

**SENATE . . . . . No. 01843**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Brian A. Joyce*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act further regulating franchise agreements .

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PETITION OF:

NAME:

*Brian A. Joyce*

DISTRICT/ADDRESS:

*Norfolk, Bristol, and Plymouth*

# SENATE . . . . . No. 01843

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By Mr. Joyce, petition (accompanied by bill, Senate, No. 54) of Joyce for legislation to regulate franchise agreements [Joint Committee on Community Development and Small Businesses].

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act further regulating franchise agreements .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 93 of the General Laws is hereby amended by adding the  
2 following 2 sections under the title of “Regulation of Franchise Agreements”:-

3           Section 115. For the purposes of section 116, the following words shall have the  
4 following meanings:

5 “Franchise”, a contract or agreement, either expressed or implied, whether oral or written,  
6 between 2 or more persons by which: (i) a franchisee is granted the right to engage in the  
7 business of offering, selling or distributing goods or services, under a marketing plan or system  
8 prescribed or suggested in substantial part by a franchisor; and (ii) the operation of the  
9 franchisee’s business pursuant to that plan or system is substantially associated with the  
10 franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial  
11 symbol designating the franchisor or its affiliate.

12 “Franchisee”, an individual to whom a franchise is granted.

13 “Franchisor”, an individual, corporation, partnership, joint venture, association, joint stock  
14 company, trust or unincorporated organization that grants a franchise.

15           Section 116. (a) A franchisor shall not, directly or through an officer, agent or  
16 employee, terminate a franchise, except for good cause shown which shall include, but not be  
17 limited to, the franchisee’s refusal or failure to comply substantially with any material and  
18 reasonable obligation of the franchise agreement. For the purposes of termination, “good cause”  
19 shall mean: cause based upon legitimate business reason, and shall include the franchisee’s  
20 failure to comply with any material lawful requirement contained in the franchise agreement.

21           Prior to termination of the franchise, the franchisor shall give the franchisee written  
22 notice of the termination at least 90 days in advance of the termination with the cause stated  
23 thereon. The 90 day advanced written notice for termination shall not apply if the reason for  
24 termination is because: (1) the alleged grounds were voluntary abandonment by the franchisee of  
25 the franchise relationship, in which event, such notice may be given 15 days in advance of the  
26 termination, cancellation, or failure to renew; or (2) the alleged grounds are the conviction of the  
27 franchisee in a court of competent jurisdiction of an offense punishable by a term of  
28 imprisonment in excess of 1 year and directly related to the business conduct pursuant to the  
29 franchise, in which event, such notice may be given at any time following the conviction and  
30 shall be effective upon delivery and written receipt of the notice.

31           (b) A franchisor shall not, directly or through an officer, agent or employee, fail to  
32 renew a franchise, except for good cause shown which shall include, but not be limited to, the  
33 franchisee’s refusal or failure to comply substantially with any material and reasonable

34 obligation of the franchise agreement. The franchisor is obligated to act in good faith and shall  
35 not refuse to renew a franchise for arbitrary or capricious reasons. For the purposes of non-  
36 renewal, “good cause” shall mean cause based upon legitimate business reason, and includes the  
37 franchisee’s failure to comply with any material lawful requirement contained in the franchise  
38 agreement.

39           Before non-renewal of the franchise, the franchisor shall give the franchisee written  
40 notice of the non-renewal at least 90 days in advance of the non-renewal with cause stated  
41 thereon.

42           (c) A franchisor that develops a new outlet or location which has an adverse impact on  
43 the gross sales of an existing franchisee's outlet or location shall be liable to the affected  
44 franchisee for monetary damages, unless any of the following are applicable:

45                   (1) the franchisor first offers the new outlet or location to the existing  
46 franchisee;

47                   (2) at the time the new outlet or location is developed, the existing franchisee  
48 is not in compliance with the franchisor’s current reasonable criteria for new franchisees.

