

date not later than July 1, 2028, if the Secretary determines that additional time is necessary to permit the orderly implementation of this section. A waiver under this paragraph shall require a written compliance plan and may not be renewed or extended beyond July 1, 2028.

"(2) Essential air service waiver.—The Secretary may grant a temporary waiver of subsection (b) for a period not to exceed 2 calendar years, if the Secretary determines that—

"(A) compliance would result in significant harm to essential air service; and

"(B) the waiver includes enforceable conditions to promote entry by competing carriers.

"(3) Renewal limitation.—No waiver under paragraph (2) may be renewed more than once.

"(e) Enforcement.—A violation of this section constitutes an unfair method of competition for purposes of [section 41712](#) of this title.

"(f) Regulations.—Not later than July 1, 2027, the Secretary shall issue regulations to carry out this section, including regulations addressing divestiture, schedule adjustments, and slot reallocation."

(b) Clerical amendment.—The analysis of [chapter 417 of title 49](#), United States Code, is amended by inserting after the item relating to section 41730 the following:

"41731. Limitations on excessive air carrier concentration at covered airports."

(c) Effective date.—Except as provided in the following sentence, this section shall take effect on January 1, 2028. Subsection (f) of section 41731 of title 49, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act.

Subtitle H—Fair Franchise Relationships

SEC. 1191. SHORT TITLE, FINDINGS, AND PURPOSE.

(a) Short title.—This subtitle may be cited as the "Fair Franchise Relationships Act".

(b) Findings.—Congress finds the following:

(1) Franchise businesses represent a large and growing segment of the Nation's retail and service businesses and involve a joint enterprise between the franchisor and franchisees in which each party has a vested interest in the success of the franchised business.

(2) Prospective franchisees often lack bargaining power and invest substantial amounts of their own money, take loans that may be secured by their homes or retirement accounts or guaranteed by the Small Business Administration, and enter into long-term commercial leases and other obligations to support themselves and their families.

(3) Franchise agreements frequently reflect a profound imbalance of contractual power in favor of the franchisor and fail to give due regard to the legitimate business interests of the franchisee because the franchisor reserves one-sided and pervasive contractual authority over the franchise relationship. Franchise systems may also separate operational control from legal and financial responsibility, allowing a franchisor to prescribe the brand, methods, technology,

suppliers, fees, and other material conditions of the business while shifting capital costs, debt, and operating risk to franchisees.

(4) Franchisees may suffer substantial financial losses when a franchisor does not provide truthful or complete information regarding the franchise opportunity or does not act in good faith, with due care, or in a commercially reasonable manner in the performance of the franchise agreement. Mandatory sourcing requirements, undisclosed vendor payments, opaque advertising funds, excessive fees, territorial encroachment, arbitrary termination, and restraints on association or public discussion can further permit a franchisor to extract value from a franchisee without providing a corresponding benefit to the franchised business.

(5) Unlike an investment in securities, an investment in a franchise may lead to losses beyond the initial capital investment, and a franchisee generally cannot simply resign and leave the franchised business without substantial continuing liabilities. Traditional common-law doctrines and contractual remedies have not evolved sufficiently to protect franchisees from fraudulent or unfair practices in the sale and operation of franchise businesses.

(6) The Federal Government has a substantial interest in regulating franchising, protecting fair competition and honest trade, and ensuring that franchisors accept responsibility commensurate with the authority they possess or exercise within a franchise system.

(c) Purpose.—The purposes of this subtitle are—

(1) to promote fair business relations between franchisees and franchisors;

(2) to protect franchisees against deceptive sales practices, coercive contract terms, arbitrary treatment, and the abuse of superior economic and bargaining power, and to provide effective rights and remedies;

(3) to preserve and strengthen the ability of States to provide greater protection to franchisees; and

(4) to unstack franchise relationships by ensuring that economic and legal responsibility follows the authority and control exercised within a franchise system.

SEC. 1192. DEFINITIONS.

(a) Definitions.—In this subtitle:

(1) Affiliate.—The term "affiliate" has the meaning given the term in [section 436.1\(b\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act.

(2) Commission.—The term "Commission" means the Federal Trade Commission.

