

International Franchise Association  
58<sup>th</sup> Annual Legal Symposium  
May 17-19, 2026

---

# Basics Track: Franchise Relationship Laws

---

**Kelly Krug, Esq.**  
New York, New York

**Bryan Couch, Esq.**  
Connell Foley LLP  
Roseland, New Jersey

**Brett Buterick, Esq.**  
The Franchise Firm LLP  
Chadds Ford, Pennsylvania

## **BASICS TRACK – FRANCHISE RELATIONSHIP LAWS**

### **I. Introduction**

This paper provides a practical overview of key federal and state relationship laws that govern terminations, renewals, transfers, encroachment, and the duty of good faith and fair dealing. The paper will explore the purpose and policy behind these statutes, highlight key differences among states, and discuss recent judicial interpretations affecting system operations. Finally, the paper will illustrate how these laws impact business decisions, from enforcing brand standards to handling underperforming units or system changes.<sup>1</sup>

#### **A. What are Franchise Relationship Laws?**

"Franchise relationship laws" are statutes that regulate the parties' rights and obligations during the life of the franchise relationship. Franchise relationship laws typically contain provisions designed to regulate the ongoing relationship between franchisors and franchisees after the formation of a franchise agreement. These laws aim to protect franchisees from potential abuses by franchisors, particularly in areas such as termination, nonrenewal, transfer of franchise rights, and enforcement of post-term obligations. For example, these laws often require "good cause" for termination or nonrenewal of a franchise agreement and impose procedural safeguards, such as notice and an opportunity to cure defaults, before termination. Additionally, these laws may override certain terms of the franchise agreement, such as choice of law or venue provisions, to ensure compliance with the state's protective framework. In summary, franchise relationship laws are designed to regulate the ongoing interactions between franchisors and franchisees, ensuring fairness and protecting franchisees from arbitrary or abusive practices. The scope and application of these laws depend on the jurisdiction and the specific industry involved.

##### ***1. Definition and Scope***

The scope of the franchise relationship laws vary by state, but generally fall into three categories. The majority of states have franchise relationship laws that are narrow in scope in that they only apply if the franchised unit is located within the state.<sup>2</sup> Several states have franchise relationship laws that are slightly broader in that they apply if the franchised unit is located within the state or if the franchisee lives in that state.<sup>3</sup> A final group of states have franchise relationship laws that

---

<sup>1</sup> This paper has been prepared by IFA members and reviewed and revised by the individuals listed on the title page. It is intended to be used solely as an educational tool and to foster discussions about franchise relationship statutes. The views expressed in this paper do not necessarily reflect the views of those individuals or their respective employers, law firms or clients. This paper draws heavily from two prior works, and the authors gratefully acknowledge those contributions: Rob Huelin and Danielle Diller, *Basics Track: Handling Franchise Defaults and Terminations*, 57th Annual Legal Symposium, International Franchise Association, May 4–6, 2025; and Julianne Lusthaus and Elliot Ginsburg (Editors), *Franchise Relationship Laws: A Practical Guide*, American Bar Association, 2025. The authors of this paper thank Rob Huelin, Danielle Diller, Julianne Lusthaus, and Elliot Ginsburg for their foundational work on these topics.

<sup>2</sup> See, e.g., Ark. Code Ann. § 4-72-203; Conn. Gen. Stat. Ann. § 42-133h; 815 Ill. Comp. Stat. Ann. 705/19; Iowa Code Ann. §§ 523H.2, 537A10; Mo. Ann. Stat. § 407.400; Neb. Rev. Stat. Ann. § 87-403; N.J. Stat. Ann.