49           (d) Upon termination of a franchise for whatever cause or reason, except voluntary  
50 relinquishment or abandonment of the franchise by the franchisee, the franchisor shall fairly  
51 compensate the franchisee or franchisee’s estate for the fair market value at the time of  
52 termination of the franchise, of the franchisee’s inventory, supplies, equipment and furnishing  
53 purchased by the franchisee from the franchisor or its approved sources and good will, if any,  
54 exclusive of personalized items which have no value to the franchisor and inventory, supplies,  
55 equipment and furnishings not reasonably required in the conduct of the franchise business;

56 provided, however, that compensation need not be made to franchisee of good will if: the  
57 franchisor agrees in writing not to enforce a covenant which restrains the franchisee from  
58 competing with the franchisor; and provided further, that a franchisor may offset against amounts  
59 owed to a franchisee under this subsection any amount owed by the franchisee to franchisor.

60 (e) A franchisor shall not terminate or fail to renew a franchise for the failure or  
61 refusal of the franchisee to do any of the following:

62 (1) Refusal to take part in promotional campaigns of the franchisor's  
63 products.

64 (2) Failure to meet sales quotas suggested by the franchisor.

65 (3) Refusal to sell any products at a price suggested by the franchisor or  
66 supplier.

67 (4) Refusal to keep the premises open and operating during those hours  
68 which are documented by the franchisee to be unprofitable to the franchisee or to preclude the  
69 franchisee from establishing his own hours of operation beyond the hour of 10 p.m. and prior to  
70 6 a.m..

71 (5) Refusal to give the franchisor or supplier of financial records of the  
72 operation of the franchise which are not related or unnecessary to the franchisee's obligations  
73 under the franchise agreement.

74 (f) A franchisor, directly or indirectly, through any officer, agent, or employee shall  
75 not do any of the following:

76 (1) Prohibit, directly or indirectly, the right of free association among  
77 franchisees for any lawful purpose.

78 (2) Prohibit the transfer by will of any franchise and the rights of any  
79 franchisee.

80 (3) Require or prohibit any change in management of any franchise unless  
81 the requirement or prohibition of the change shall be for good cause, which cause shall be stated  
82 in writing by the franchisor.

83 (4) Impose unreasonable standards of performance upon a franchisee.

84 (5) Fail to deal in good faith with a franchisee.

85 (6) Sell, rent or offer to sell to a franchisee any product or service for more  
86 than a fair and reasonable price.

87 (7) Impose on a franchise by contract, rule or regulation, whether written or  
88 oral, a standard of conduct unless the franchisor, his agents or representatives sustain the burden  
89 of proving the standard of conduct to be reasonable and necessary.

90 (8) Discriminate between franchises in the charges offered or made for  
91 royalties, goods, services, equipment, rentals, advertising services, or in any other business  
92 dealing, unless (A) that discrimination between franchisees would be necessary to allow a  
93 particular franchisee to fairly meet competition in the open market, or (B) to the extent that the  
94 franchisor satisfies the burden of proving that any classification of or discrimination between  
95 franchisees is reasonable, is based on franchises granted at materially different times and the  
96 discrimination is reasonably related to the difference in time or on other proper and justifiable

97 distinctions, and is not arbitrary. Nothing in this subsection shall be construed as granting to a  
98 franchisor any right which may be limited by any other state or federal statute.

99                   (9) Notify the franchisee of a claimed breach of franchise agreement for  
100 good cause later than 180 days from the date good cause arises or 180 days after the franchisor  
101 knew or in the exercise of reasonable care should have known of the claimed good cause.

102                   (g) A franchisee or franchisor, upon request, shall have the right to have the question  
103 of good cause submitted to arbitration in accordance with the rules of the American Arbitration  
104 Association. A franchisee or franchisor, upon the rendering of a decision in arbitration, shall  
105 have the right to apply to the superior court in the county wherein the franchisee or franchisor is  
106 doing the business or resides for confirmation, modification, correction or vacation of any  
107 arbitration decision.

108                   (h) A franchisor shall protect and save harmless its franchisee from financial loss and  
109 expense, including legal fees and costs, if any, arising out of any claim, demand, suit or  
110 judgment by reason of defect in merchandise or methods or procedures prescribed by franchisor  
111 and performed by the franchisee, except for alleged negligence or willful misconduct of the  
112 franchisee.

113                   (i) A franchisor shall reimburse its franchisee at the prevailing retail price for any  
114 services rendered or party supplied by the franchisee in satisfaction of any warranty issued by the  
115 franchisor, and a franchisor shall not restrict a franchisee from rendering services or providing  
116 parts in accordance with standards of good workmanship in satisfaction of the warranty.