(3) Disclosure document.—The term "disclosure document" means the disclosure document required under [part 436 of title 16](#), Code of Federal Regulations, or an offering format allowed or required by State or local law.

(4) Franchise.—The term "franchise" has the meaning given the term in [section 436.1\(h\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act, but does not include a contract otherwise regulated by the Petroleum Marketing Practices Act ([15 U.S.C.](#)

[2801 et seq.](#)), except with respect to a franchise relationship that does not involve the sale of petroleum products.

(5) Franchise agreement.—The term "franchise agreement" means a contract or agreement, whether written or oral, that governs a franchise or any material aspect of a franchise relationship, including an agreement ancillary or collateral to a franchise.

(6) Franchise seller.—The term "franchise seller" has the meaning given the term in [section 436.1\(j\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act.

(7) Franchisee.—The term "franchisee" has the meaning given the term in [section 436.1\(i\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act.

(8) Franchisor.—The term "franchisor" has the meaning given the term in [section 436.1\(k\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act.

(9) Material; material fact.—The terms "material" and "material fact" include—

(A) a fact, circumstance, or set of conditions that a reasonable franchisee or prospective franchisee would consider important in making a significant decision relating to entering into, remaining in, transferring, renewing, or abandoning a franchise relationship; and

(B) a fact, circumstance, or set of conditions that has or may have a significant financial impact on a franchisor, franchisee, or prospective franchisee.

(10) Nonrenewal; nonrenew.—The terms "nonrenewal" and "nonrenew" mean that a franchisor fails or refuses to extend the franchisor-franchisee relationship at the end of the existing term of the franchise agreement, irrespective of whether the agreement contains a contractual renewal term.

(11) Offer; offering.—The terms "offer" and "offering" mean an effort to offer or dispose of, or a solicitation of an offer to buy, a franchise or an interest in a franchise for value.

(12) Outlet.—The term "outlet" means a point of sale, whether temporary or permanent, fixed or mobile, from which goods or services are offered for sale.

(13) Prospective franchisee.—The term "prospective franchisee" has the meaning given the term in [section 436.1\(r\) of title 16](#), Code of Federal Regulations, as in effect on the date of enactment of this Act.

(14) State.—The term "State" means a State, the District of Columbia, and any territory or possession of the United States.

(15) Trade secret.—The term "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that—

(A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from its disclosure or use; and

(B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SEC. 1193. FAIR FRANCHISE SALES AND DISCLOSURE.

(a) Fraudulent sales practices.—In connection with the advertising, offering, sale, or promotion of a franchise, it shall be unlawful for any person, directly or indirectly, to—

(1) employ a device, scheme, or artifice to defraud;

(2) engage in an act, practice, course of business, or pattern of conduct that operates or is intended to operate as a fraud upon a prospective franchisee; or

(3) obtain property, or assist another person to obtain property, by making an untrue statement of material fact or failing to state a material fact.

(b) Disclosure required.—Notwithstanding an exemption under section 436.8 of title 16, Code of Federal Regulations, a franchise seller shall furnish each prospective franchisee a disclosure document that complies with this subtitle and part 436 of title 16, Code of Federal Regulations, at the time and in the manner required under that part.

(c) Misrepresentations in required disclosures.—In connection with a disclosure document, notice, or report required by Federal, State, or local law, it shall be unlawful for a franchise seller, directly or indirectly, to—

(1) make an untrue statement of material fact;

(2) fail to state a material fact;

(3) fail to state a fact necessary to prevent a required statement or disclosure from being untrue or misleading;

(4) fail to furnish a prospective franchisee with all information required to be disclosed by law at the time and in the manner required; or

(5) fail, before a prospective franchisee signs a franchise agreement or makes a required payment, to disclose any material change known to the franchise seller that occurred after delivery of the disclosure document and that renders a statement in the disclosure document materially inaccurate or misleading.

(d) Historical financial performance data.—A franchisor shall include in the disclosure document historical financial performance data, including sales, expenses, and profitability data, sufficient to permit a prospective franchisee to make an informed assessment of the actual financial performance of the franchise system.

(e) Consistency of representations.—It shall be unlawful for a franchise seller to make an oral, written, visual, or electronic claim or representation to a prospective franchisee that is inconsistent with or contradicts the disclosure document or for which the franchise seller lacks a reasonable basis and written substantiation at the time the claim or representation is made.