<sup>3</sup> See, e.g., Cal. Bus. & Prof. Code § 20015; Haw. Rev. Stat. Ann. § 482E-4, 6; Ind. Code Ann. § 23-2-2.5-2.

are very broad in scope. In addition to the location of the franchise or franchisee, these laws apply even when an offer to buy or sell a franchise is made, accepted, or directed into the relevant state.<sup>4</sup>

It is extremely important to determine whether a state's franchise relationship law applies as an initial step. Certain states, like New Jersey, include additional layers relating to the definition of a franchise that must be considered.<sup>5</sup> In addition, a franchise agreement may contain a choice of law provision invoking the law of a state that has a franchise relationship law. In this instance, a franchisee may argue that the franchise relationship law applies even if the other jurisdictional elements enumerated above do not exist. Therefore, it is advisable for franchisors to expressly indicate in the choice of law provision that the state's franchise relationship does not apply unless the statute's jurisdictional elements are satisfied.

## **2. *Jurisdictions with Franchise Relationship Laws***

Currently, twenty-two states have enacted franchise relationship laws. However, the laws in two of these states (Maryland and North Dakota) do not apply to franchises governed by those states' franchise registration or investment laws.

The remaining franchise relationship states are:

- Alaska
- Arkansas
- California
- Connecticut
- Delaware
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Michigan
- Minnesota
- Mississippi
- Nebraska
- New Jersey
- Rhode Island

---

<sup>4</sup> See, e.g., Mich. Comp. Laws § 445.1504; Minn. Stat. Ann. § 80C.19; Wash. Rev. Code § 19.100.020(2).

<sup>5</sup> N.J. Stat. Ann. § 56:10-3(a)

- South Dakota
- Virginia
- Washington
- Wisconsin

As discussed in more detail below, these laws vary in their specific requirements and remedies but generally aim to balance the power dynamics between franchisors and franchisees.

### 3. *Key Distinctions from Registration/Disclosure Laws*

Franchise relationship laws differ from franchise registration and disclosure laws. A simple way to generally distinguish between relationship laws and registration/disclosure laws is that relationship laws govern the parties' interactions after the sale of the franchise, while registration/disclosure laws impose requirements upon a franchisor prior to the sale of a franchise. States with franchise registration laws require a franchisor to register their franchise disclosure document ("FDD") with a state regulator and obtain government approval before they are permitted to operate their franchise. States with franchise filing laws require franchisors to file an FDD and pay a fee without any additional approval required from the state. These state law requirements are in addition to the Federal Franchise Rule enforced by the Federal Trade Commission ("FTC")<sup>6</sup>, which governs the offer and sale of franchises in the United States. The primary requirement of the Federal Franchise Rule is that franchisors must prepare and provide an FDD 14 calendar days before signing a binding agreement. The FDD contains 23 specific items of information, including details about the franchisor, its officers, financial performance, litigation history, and other franchisees.

#### **B. Policy Goals of Franchise Relationship Laws**

Franchise relationship laws were enacted primarily to address the imbalance of power between franchisors and franchisees.<sup>7</sup> Franchisees are typically required to make substantial investments of capital to begin a franchised business. For many, this comes in the form of both money and sweat equity.<sup>8</sup> Franchise relationship laws are designed to protect this investment and prevent franchisors from engaging in wrongful opportunistic behavior. In nearly all instances, franchise agreements are drafted by franchisors. Franchise relationship laws seek to impose standards of reasonableness into franchise agreements to ensure good faith performance by franchisors. This includes prohibiting franchisors from acting in a purely arbitrary fashion. Another policy goal of franchise relationship laws is to seek to balance the need for brand standardization with autonomy for the franchisee.<sup>9</sup> This usually comes in the form of providing oversight of system changes and protecting franchisees from unnecessary costs or burdens that may arise when franchisors seek to maintain strong brand uniformity. In summary, the policy of the franchise

---

<sup>6</sup> 16 C.F.R. § 436.1 (1978)

<sup>7</sup> Lexology, Franchise Law: Good Faith and International Franchising (2024).

<sup>8</sup> Thomas M. Pitegoff, Franchise Relationship Laws: A Minefield for Franchisors, JSTOR.

