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SENATE BILL 439

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

Joshua A. Sanchez

AN ACT

RELATING TO BUSINESS; ENACTING THE DECEPTIVE FRANCHISE  
PRACTICES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Deceptive Franchise Practices Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Deceptive Franchise Practices Act, "franchise" means an oral or  
written arrangement for a definite or indefinite period in  
which a manufacturer, distributor or representative grants to a  
person a license to use a trade name, service mark or related  
characteristic and in which there is a community of interest in  
the marketing of products or services related to marketing,  
service or repair of products at wholesale, retail, leasing or  
otherwise.

1           SECTION 3.   ~~[NEW MATERIAL]~~ FRANCHISE AGREEMENTS--UNLAWFUL

2   PROVISIONS.--It is unlawful for a franchise agreement entered  
3   into between a franchisor and a franchisee who is either a  
4   resident of New Mexico or a nonresident who will be operating a  
5   franchise in New Mexico to contain any of the following  
6   provisions:

7           A.   requiring goods, supplies, inventories or  
8   services to be purchased exclusively from the franchisor or  
9   sources designated by the franchisor when such goods, supplies,  
10   inventories or services of comparable quality are available  
11   from sources other than those designated by the franchisor;  
12   provided that the publication by the franchisor of a list of  
13   approved suppliers of goods, supplies, inventories or services  
14   or the requirement that such goods, supplies, inventories or  
15   services comply with specifications and standards prescribed by  
16   the franchisor does not constitute designation of a source nor  
17   does a reasonable right of the franchisor to disapprove a  
18   supplier constitute a designation; and provided further that  
19   this subsection does not apply to the principal goods,  
20   supplies, inventories or services manufactured or trademarked  
21   by the franchisor;

22           B.   allowing the franchisor to establish a  
23   franchisor-owned outlet engaged in a substantially identical  
24   business to that of the franchisee within the exclusive  
25   territory granted the franchisee by the franchise agreement or,

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1 if no exclusive territory is designated, permitting the  
2 franchisor to compete unfairly with the franchisee within a  
3 reasonable area;

4 C. allowing substantial modification of the  
5 franchise agreement by the franchisor without the consent in  
6 writing of the franchisee;

7 D. allowing the franchisor to obtain money, goods,  
8 services or any other benefit from any other person with whom  
9 the franchisee does business, on account of or in relation to  
10 the transaction between the franchisee and the other person,  
11 other than for compensation for services rendered by the  
12 franchisor, unless the benefit is promptly accounted for and  
13 transmitted to the franchisee;

14 E. requiring the franchisee to prospectively assent  
15 to a release, assignment, novation, waiver or estoppel that  
16 purports to relieve any person from liability to be imposed by  
17 the Deceptive Franchise Practices Act or requiring any  
18 controversy between the franchisee and the franchisor to be  
19 referred to any person, if referral would be binding on the  
20 franchisee; provided that this subsection shall not apply to  
21 arbitration before an independent arbitrator;

22 F. allowing for an increase in prices of goods,  
23 supplies, inventories and services provided by the franchisor  
24 that the franchisee had ordered for private retail consumers  
25 prior to the franchisee's receipt of an official price increase

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1 notification; provided that:

2 (1) a sales contract signed by a private  
3 retail consumer shall constitute evidence of each order;

4 (2) price changes applicable to new models of  
5 a product at the time of introduction of such new models shall  
6 not be considered a price increase; and

7 (3) price increases caused by conformity to a  
8 state or federal law, or the revaluation of the United States  
9 dollar in the case of foreign-made goods, supplies, inventories  
10 and services, are not subject to this subsection;

11 G. permitting unilateral termination of the  
12 franchise if such termination is without good cause or in bad  
13 faith; provided that "good cause" within the meaning of this  
14 subsection includes any material violation of the franchise  
15 agreement;

16 H. permitting the franchisor to fail to renew a  
17 franchise without good cause or in bad faith. The Deceptive  
18 Franchise Practices Act shall not prohibit a franchise  
19 agreement from providing that the agreement is not renewable  
20 upon expiration or that the agreement is renewable if the  
21 franchisee meets certain conditions specified in the agreement;

22 I. requiring a franchisee to covenant not to  
23 compete with the franchisor for a period longer than two years  
24 or in an area greater than the exclusive area granted by the  
25 franchise agreement or, in absence of such a provision in the

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1 agreement, an area of reasonable size, upon termination of or  
2 failure to renew the franchise;

3 J. limiting litigation brought for breach of the  
4 agreement in any manner whatsoever; and

5 K. requiring the franchisee, at an expense to the  
6 franchisee that is indeterminate, determined by a third party  
7 or determined by a formula, unless the franchise agreement  
8 specifies the maximum percentage of gross monthly sales or the  
9 maximum absolute sum that the franchisee may be required to  
10 pay, to participate in any:

11 (1) advertising campaign or contest;

12 (2) promotional campaign;

13 (3) promotional materials; or

14 (4) display of decorations or materials.