(f) Renewal statement.—A franchise seller shall furnish a prospective franchisee with a written statement specifying prominently and in not less than 14-point type whether the proposed franchise agreement provides a renewal term and the conditions that apply to renewal.

(g) Relation to Franchise Rule.—The requirements of this section are in addition to, and not in lieu of, the requirements of [part 436 of title 16](#), Code of Federal Regulations.

SEC. 1194. UNFAIR FRANCHISE PRACTICES AND STANDARDS OF CONDUCT.

(a) Prohibited practices.—In connection with the performance, enforcement, renewal, transfer, or termination of a franchise agreement, it shall be unlawful for a franchisor, directly or indirectly, to—

(1) engage in an act, practice, course of business, or pattern of conduct that operates as a fraud upon any person;

(2) discriminate against a franchisee by imposing a requirement not imposed on other similarly situated franchisees, unless the franchisor establishes that the distinction is reasonable, based on a legitimate business reason, and not arbitrary or intended to benefit the franchisor at the expense of the franchisee;

(3) charge a renewal fee prohibited under section 1196(b)(2);

(4) terminate, cancel, fail to renew, threaten, penalize, or otherwise take adverse action against a franchisee because the franchisee—

(A) refuses to participate in a promotional campaign that is not reasonable, implemented in good faith, and reasonably expected to promote the profitability of the franchisee's business;

(B) fails to meet a sales quota not expressly set forth in the franchise agreement;

(C) refuses to sell a product or service at a price suggested or required by the franchisor, an affiliate, or an approved supplier;

(D) refuses to operate during hours that are unprofitable to the franchisee, including between 10 p.m. and 6 a.m., unless the business is commonly recognized as an extended-hour business or the initial signed franchise agreement expressly required operation during those hours; or

(E) refuses to provide financial records that are unrelated or unnecessary to the performance of the franchisee's express obligations under the franchise agreement;

(5) require or prohibit a change in the management of a franchise except for good cause stated in writing and based on a violation of a material, reasonable, and reasonably necessary express provision of the franchise agreement;

(6) impose a standard of conduct or performance unless the franchisor establishes that the standard is reasonable, necessary, uniformly enforced, and uniformly applied throughout the franchise system, including to franchisor-owned outlets and licensees;

(7) sell, rent, or offer to sell to a franchisee, or require a franchisee to buy, a product or service for more than a fair and reasonable price or without a reasonable expectation that the transaction will support the profitable operation of the franchised business;

(8) discriminate among franchisees in charges for royalties, goods, services, equipment, rentals, advertising services, or another business dealing, unless the franchisor establishes that the distinction is reasonable, necessary to meet competition or reflect a material difference in circumstances, and does not adversely affect another franchisee;

(9) require or demand that a franchisee pay liquidated or other post-termination damages in excess of the average monthly royalty fees paid by the franchisee during the preceding 12 full calendar months, or the shorter period during which the outlet operated, multiplied by the lesser of—

(A) 6; or

(B) the number of months remaining in the term of the franchise agreement; or

(10) accomplish through a parent, subsidiary, affiliate, supplier, agent, or other intermediary any act prohibited by this subtitle.

(b) Duty of good faith.—

(1) A franchise agreement imposes on each party a duty to act in good faith in the performance and enforcement of the agreement.

(2) The duty of good faith shall—

(A) obligate a party to refrain from conduct that destroys or injures the ability of the other party to obtain and receive the expected fruits of the agreement;

(B) obligate a party to perform the acts required under the agreement to accomplish its purposes; and

(C) require honesty in fact and observance of reasonable standards of fair dealing in the trade.

(3) A provision of a franchise agreement may not be interpreted or enforced to obscure, avoid, or waive the duty to act reasonably and in good faith.

(c) Duty of due care.—

(1) A franchise agreement imposes on the franchisor a duty of due care. The franchisor shall exercise the skill and knowledge normally possessed by franchisors in good standing in the same or a similar type of business with respect to each undertaking the franchisor assumes or performs and each area in which the franchisor represents that it possesses skill or knowledge. A franchisor may conspicuously state that it does not provide advice or expertise in a specified area, but such a statement does not limit the duty of due care with respect to an undertaking the franchisor actually assumes or performs.