<sup>9</sup> The Balance of Power in Franchising (2024).

relationship laws seek to balance the power dynamics in the franchise relationship, ensure procedural fairness and promote system stability.

### **C. Core Elements of Franchise Relationship Laws**

The franchise relationship laws differ greatly from state to state. However, franchise relationship laws typically contain several common elements. These include restrictions on terminations and non-renewals, withholding consent to a transfer, preventing encroachment, prohibiting extensive system changes, requiring the repurchase of equipment or inventory, and imposing a duty of good faith and fair dealing.

First among the common elements is some form of limitation of a franchisor's ability to terminate the franchise agreement. These limitations typically come in the form of imposing a good faith requirement on termination and imposing notice and cure periods thereby limiting a franchisor's ability to immediately terminate a franchise agreement except in the case of egregious breaches, i.e., public health risk, criminal conduct, etc. Relatedly, many franchise relationship laws impose controls around a franchisor's ability to refuse to renew an expired franchise agreement. These controls again focus on imposing a good faith requirement on a franchisor who wishes not to renew a franchise agreement. In addition to requiring good cause, many franchise relationship laws require a franchisor to provide advance notice of a decision not to renew. Several franchise relationship laws also require that franchisors offer renewal on commercially reasonable terms or provide a path to dispose of inventory or equipment.

Another common element of franchise relationship laws is a restriction on the ability of a franchisor to prevent a franchisee from transferring the franchise. These laws seek to permit a franchisee to transfer the franchise if the buyer of the franchise meets objective criteria. These franchise relationship laws typically include language that prohibit a franchisor from unreasonably withholding consent to a transfer.

The next common element of a franchise relationship law is the protection of a franchisee from encroachment, i.e., the placement by a franchisor of another franchise with the same name in the same territory or market of an existing franchisee. Several state franchise relationship laws that seek to protect franchisees from having to compete with under franchisees in the same franchise system.

Several states also have franchise relationship laws that limit a franchisor's ability to impose major system changes, especially when those changes would require substantial new investments, operational overhauls, or materially alter the franchisee's obligations.

A number of states require franchisors to repurchase inventory, equipment, supplies, furnishings, or fixtures when a franchise is terminated or not renewed — usually when the termination is without cause.

Finally, a number of state franchise relationship laws seek to codify a duty of good faith in their franchise statutes, meaning the obligation is not just implied—it is legally mandated.

## **D. How do Franchise Relationship Laws Interact with the FTC Franchise Rule and Common Law Doctrines?**

### **1. *Interaction with FTC Franchise Rule***

As noted above, franchise relationship laws and the FTC Franchise Rule operate together, but they regulate different parts of the franchise lifecycle. The easiest way to understand the interaction is to remember that the FTC Franchise Rule governs pre-sale disclosure while franchise relationship laws govern the ongoing relationship after the contract is signed. They overlap in purpose, i.e., the protection of franchisees but they regulate different conduct. Because they regulate different phases (pre-sale vs. post-sale), courts consistently hold that franchise relationship laws are not preempted by the FTC Rule. The FTC Rule itself says it does not preempt state franchise laws. In short, a franchisor must comply with the FTC Rule but must also comply with any franchise relationship laws that govern the relationship. However, while a franchise relationship laws may override the terms of a Franchise Agreement, the FTC Rule does not because it only requires disclosure. And, there is currently no private right of action for a violation of the FTC Rule. However, there is currently a proposed bill in Congress that would, if passed, give franchisees the right to sue franchisor for violations of the FTC Rule.<sup>10</sup>

### **2. *Interplay with Common Law***

Franchise relationship laws and common-law doctrines operate side-by-side, not in conflict. Statutes set minimum rules, while common law fills the gaps and constrains franchisor behavior even when statutes are silent. For example, if a franchise relationship law does not mandate a duty of good faith and fair dealing, common law principles will typically impose a similar obligation. Notably, every state recognizes an implied covenant of good faith and fair dealing in contracts. Courts often use common law good faith to interpret statutory requirements like “good cause,” “reasonable notice,” or “undue influence.”

