

Senate Bill 447

By: Senators Robertson of the 29th, Albers of the 56th, Burns of the 23rd, Summers of the 13th, Williams of the 25th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling
2 and other trade practices, so as to enact the "Georgia Restaurant Franchise Relations Act";
3 to define certain terms; to provide that a franchisor may not terminate a franchise except
4 under certain circumstances; to provide for circumstances which warrant the termination of
5 a franchise; to provide conditions for arbitration; to provide for the renewal of a franchise;
6 to provide that a franchisor may not discriminate against franchise operations over franchisor
7 owned operations; to prohibit forum selection; to provide that a franchisor shall provide an
8 opportunity for the survivor of a deceased franchisee to operate the franchise; to provide
9 penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
13 trade practices, is amended by enacting a new article to read as follows:

14 "ARTICLE 37

15 Part 1

16 10-1-960.

17 This chapter shall be known and may be cited as the 'Georgia Restaurant Franchise
18 Relations Act.'

19 10-1-961.

20 As used in this chapter, the term:

21 (1) 'Area franchise' means any contract or agreement between a franchisor and a
22 subfranchisor whereby the subfranchisor is granted the right, for consideration given in
23 whole or in part for such right, to sell or negotiate the sale of franchises in the name or
24 on behalf of the franchisor.

25 (2)(A) 'Franchise' means a contract or agreement, either expressed or implied, whether
26 oral or written, between two or more persons by which:

27 (i) A franchisee is granted the right to engage in the business of offering, selling, or
28 distributing food or food services under a marketing plan or system prescribed in
29 substantial part by a franchisor;

30 (ii) The operation of the franchisee's business pursuant to that plan or system is
31 substantially associated with the franchisor's trademark, trade dress, service mark,
32 trade name, logotype, advertising, or other commercial symbol designating the
33 franchisor or its affiliate; and

34 (iii) The franchisee is required to pay, directly or indirectly, a franchise fee.

35 (B) Such term does not include any of the following:

36 (i) Lease departments, licenses, or concessions at or with a general merchandise retail
37 establishment where the lease department, licensee, or concessionaire is incidental
38 and ancillary to the general commercial operation of the retail establishment. Sales

- 39 of a lease department, license, or concessionaire are incidental and ancillary to the
40 general commercial operation of the retail establishment if they amount to less than
41 10 percent of the establishment's sales; or
42 (ii) A nonprofit organization operated on a cooperative basis by and for independent
43 retailers which wholesales goods and services primarily to its member retailers and
44 in which:
- 45 (I) Control and ownership of each member is substantially equal;
 - 46 (II) Membership is limited to those who will use the services furnished by the
47 organization;
 - 48 (III) Transfer of ownership is prohibited or limited;
 - 49 (IV) Capital investments receive no return;
 - 50 (V) Substantially equal benefits pass to the members on the basis of patronage of
51 the organization;
 - 52 (VI) Members are not personally liable for obligations of the organization in the
53 absence of a direct undertaking or authorization by them;
 - 54 (VII) Services of the organization are furnished primarily for the use of the
55 members;
 - 56 (VIII) Each member and prospective member is provided with an offering circular;
 - 57 (IX) No part of the receipts, income, or profit of the organization is paid to any
58 profit-making entity, except for arm's length payments for necessary goods and
59 services, and members are not required to purchase goods or services from any
60 designated profit-making entity; and
 - 61 (X) The nonprofit organization is subject to an action for rescission or damages if
62 the organization fraudulently induced the plaintiff to join the organization.
- 63 (3) 'Franchisee' means a person to whom a franchise is granted.
64 (4) 'Franchise fee' means any fee or charge that a franchisee or subfranchisor is required
65 to pay or agrees to pay for the right to enter into a business under a franchise agreement.

66 including, but not limited to, any such payment for such goods and services; provided,
67 however, that the following shall not be considered the payment of a franchise fee:

68 (A) The purchase or agreement to purchase goods at a bona fide wholesale price if no
69 obligation is imposed upon the purchaser to purchase or pay for a quantity of such
70 goods in excess of that which a reasonable businessperson normally would purchase by
71 way of a starting inventory or supply or to maintain an ongoing inventory or supply;

72 (B) The payment of a reasonable service charge to the issuer of a credit card by an
73 establishment accepting or honoring such credit card;

74 (C) The payment, directly or indirectly, of a franchise fee which, on an annual basis,
75 does not exceed the sum of \$100.00; or

76 (D) The payment of a sum of not exceeding \$1,000.00 annually on account of the
77 purchase price or rental of fixtures, equipment, or other tangible property to be utilized
78 in, and which is necessary for, the operation of the franchised business, if the price or
79 rental so charged does not exceed the cost which would be incurred by the franchisee
80 acquiring the item or items from other persons or in the open market.

81 (5) 'Franchisor' is a person who grants or has granted a franchise.

82 (6) 'Person' means an individual, a corporation, a partnership, a limited liability
83 company, a joint venture, an association, a joint stock company, a trust, or an
84 unincorporated organization.