(2) For purposes of paragraph (1), skill or knowledge includes expertise resulting from—

(A) training and experience in the business licensed under the franchise agreement or extensive experience with the goods, services, or operating system of that business;

(B) experience organizing a franchise system and providing training, assistance, and services to franchisees; and

(C) written or oral commitments and representations upon which a prospective franchisee would reasonably rely.

(3) A franchisor may establish compliance with this subsection by showing that the franchisor contracted for, hired, or purchased the expertise necessary to perform its undertaking and incorporated, communicated, or provided that expertise to the franchisee.

(4) The duty imposed by this subsection may not be waived by agreement or conduct.

SEC. 1195. PROCEDURAL FAIRNESS AND FRANCHISEE ASSOCIATION.

(a) Franchisee association.—A franchisor may not, directly or indirectly—

(1) restrict a franchisee from associating with other franchisees or from forming, joining, leading, or participating in a trade association or other franchisee association for a lawful purpose;

(2) interfere with communications between franchisees concerning the franchise system or their common business interests; or

(3) retaliate or threaten to retaliate against a franchisee for conduct protected under paragraph (1) or (2).

(b) Unlawful contract terms.—It shall be unlawful for a franchisor, directly or indirectly, to require a term or condition in a franchise agreement or in an agreement ancillary or collateral to a franchise that directly or indirectly violates this subtitle.

(c) Waivers and releases.—

(1) A franchisor may not require a franchisee to assent to a disclaimer, waiver, release, stipulation, or other provision that purports—

(A) to relieve a person from a duty imposed by this subtitle, except as part of a settlement of a preexisting bona fide dispute; or

(B) to protect a person from liability under this subtitle arising from willful misconduct, bad faith, gross negligence, or reckless disregard of an obligation or duty.

(2) Except as provided in paragraph (1)(A), a condition, stipulation, provision, or term that purports to waive or restrict a protection or remedy under this subtitle is void and unenforceable.

(d) Gag clauses prohibited.—A franchisor may not require a franchisee, including in connection with operation, termination, cancellation, forfeiture, repurchase, resale, or departure from a franchise system, to assent to a provision that purports to prevent the franchisee from making an

oral or written statement relating to the franchise business, operation of the franchise system, or the franchisee's experience with the franchise business.

(e) Applicable law and forum.—A franchise agreement or an agreement ancillary or collateral to a franchise may not—

(1) deprive a franchisee of the application and benefits of this subtitle, another Federal law, or the law of a State in which the franchisee resides or the franchised business is located; or

(2) deprive a franchisee of the ability to commence an action against the franchisor for a violation of this subtitle or breach of an applicable agreement in a court in the State in which the franchisee's principal place of business is located.

(f) Collective proceedings.—A franchise agreement or an agreement ancillary or collateral to a franchise may not prevent a franchisee from bringing or participating in—

(1) a consolidated action;

(2) a mass action;

(3) a class action under rule 23 of the Federal Rules of Civil Procedure; or

(4) a similar consolidated, mass, or class proceeding permissible under Federal or State law.

(g) Integration clauses and evidence outside the agreement.—

(1) No avoidance.—An integration clause may not waive, excuse, or avoid compliance with this subtitle or an applicable State franchise law.

(2) Evidence outside the agreement.—In an action under this subtitle or an applicable State franchise law, an integration clause or the parol evidence rule may not be used to exclude consideration of a representation, omission, or circumstance solely because it is not contained in the franchise agreement.

(3) Other evidentiary rules preserved.—Except as provided in paragraph (2), nothing in this subsection alters the application of any rule of evidence.

SEC. 1196. TRANSFER, RENEWAL, TERMINATION, AND EFFECT OF TERMINATION.

(a) Transfer by franchisee.—

(1) Transfer permitted.—A franchisee may assign an interest in a franchised business or franchise to a transferee that satisfies the reasonable qualifications then generally applied by the franchisor in the offer and sale of franchises. A qualification is reasonable only if it is based on a legitimate business reason.

(2) Written grounds for refusal.—A franchisor may refuse to permit a transfer only if the refusal is not arbitrary or capricious and the franchisor states the grounds for refusal in writing.