Waiver is another common law doctrine that applies even when franchise statutes do not mention it. A franchisor can waive contractual or statutory rights by repeated non-enforcement, accepting performance inconsistent with the contract, or making statements suggesting the right will not be enforced. Franchise relationship laws rarely address waiver, so common law governs. For example, in states like Minnesota or Wisconsin with strict termination requirements, a franchisor who consistently accepts late payments may be found to have waived the right to terminate for late payments unless a franchisor gives clear notice of reinstating strict compliance. Similarly, the common law doctrine of estoppel prevents a party from acting inconsistently with its prior conduct or representations. Promissory estoppel relates to reliance on a promise, while equitable estoppel relates to reliance on a representation. As with waiver, Franchise relationship laws rarely address estoppel, so common law governs. For example, If a franchisor tells a franchisee not to worry about a cure period, the franchisor may be estopped from later claiming the cure period expired.

### **3. *Hierarchy of Protections: When State Law Trumps Contract Terms***

---

<sup>10</sup> 2025 Franchise Legislative Activity Update - AAFD | American Association of Franchisees & Dealers

Franchise relationship laws operate to supersede contract terms whenever the contract conflicts with statutory protections. For example, **in the context of termination**, states like Minnesota and Wisconsin require 90-day notice and 60-day cure periods, even if the contract says otherwise. With respect to renewal, states like California, Connecticut, and Delaware require notice, good cause, and sometimes compensation even if the contract allows non-renewal at will. California prohibits franchisors from unreasonably withholding consent, even if the contract gives a franchisor sole discretion. California and Minnesota ban non-competes entirely, regardless of contract language.

## **II. Impact of Franchise Relationship Laws on Termination, Non-Renewal, Transfer, and System-wide Operations**

Franchise relationship laws are among the most consequential legal frameworks governing day-to-day franchise operations in the United States. Unlike the FTC Franchise Rule, which focuses primarily on pre-sale disclosure, these statutes regulate the ongoing conduct of franchisors throughout the franchise agreement lifecycle—including when and how a franchisor may terminate, decline to renew, or restrict the transfer of a franchise. Understanding how these laws apply is essential to building and maintaining legally compliant systems.

This section provides a practical survey of the most significant ways in which franchise relationship laws affect terminations, non-renewals, transfers, and system-wide operations. No two statutes are identical, and the interaction between state law, the franchise agreement, and common law can be complex. The analysis that follows draws on both statutory text and the growing body of case law interpreting these provisions.

### **A. Determining Whether and Which State’s Franchise Relationship Law Applies**

The threshold question in any relationship law analysis is which state’s (or states’) law governs, a question that is not always straightforward. Franchisors headquartered in one state often have franchisees located across dozens of jurisdictions, each with different relationship statutes, or none at all. The answer will determine whether the franchisor must satisfy a statutory good cause standard, provide mandatory notice and cure periods, or comply with buyback obligations that may not appear anywhere in the franchise agreement.

#### ***1. Jurisdictional Scope Variations Among States***

Currently, twenty U.S. jurisdictions have enacted franchise relationship statutes that regulate some aspect of the franchisee-franchisor relationship.<sup>11</sup> These statutes differ not only in their substantive