85 Part 2

86 10-1-965.

87 Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior
88 to the expiration of its term, except for good cause. Good cause shall include, but not be
89 limited to, the failure of the franchisee to comply with any lawful requirement of the
90 franchise agreement after being given at least 90 days' notice to cure the failure. If the

91 franchisor is the sole provider of goods or services under the terms of the franchise
92 agreement, the franchisor may not suspend the sale of goods or the provision of services
93 during the period allowed to cure any such failure.

94 10-1-966.

95 All notices of termination or nonrenewal required by this chapter shall:

96 (1) Be in writing;

97 (2) Be posted by registered, certified, or other receipted mail, delivered by email or by
98 other electronic means, or personally delivered to the franchisee; and

99 (3) Contain a statement of intent to terminate or not to renew the franchise, together with
100 the reasons therefor and the effective date of such termination, nonrenewal, or expiration.

101 10-1-967.

102 If, during the period in which the franchise is in effect, there occur any of the following
103 events which are relevant to the franchise, immediate notice of termination without an
104 opportunity to cure shall be deemed reasonable:

105 (1) The franchisee or the business to which the franchise relates is declared bankrupt or
106 judicially determined to be insolvent, or all or a substantial part of the assets thereof are
107 assigned to or for the benefit of any creditor, or the franchisee admits his or her inability
108 to pay his or her debts as they come due;

109 (2) The franchisor and franchisee agree in writing to terminate the franchise;

110 (3) The franchisee makes any material misrepresentations relating to the acquisition of
111 the franchise business or the franchisee engages in conduct which reflects materially and
112 unfavorably upon the operation and reputation of the franchise business or system;

113 (4) The franchisee repeatedly fails to comply with one or more requirements of the
114 franchise, but in no event where the franchisee takes corrective action pursuant to Code
115 Section 10-1-965 to remedy such failure after proper notice;

116 (5) The franchised business or business premises of the franchise is seized, taken over,
117 or foreclosed by a government official in the exercise of his or her duties or seized, taken
118 over, or foreclosed by a creditor, lienholder, or lessor if:

119 (A) A final judgment against the franchisee remains unsatisfied for 30 days unless a
120 supersedeas or other appeal bond has been filed; or

121 (B) A levy of execution has been made upon the license granted by the franchise
122 agreement or upon any property used in the franchised business, and it is not discharged
123 within five days of such levy; or

124 (6) The franchisee is convicted of a felony or any other criminal misconduct which is
125 relevant to the operation of the franchise.

126 10-1-968.

127 Nothing contained in this article shall limit the right of a franchisor and franchisee to agree
128 before or after a dispute has arisen to binding arbitration of claims under this chapter,
129 provided that:

130 (1) The standards applied in such arbitration are not less than the requirements specified
131 in this chapter; and

132 (2) The arbitrator or arbitrators employed in such arbitration are chosen from a list of
133 impartial arbitrators supplied by the American Arbitration Association or other impartial
134 person.

135 10-1-969.

136 If a franchisor consents to a franchisee continuing to operate a franchise for 30 days or
137 more after the expiration of a franchise agreement, such franchise agreement shall be
138 deemed to have been renewed for the same term and under the same conditions as the
139 original agreement. For purposes of this Code section, a failure to take affirmative action
140 to prevent operation shall be considered a consent to operate.

141 Part 3142 10-1-975.

143 If a franchisor operates facilities in this state, it may not require higher standards with
144 regard to physical plant, employee attire, product offerings, or pricing or in any other
145 material way differentiate a franchise facility from a facility owned or operated by the
146 franchisor.

147 10-1-976.

148 Any condition, stipulation, or provision in a franchise agreement requiring the application
149 of the law of another state or selecting venue in a particular court is void and
150 unenforceable.

151 10-1-977.

152 No franchisor shall deny the surviving spouse, heirs, or estate of a deceased franchisee or
153 the majority shareholder of the franchisee the opportunity to continue to participate in the
154 ownership of the franchise under the franchise agreement between the franchisee and
155 franchisor. No franchisor shall require any training or qualification for any such person for
156 a period of six months following the death of the franchisee or principal shareholder;
157 provided, however, that, during such period, the surviving spouse, heirs, or estate of the
158 deceased shall maintain all lawful standards and obligations of the franchise.

159 10-1-978.

160 Any condition, stipulation, or provision purporting to bind any person to waive compliance
161 with any provision of this chapter is contrary to public policy and therefore void.

162 10-1-979.

163 The provisions of this article shall apply to any franchise where either the franchisee is
164 domiciled in this state or the franchised business is or has been operated in this state.

165 10-1-980.

166 Any violation of this article by a franchisor shall be an unfair trade practice subject to the
167 provisions of Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act of 1975.'

168 In addition, any individual who is harmed as a result of a violation of this article shall have
169 a cause of action against the person whose violation caused the harm."

170

SECTION 2.

171 All laws and parts of laws in conflict with this Act are repealed.