(3) Notice and implied consent.—A franchisee shall give the franchisor not less than 60 days' written notice of a proposed transfer. The transfer shall be considered approved 60 days

after submission unless the franchisor provides a written refusal that complies with paragraph (2).

(4) Permissible conditions.—A franchisor may condition a transfer on—

- (A) successful completion by the transferee of a reasonable training program;
- (B) payment of a reasonable transfer fee that reimburses the franchisor for reasonable and actual expenses directly attributable to the transfer;
- (C) payment or reasonable provision for payment of an amount due to the franchisor or an affiliate that is not subject to a bona fide dispute; or
- (D) satisfaction by the transferee of the franchisor's current, reasonable financial qualifications for franchisees.

(5) Prohibited conditions.—A franchisor may not condition consent to a transfer on—

- (A) forfeiture by the franchisee of an existing protection or remedy;
- (B) a release of claims broader than a counterpart release offered by the franchisor; or
- (C) a capital improvement, reinvestment, or purchase greater than the franchisor could reasonably require under the existing franchise agreement.

(6) Existing term preserved.—A franchisor may not require a franchisee or transferee to enter into an agreement with materially different terms or financial requirements as a condition of assigning the unexpired term of the franchise agreement.

(7) Transactions not requiring consent.—The following shall not be treated as a transfer requiring the consent of the franchisor, and the franchisor may not impose a fee exceeding its actual cost to review the matter:

- (A) succession upon the death or disability of a franchisee or owner to a surviving spouse or heir, or to a partner active in management, unless the successor fails within 1 year to meet the franchisor's then current reasonable qualifications;
- (B) incorporation of a proprietorship franchisee, except that the franchisor may require a personal guarantee of obligations relating to the franchise;
- (C) a transfer within an existing ownership group if more than 50 percent of the franchise remains held by persons who meet the franchisor's reasonable current qualifications;
- (D) a transfer of less than a controlling interest to the spouse or child of the franchisee if more than 50 percent of the franchise remains held by persons who meet the franchisor's reasonable current qualifications; or
- (E) a grant or retention of a security interest in the franchised business, its assets, or an ownership interest in the franchisee, if the secured party is obligated to provide the franchisor notice of an intended foreclosure and a reasonable opportunity to satisfy the

secured obligation in exchange for an assignment of the secured obligation and security interest.

(8) Post-transfer covenant.—After transfer of the transferor's complete interest, a franchisor may not enforce a covenant that prohibits the transferor from engaging in a lawful occupation or enterprise, except a covenant protecting a trade secret, trademark, trade dress, or other intellectual property of the franchisor.

(b) Renewal.—

(1) Good cause required.—A franchisor may not fail to renew a franchise except for good cause based on a legitimate business reason, including a franchisee's refusal or failure during the preceding year substantially to comply with a material, reasonable, and reasonably necessary express obligation of the franchise agreement.

(2) Renewal fee.—A renewal fee shall not be unreasonable and shall be considered reasonable if it does not exceed 50 percent of the average initial franchise fee or other required payment then being charged to new franchisees in the same market.

(3) Notice and cure.—Before nonrenewal, the franchisor shall give the franchisee written notice at least 90 days in advance. The notice shall state each reason constituting good cause and provide the franchisee not less than 60 days to cure a claimed discrepancy and reinstate eligibility for renewal.

(4) Terms of renewal.—If a franchisor requires a new franchise agreement as a condition of renewal, the renewed agreement shall preserve the royalties, advertising fees, other fees, and protected territory in the expiring agreement and may not impose a new fee.

(c) Termination.—

(1) Good cause required.—A franchisor may not terminate or cancel a franchise, or substantially change the competitive circumstances of the franchisee, except for good cause.

(2) Cross-default prohibited.—A default under one franchise agreement does not constitute a default under another franchise agreement to which the franchisee or an affiliate is a party. A contrary cross-default provision is void and unenforceable.

(3) Notice and cure.—Except as provided in paragraphs (4) through (6), before termination or cancellation, the franchisor shall give the franchisee written notice at least 90 days in advance. The notice shall state each reason constituting good cause and provide the franchisee not less than 60 days to cure each claimed default.