---

<sup>11</sup> Arkansas (Ark. Code Ann. § 4-72-201 et seq.); California (Cal. Bus. & Prof. Code § 20000 et seq.); Connecticut (Conn. Gen. Stat. § 42-133e et seq.); Delaware (Del. Code Ann. tit. 6, § 2551 et seq.); Hawaii (Haw. Rev. Stat. § 482E-1 et seq.); Illinois (815 Ill. Comp. Stat. 705/1 et seq.); Indiana (Ind. Code § 23-2-2.7-1 et seq.); Iowa (Iowa Code § 523H.1 et seq.); Michigan (Mich. Comp. Laws § 445.1501 et seq.); Minnesota (Minn. Stat. § 80C.01 et seq.); Mississippi (Miss. Code Ann. § 75-24-51 et seq.); Missouri (Mo. Rev. Stat. § 407.400 et seq.); Nebraska (Neb. Rev. Stat. § 87-401 et seq.); New Jersey (N.J. Stat. Ann. § 56:10-1 et seq.); Puerto Rico (P.R. Laws Ann. tit. 10, § 278 et seq.); Rhode Island (R.I. Gen. Laws § 6-50-1 et seq.); Virginia (Va. Code Ann. § 13.1-557 et seq.); Washington (Wash. Rev. Code § 19.100 et seq.); and Wisconsin (Wis. Stat. ch. 135). New franchise relationship laws in New Mexico and

requirements, but also in the geographic scope of their application, that is, which franchise relationships they purport to govern. The jurisdictional scope of the of applicable state relationship laws may be broadly divided into three categories, those based on the location of the franchised business, those based on the location of the franchisee’s principal place of business or residence, and those based on where the franchise offer was made or accepted.

The majority of state franchise relationship statutes apply if, and only if, the franchised unit is physically located within the state. States in this category include Arkansas, Connecticut, Illinois, Iowa, Missouri, Nebraska, New Jersey, Rhode Island, Virginia, Wisconsin, and Puerto Rico.<sup>12</sup> The Nebraska Franchise Practices Act, for example, requires the franchisee to establish or maintain a place of business in Nebraska, defined as “a fixed geographical location at which the franchisee displays for sale and sells the franchisor’s goods or offers for sale and sells the franchisor’s services.” Similarly, the New Jersey Franchise Practices Act applies only where the parties contemplated, or the franchisor required, that the franchisee maintain a “place of business” in New Jersey.

A second group of states (California, Hawaii, and Indiana) extends the reach of their relationship statutes beyond the physical location of the franchise unit to include situations where the franchisee itself is domiciled or has its principal place of business within the state, even if the franchised unit is located elsewhere.<sup>13</sup>

A third group of states (Michigan, Minnesota, and Washington) applies the most expansive jurisdictional tests.<sup>14</sup> The Michigan relationship law applies where (i) the offer to sell is made in the state, (ii) the offer to buy is accepted in the state, or (iii) if the franchisee is domiciled in the state, the franchised business is operated in the state.<sup>15</sup> The Minnesota Franchise Act (“MFA”) applies when a sale or offer to sell is made in Minnesota, when an offer to purchase is made and accepted in Minnesota, or when the franchise is to be located in Minnesota.<sup>16</sup> The Minnesota Supreme Court recently confirmed that the MFA does not categorically preclude an out-of-state company from enforcing a claim for unfair practices, but an out-of-state company must demonstrate a sufficient connection to Minnesota—such as continuous business with a Minnesota franchisor, agreements drafted in Minnesota, and a Minnesota choice-of-law provision.<sup>17</sup> The

---

amendments to the current versions of New Jersey and Maryland, are pending and may impact obligations for defaults and termination in specific circumstances.

<sup>12</sup> Ark. Code Ann. § 4-72-203; Conn. Gen. Stat. Ann. § 42-133h; 815 Ill. Comp. Stat. Ann. 705/19; Iowa Code Ann. §§ 523H.2, 537A10; Mo. Ann. Stat. § 407.400; Neb. Rev. Stat. Ann. § 87-403; N.J. Stat. Ann. §§ 56:10-3, 56:10-4; 6 R.I. Gen. Laws Ann. § 6-50-2; Va. Code Ann. § 13.1-559; Wis. Stat. Ann. § 135.02; 10 L.P.R.A. § 278.