15 SECTION 4. [NEW MATERIAL] FRANCHISE AGREEMENTS--UNLAWFUL  
16 ACTS AND PRACTICES.--It is unlawful for a franchisor who has  
17 entered into a franchise agreement with a franchisee who is  
18 either a resident of New Mexico or a nonresident operating a  
19 franchise in New Mexico to engage in any of the following acts  
20 and practices in relation to the agreement:

21 A. coercing the franchisee to:

22 (1) order or accept delivery of any goods,  
23 supplies, inventories or services that are not:

24 (a) necessary to the operation of the  
25 franchise;

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1 (b) required by the franchise agreement;  
2 (c) required by law; or  
3 (d) voluntarily ordered by the  
4 franchisee;

5 (2) order or accept delivery of any goods,  
6 supplies, inventories and services offered for sale by the  
7 franchisee, which includes modifications or accessories that  
8 are not included in the base price of those goods, supplies,  
9 inventories and services as publicly advertised by the  
10 franchisor;

11 (3) participate in an advertising campaign or  
12 contest, any promotional campaign, promotional materials,  
13 display of decorations or materials at an expense to the  
14 franchisee over and above the maximum percentage of gross  
15 monthly sales or the maximum absolute sum required to be spent  
16 by the franchisee provided for in the franchise agreement;  
17 provided that in the absence of such provision for required  
18 advertising expenditures in the franchise agreement, no such  
19 participation may be required; or

20 (4) enter into any agreement with the  
21 franchisor or any designee of the franchisor, or do any other  
22 act prejudicial to the franchisee, by threatening to cancel or  
23 fail to renew any agreement between the franchisee and the  
24 franchisor; provided that notice in good faith to any  
25 franchisee of the franchisee's violation of the terms or

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1 provisions of a franchise agreement does not constitute a  
2 violation of this subsection;

3 B. refusing or failing to deliver in reasonable  
4 quantities and within a reasonable time after receipt of an  
5 order from a franchisee for any goods, supplies, inventories or  
6 services that the franchisor has agreed to supply to the  
7 franchisee, unless the failure is caused by acts or causes  
8 beyond the control of the franchisor;

9 C. denying the surviving spouse, heirs or estate of  
10 a deceased franchisee the opportunity to participate in the  
11 ownership of the franchise under a valid franchise agreement  
12 for a reasonable time after the death of the franchisee;  
13 provided that the surviving spouse, heirs or estate maintains  
14 all standards and obligations of the franchise;

15 D. establishing a franchisor-owned outlet engaged  
16 in a substantially identical business to that of the franchisee  
17 within the exclusive territory granted the franchisee by the  
18 franchise agreement or, if no exclusive territory is  
19 designated, competing unfairly with the franchisee within a  
20 reasonable area; provided that a franchisor shall not be  
21 considered to be competing when operating a business either  
22 temporarily for a reasonable period of time, or in a bona fide  
23 retail operation that is for sale to any qualified independent  
24 person at a fair and reasonable price, or in a bona fide  
25 relationship in which an independent person has made a

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1 significant investment subject to loss in the business  
2 operation and can reasonably expect to acquire full ownership  
3 of such business on reasonable terms and conditions;

4 E. discriminating unfairly among its franchisees or  
5 unreasonably failing or refusing to comply with any terms of a  
6 franchise agreement;

7 F. obtaining money, goods, services or any other  
8 benefit from any other person with whom the franchisee does  
9 business, on account of, or in relation to, the transaction  
10 between the franchisee and the other person, other than  
11 compensation for services rendered by the franchisor, unless  
12 the benefit is promptly accounted for and transmitted to the  
13 franchisee;

14 G. increasing prices of goods, supplies,  
15 inventories and services provided by the franchisor that the  
16 franchisee had ordered for retail consumers prior to the  
17 franchisee's receipt of a written official price increase  
18 notification; provided that price increases caused by  
19 conformity to a state or federal law or the revaluation of the  
20 United States dollar in the case of foreign-made goods,  
21 supplies, inventories and services are not subject to this  
22 subsection; and

23 H. using deceptive advertising or engaging in  
24 deceptive acts in connection with the franchise or the  
25 franchisor's business.

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1           SECTION 5.   [NEW MATERIAL] TERMINATION OR ELECTION NOT TO  
2 RENEW FRANCHISE--NOTICE.--Unless otherwise provided in the  
3 agreement, any termination of a franchise or election not to  
4 renew a franchise shall be made on at least ninety days'  
5 notice.

6           SECTION 6.   [NEW MATERIAL] ACTION TO RECOVER DAMAGES OR  
7 REFORM FRANCHISE AGREEMENT.--A franchisee who is a party to a  
8 franchise agreement entered into or renewed after July 1, 2025  
9 that contains any provision set forth in Section 3 of the  
10 Deceptive Franchise Practices Act or who is injured by an  
11 unfair act or practice set forth in Section 3 of that act may  
12 bring an action to recover damages or reform the franchise  
13 agreement.

14           SECTION 7.   [NEW MATERIAL] LIMITATION OF ACTIONS.--No  
15 action may be brought for a violation of the Deceptive  
16 Franchise Practices Act more than five years after the  
17 violation.

18           SECTION 8.   APPLICABILITY.--The provisions of the  
19 Deceptive Franchise Practices Act apply only to agreements  
20 entered into or renewed, or an act or a practice occurring,  
21 after June 30, 2025.

22           SECTION 9.   EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2025.