisement or other commercial symbol that the franchisor**
10 **owns or to which the franchisor has a proprietary right.**

11 (6) **“Franchise agreement” means a contract or agreement, whether oral, written, ex-**
12 **press or implied, that sets forth the terms and conditions that govern a franchise.**

13 (7) **“Franchisee” means a person that has a right to engage in business under a franchise**
14 **agreement.**

15 (8) **“Franchisor” means a person, including a subfranchisor, that receives consideration**
16 **equivalent in value to \$100 or more in return for granting rights to a franchisee or another**
17 **subfranchisor under a franchise agreement.**

18 (9) **“Lawful decision” means a decision that a franchisor makes in accordance with the**
19 **terms of a franchise agreement or under applicable law.**

20 [(7)] (10) **“Offer” or “offer to sell” includes every attempt to offer to dispose of, or solicitation**
21 **of an offer to buy, a franchise or interest in a franchise for value.**

22 [(8)] (11)(a) **“Sale” or “sell” includes every contract or agreement of sale of, contract to sell,**
23 **or disposition of a franchise or interest in a franchise for value[, but].**

24 (b) **“Sale” or “sell” does not include the renewal or extension of an existing franchise without**
25 **any material change in the terms [thereof if there is no interruption in the operation of the franchised**
26 **business by the franchisee] and conditions of a franchise agreement if the franchisee does not**
27 **interrupt the operation of the franchise.**

28 [(9)] (12) **“Subfranchisor” means a person [to whom an area franchise is sold by a franchisor]**
29 **that obtains an area franchise from a franchisor.**

30 **SECTION 12. Sections 2 to 10 of this 2022 Act and the amendments to ORS 650.005 by**
31 **section 11 of this 2022 Act apply to franchises that are operating, and to franchise agree-**
32 **ments that a franchisor enters into, amends or renews, on or after the effective date of this**
33 **2022 Act.**

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