(4) Abandonment.—If the ground for termination is voluntary abandonment of the franchise relationship, the franchisor may give notice 15 days before termination or cancellation.

(5) Nonpayment.—If the ground for termination is nonpayment of an amount due under the franchise agreement, the franchisee shall receive written notice and not less than 15 days to cure. A franchisee may exercise the cure provided by this paragraph not more than 3 times during any 12-month period.

(6) Imminent danger.—If the ground for termination is a violation of law or regulation that creates an imminent danger to public health or safety, the franchisee shall receive immediate written notice and 24 hours after receipt to cure the violation.

(7) Certain final convictions.—A franchisor may terminate upon written notice after a franchisee is convicted by final judgment of an offense punishable by imprisonment for more than 1 year that is directly related to operation of the franchised business or materially impairs the goodwill of the franchise or franchised trademark. The franchisor may not collect a penalty or fee as a consequence of the conviction.

(8) Termination by franchisee.—A franchisee may terminate a franchise agreement for good cause without liability for the termination, lost future royalties, or the unexpired term of the agreement, but remains liable for an accrued obligation that is not subject to a bona fide dispute. Good cause includes a change to the franchise system or competitive circumstances that causes a substantial negative impact or substantial financial hardship in operation of the franchise.

(d) Effect of termination.—

(1) Compensation.—Except in the case of voluntary relinquishment or abandonment by the franchisee or expiration where the franchisee does not elect to renew, the franchisor shall fairly compensate the franchisee or the franchisee's estate for—

(A) the fair market value at termination of inventory, supplies, equipment, and furnishings purchased from the franchisor or an approved source and reasonably required in operation of the franchised business; and

(B) the fair market value of the going-concern value and goodwill of the business, if any.

(2) Offset.—A franchisor may offset an amount mutually agreed upon and owed by the franchisee that is not subject to a bona fide dispute.

(e) Transfer by franchisor.—A franchisor may not transfer, by sale or otherwise, its interest in a franchise system unless—

(1) not less than 30 days before the effective date, the franchisor provides every franchisee notice of the proposed transfer;

(2) the notice includes a complete description of the business and financial terms of the proposed transfer; and

(3) the person assuming the franchisor's obligations has the business experience and financial means to perform all obligations of the franchisor in the ordinary course of business.

(f) Post-expiration competition.—A franchisor may not prohibit or enforce a prohibition against a former franchisee engaging in a business at any location after expiration or lawful termination of the franchise agreement or using the customer list and telephone numbers associated with the franchised business, to the extent permitted by applicable privacy law and consistent with any express customer direction regarding use or disclosure of the customer's information, except that the franchisor may enforce a provision reasonably requiring the former franchisee to—

(1) cease using a trademark, trade secret, trade dress, or other intellectual property owned by the franchisor or an affiliate;

(2) alter the appearance of the business premises to avoid substantial similarity to the standard design, decor, trade dress, or motif of the franchise system; or

(3) modify the manner or mode of operations to avoid substantial confusion with methods unique to the franchisor and commonly used by franchisees in the same market.

SEC. 1197. INDEPENDENT SOURCING, ADVERTISING, AND ENCROACHMENT.

(a) Independent sourcing.—Except as provided in subsection (e), a franchisor, directly or indirectly through an affiliate or another person, may not prohibit or restrict a franchisee from obtaining equipment, fixtures, supplies, goods, or services used in the establishment or operation of the franchised business from a source chosen by the franchisee, except that the franchisor may require such equipment, fixtures, supplies, goods, or services to meet reasonable, established, and uniformly enforced systemwide quality standards.

(b) Approved vendors.—If a franchisor approves vendors of equipment, fixtures, supplies, goods, or services—

(1) the franchisor shall provide and continuously update an inclusive list of approved vendors;

(2) the franchisor shall promptly and objectively evaluate and respond to a reasonable request by a franchisee for approval of a competitive source; and

(3) the franchisor shall approve not fewer than 2 vendors for each required category of equipment, fixture, supply, good, or service unless the franchisor and franchisees operating a majority of the outlets subject to the requirement agree otherwise.

