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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1591 Session of  
2017

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INTRODUCED BY DALEY, JUNE 21, 2017

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REFERRED TO COMMITTEE ON COMMERCE, JUNE 21, 2017

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AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania  
2 Consolidated Statutes, in commercial protection, providing  
3 for franchises.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 12 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 55

9 FRANCHISES

10 Subchapter

11 A. Preliminary Provisions

12 B. Payment Processing Services

13 SUBCHAPTER A

14 PRELIMINARY PROVISIONS

15 Sec.

16 5501. Scope of chapter.

17 5502. Definitions.

18 § 5501. Scope of chapter.

19 This chapter relates to franchises.

1 § 5502. Definitions.

2 The following words and phrases when used in this chapter  
3 shall have the meanings given to them in this section unless the  
4 context clearly indicates otherwise:

5 "Area franchise." A franchise in which a subfranchisor is  
6 granted the right, for consideration given in whole or in part  
7 for the right, to sell or negotiate the sale of a franchise in  
8 the name or on behalf of the franchisor.

9 "Franchise." As follows:

10 (1) Any of the following:

11 (i) An express or implied agreement between a  
12 franchisor and a franchisee, whether oral or written,  
13 which includes all the following:

14 (A) The franchisee is granted the right to  
15 offer, sell or distribute goods or services under a  
16 marketing plan or system prescribed or suggested in  
17 substantial part by the franchisor.

18 (B) The operation of the business is allowed to  
19 be substantially associated with a trademark, service  
20 mark, trade name, logotype, advertising or other  
21 commercial symbol owned, controlled or used by the  
22 franchisor.

23 (C) The franchisee is required to pay a  
24 franchise fee.

25 (ii) An area franchise.

26 (iii) A franchise involving a subfranchisor.

27 (iv) A commercial relationship entered into in  
28 reasonable reliance on representations of the criteria of  
29 subparagraph (i).

30 (2) The term does not include any of the following:

1           (i) A nonprofit organization operated on a  
2 cooperative basis by and for independent retailers which  
3 wholesales goods and services primarily to the  
4 organization's member retailers and to which all of the  
5 following apply:

6           (A) Each member has substantially the same  
7 control and ownership of the cooperative control and  
8 ownership is apportioned by number of retail units  
9 owned.

10          (B) Only persons that will avail themselves of  
11 the services furnished by the organization may be  
12 members.

13          (C) Transfer of ownership is prohibited or  
14 limited.

15          (D) Capital investment receives no return.

16          (E) Benefits to members are made on the basis of  
17 patronage of the cooperative or on the basis of  
18 retail units owned.

19          (F) A member is not personally liable for  
20 obligations of the organization in the absence of a  
21 direct undertaking or authorization by the member.

22          (G) Services of the organization are furnished  
23 primarily for the use of a member.

24          (H) No part of the receipts, income or profit of  
25 the organization is paid to a for-profit entity. This  
26 subparagraph does not include an arms-length payment  
27 for necessary goods and services.

28          (I) A member is not required to purchase goods  
29 or services from a designated for-profit entity other  
30 than an approved supplier selected on an objective

1 basis.

2 (ii) A contract regulated by the Petroleum Marketing  
3 Practices Act (Public Law 95-297, 15 U.S.C. § 2801 et  
4 seq.).

5 (iii) A contract or business relationship between a  
6 contractor and an automobile club that is a corporation  
7 not-for-profit and that:

8 (A) directs or refers the automobile club's  
9 members and other customers to the contractor for  
10 roadside assistance, auto battery, auto repair, auto  
11 body repair or other motor-vehicle-related services;  
12 or

13 (B) authorizes the contractor to display the  
14 automobile club's trademark, service mark or other  
15 commercial symbol as an indication of the  
16 contractor's affiliation with the automobile club.

17 (iv) An equipment dealer which is a person,  
18 partnership or corporation that is primarily engaged in  
19 the business of retail sales of any of the following:

20 (A) Farm and utility equipment.

21 (B) Forestry equipment.

22 (C) Industrial and construction equipment.

23 (D) Farm implements.

24 (E) Farm machinery.

25 (F) Yard and garden equipment.

26 (G) Attachments, accessories and repair parts.

27 (3) The term does not apply to any of the following:

28 (i) A distribution agreement under section 431 of  
29 the act of April 12, 1951 (P.L.90, No.21), known as the  
30 Liquor Code.

1 (ii) A contract regulated by the act of December 22,  
2 1983 (P.L.306, No.84), known as the Board of Vehicles  
3 Act.

4 "Franchisee." A person who is granted a franchise.

5 "Franchisor." A person who grants a franchise.

6 "Payment processing service." A financial service involving  
7 an electronic credit card, a credit card, a credit  
8 identification, a debit card, a prepaid card or another  
9 transaction authorization card.

10 "Person." An individual, corporation, partnership, limited  
11 liability company, joint venture, association, joint stock  
12 company, trust or an unincorporated organization.

13 "Subfranchisee." A person who is granted a franchise by a  
14 subfranchisor.

15 "Subfranchisor." A franchisee that has the right to sell or  
16 subdivide the franchise to a subfranchisee while having and  
17 retaining all or part of the franchisor's interest or rights  
18 under the franchise with the subfranchisee.

19 SUBCHAPTER B

20 PAYMENT PROCESSING SERVICES

21 Sec.

22 5511. Scope of subchapter.

23 5512. Standards for payment processing services.

24 5513. Unfair trade practices.

25 § 5511. Scope of subchapter.

26 This subchapter relates to payment processing services  
27 involving franchises.

28 § 5512. Standards for payment processing services.

29 (a) General rule.--Subject to subsection (b), a franchisor  
30 may establish reasonable and specific written standards

1 regarding the nature and quality of a payment processing service  
2 or a provider of payment processing services used or to be used  
3 by a franchisee.

4 (b) Exception.--Notwithstanding subsection (a), a franchisor  
5 may not restrain a franchisee, directly or indirectly, from  
6 using a provider of payment processing services of the  
7 franchisee's choosing if the payment processing services  
8 constitute, or could be reasonably anticipated to constitute, a  
9 substantial amount of the franchisee's commercial transactions.

10 § 5513. Unfair trade practices.

11 A violation of a provision of this chapter shall constitute  
12 an unfair method of competition and unfair or deceptive act or  
13 practice within the meaning of section 2(4) of the act of  
14 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade  
15 Practices and Consumer Protection Law, and shall be subject to  
16 the enforcement provisions, civil penalties and private rights  
17 of action contained in the Unfair Trade Practices and Consumer  
18 Protection Law.

19 Section 2. This act shall take effect in 60 days.