(c) Vendor payments and benefits.—

(1) A franchisor and each affiliate shall fully disclose each rebate, commission, payment, discount, or other benefit received from a vendor as a result of a purchase of goods or services by a franchisee.

(2) A rebate, commission, payment, discount, or other benefit described in paragraph (1) shall be distributed directly to the franchisee whose purchase generated the benefit.

(d) Annual report.—Not less frequently than annually, a franchisor shall report, in accordance with generally accepted accounting principles, the amount of revenue and profit earned by the franchisor and each affiliate from the sale or provision of equipment, fixtures, supplies, goods, or services to franchisees.

(e) Intellectual property exception.—Subsection (a) does not apply to a reasonable quantity of equipment, fixtures, supplies, goods, or services that the franchisor requires a franchisee to obtain from the franchisor or an affiliate if the item or service is central to the franchised business and incorporates a trade secret, patent, copyright, trademark, or other intellectual property owned or lawfully controlled by the franchisor or affiliate. A trademark, trade name, logo, or other

source-identifying matter applied to an otherwise substitutable item does not, by itself, satisfy this subsection.

(f) Advertising, marketing, and promotional funds.—

(1) Fiduciary duty.—A franchisor has a fiduciary duty in the administration or supervision of an advertising, marketing, or promotional fund or program to which franchisees are required or routinely expected to contribute.

(2) Separate account.—A franchisor that administers or supervises a fund or program described in paragraph (1) shall keep all franchisee contributions in a separate account.

(3) Independent audit.—Not later than 60 days after the close of each fiscal year, the franchisor shall provide each contributing franchisee an audit conducted by an independent certified public accountant of the fund or program. The audit shall disclose each fee, expense, or other payment from the account to the franchisor or to a subsidiary, affiliate, or other entity controlled in whole or in part by the franchisor.

(4) Payments to fund.—The franchisor shall disclose the source and amount of, and deliver to the fund or program, each discount, rebate, compensation, or payment received from a person with whom the fund or program transacts.

(5) Use of funds.—Amounts in a fund or program described in paragraph (1) may be used only for the purposes represented to franchisees and may not be used to promote the sale of new franchises unless that use is separately disclosed and approved by a majority of contributing franchisees.

(g) Encroachment.—

(1) Prohibition.—A franchisor may not place, or license another person to place, a new outlet for a franchised business in unreasonable proximity to an established outlet of a similar kind if—

(A) the intent or probable effect is to diminish the gross sales of the established outlet by more than 5 percent during the first 12 months of public operation of the new outlet; and

(B) the established outlet offers goods or services identified by the same trademark as the new outlet or has premises identified by the same trademark.

(2) Compensation alternative.—Paragraph (1) does not apply if, before the new outlet begins public operation, the franchisor offers in writing to pay each affected franchisee an amount equal to 50 percent of the gross sales of the new outlet, net of sales taxes, returns, and allowances, during the first 24 months of public operation if the sales of the established outlet decline by more than 5 percent during the first 12 months of public operation of the new outlet as a consequence of the new outlet.

(3) Burden of proof.—The franchisor bears the burden of establishing whether and to what extent a decline in sales occurred for a reason other than establishment of the new outlet.

(4) Measurement period.—For purposes of this subsection, a period measured from the public operation of a new outlet begins on the date on which the outlet first offers goods or services for sale to the public and may not include any period before that date.

(h) No evasion.—It shall be unlawful for a franchisor to evade or attempt to evade this section through an affiliate, designated supplier, purchasing cooperative, intermediary, common ownership arrangement, or other device.

SEC. 1198. ENFORCEMENT, APPLICABILITY, AND RELATION TO OTHER LAW.

(a) Enforcement by Commission.—

(1) Treatment under Federal Trade Commission Act.—A violation of sections 1193 through 1197, or a regulation promulgated under this subtitle, shall be treated as—

(A) an unfair, deceptive, or abusive act or practice and an unfair method of competition under section 5(a)(1) of the Federal Trade Commission Act ([15 U.S.C. 45\(a\)\(1\)](#)); and

(B) a violation of a rule under section 18 of the Federal Trade Commission Act ([15 U.S.C. 57a](#)).

(2) Powers.—The Commission shall enforce sections 1193 through 1197 and any regulation promulgated under this subtitle in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act ([15 U.S.C. 41 et seq.](#)) were incorporated into and made a part of this subtitle.

(b) Enforcement by States.—

(1) Civil action.—If the attorney general of a State, or another authorized State officer, has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by a violation of this subtitle, the attorney general or officer may bring a civil action on behalf of the residents of the State in an appropriate State court or district court of the United States to—

(A) enjoin the violation;

(B) enforce compliance with this subtitle;

(C) obtain damages, restitution, refunds, or other compensation; or

(D) obtain any other relief the court considers appropriate.

(2) State powers preserved.—Nothing in this subsection shall prevent an attorney general or other authorized State officer from exercising powers conferred by State law to conduct investigations, administer oaths or affirmations, compel attendance of witnesses or production of evidence, or proceed under a civil or criminal statute of the State.

(c) Private cause of action.—

(1) In general.—Notwithstanding any other provision of law, a person harmed by a violation or threatened violation of this subtitle or [part 436 of title 16](#), Code of Federal Regulations, may

bring a civil action in a State court of competent jurisdiction or a district court of the United States to—

(A) recover actual damages;

(B) obtain rescission, restitution, injunctive relief, and other equitable relief the court considers appropriate; and

(C) recover reasonable attorney's fees, expert witness fees, and costs.

(2) No exhaustion.—A plaintiff is not required to exhaust an administrative remedy before bringing an action under this subsection.

(d) Controlling-person liability.—A person that directly or indirectly controls a person liable under this subtitle, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person performing a similar function, and an employee who materially aids the act or transaction constituting the violation shall be jointly and severally liable to the same extent, unless the person establishes that the person had no knowledge of, or reasonable grounds to know of, the facts giving rise to liability.

(e) Limitations period.—An action under subsection (c) may be commenced not later than the later of—

(1) 5 years after the date on which the violation occurred; or

(2) 3 years after the date on which the violation was discovered or reasonably should have been discovered.

(f) Venue and service.—

(1) Private action.—A private action may be brought in a State in which the claimant resides or the franchised business is located.

(2) State action.—A State action brought in a district court of the United States may be brought in a district in which the defendant is found, is an inhabitant, or transacts business, or wherever venue is proper under [section 1391 of title 28](#), United States Code. Process may be served in any district in which the defendant is an inhabitant or may be found.

(g) Remedies cumulative.—The protections and remedies provided by this subtitle are in addition to, and not in lieu of, any protection or remedy available under Federal or State law.

(h) No preemption of stronger law.—Nothing in this subtitle shall be construed to preempt, displace, or limit a Federal, State, Tribal, or local law that provides equal or greater protection to a franchisee or prospective franchisee.

(i) Rulemaking.—

(1) Initial rules.—Not later than July 1, 2027, the Commission shall promulgate rules under [section 553 of title 5](#), United States Code, necessary to carry out this subtitle, including rules governing historical financial performance data under section 1193(d), encroachment under section 1197(g), and prevention of evasion.

(2) Continuing authority.—The Commission may thereafter revise or supplement rules promulgated under paragraph (1) and may maintain or establish requirements that provide equal or greater protection than the protections provided by this subtitle, but may not by rule, guidance, or interpretation weaken, narrow, or create an exemption from a protection established by this subtitle unless expressly authorized by an Act of Congress enacted after the date of enactment of this Act.

(3) Statutory effectiveness.—Failure to promulgate a rule by the deadline under paragraph (1) shall not delay or otherwise affect the effective date, applicability, or enforceability of this subtitle.

(j) Effective date and applicability.—

(1) Effective date.—This subtitle shall take effect on January 1, 2027.

(2) Existing agreements.—This subtitle shall apply to conduct occurring on or after January 1, 2027, with respect to any franchise agreement in effect on or after that date, without regard to the date on which the agreement was entered into, amended, exchanged, transferred, assigned, or renewed.

(3) Early administrative action.—Notwithstanding paragraph (1), beginning on the date of enactment of this Act, the Commission may promulgate rules and take other administrative actions necessary to implement this subtitle, except that no such rule may take effect before January 1, 2027.

(4) No retroactive liability.—Nothing in this subtitle shall create liability for conduct completed before January 1, 2027.