<sup>13</sup> Cal. Bus. & Prof. Code § 20015; Haw. Rev. Stat. Ann. § 482E-4, 6; Ind. Code. Ann. § 23-2-2.5-2. The 2022 CFRA broadened the jurisdictional reach to include franchises where either the franchisee or its owners are domiciled in California, or the franchised business is or will be operated in California.

<sup>14</sup> Minn. Stat. Ann. § 80C.19; Mich. Comp. Laws § 445.1504; Wash. Rev. Code § 19.100.020(2).

<sup>15</sup> Mich. Comp. Laws § 445.1504.

<sup>16</sup> Minn. Stat. Ann. § 80C.19.

<sup>17</sup> *Cambria Co., LLC v. M&M Creative Laminants, Inc.*, 2024 WL 4139394, at \*5 (Minn. Sept. 11, 2024) (holding that MFA does not categorically preclude an out-of-state company from enforcing a claim for unfair practices but requires a sufficient connection to Minnesota).

Washington law applies if (i) the offer is directed into the state and received where it is directed, (ii) the offer originates from the state and violates the franchise or business opportunity law of the state in which it is directed, (iii) the franchisee is a resident of the state, or (iv) the franchised business is operated, at least in part, in Washington.<sup>18</sup>

## **2. Choice of Law Provisions and Their Enforceability**

Most franchise agreements include a choice-of-law clause designating application of the law of the state where the franchisor is headquartered. These provisions are generally enforceable, but they have limits, particularly when the franchisee’s home state has an anti-waiver provision. Franchisors often assume that a choice-of-law provision pointing to their home state will insulate them from the relationship laws of the state where the franchisee is located.

Several states contain anti-waiver provisions that void contractual attempts to displace statutory protections. Minnesota’s anti-waiver provision, for example, expressly prevents Minnesota residents and businesses formed under Minnesota law from waiving MFA compliance, including through a choice-of-law provision.<sup>19</sup> Wisconsin’s Fair Dealership Law (“WFDL”) similarly provides that “[t]he effect of [the WFDL] may not be varied by contract.”<sup>20</sup> California’s 2022 California Franchise Relations Act (“CFRA”) amendments added a provision declaring that any franchise agreement requirement that the franchisee waive any CFRA provision is “contrary to public policy, void, and unenforceable.”<sup>21</sup>

Franchisors should be sure to expressly establish a clear choice of law provision in their franchise agreements, but carefully assess applicability of franchise relationship laws to identify which statutes may independently apply regardless of the contractual choice of law.

### **B. Through the Termination Lens - Common Issues Arising Under Franchise Relationship Laws**

Once a franchisor has determined that one or more franchise relationship statutes apply, it must navigate the substantive requirements those statutes impose. Good cause, notice and cure, and the handling of incurable defaults are the most significant of these requirements. The prescribed notice periods and termination processes, along with exceptions, differ among the states. A chart of required notice and cure periods under generally applicable state franchise laws is included at the end of this paper.

#### **1. Good Cause / Reasonable Cause Standards**

---

<sup>18</sup> Wash. Rev. Code § 19.100.020(2).

<sup>19</sup> Minn. Stat. § 80C.21; *Long John Silver’s Inc. v. Nickleson*, 923 F. Supp. 2d 1004, 1011 (W.D. Ky. 2013) (enforcing Minnesota anti-waiver provision to apply MFA to franchise agreement governed by Kentucky law).

<sup>20</sup> Wis. Stat. § 135.025(3). Courts have consistently held that WFDL protections cannot be waived by contract regardless of any choice-of-law clause.

<sup>21</sup> Cal. Bus. & Prof. Code § 20015(b) (added by 2022 CFRA amendments, effective January 1, 2023) (“Any provision of a franchise agreement requiring the franchisee to waive any provisions of the CFRA are contrary to public policy, void, and unenforceable.”).

The concept of “good cause” for termination is the cornerstone of most franchise relationship statutes. While most states require good cause, the definition varies considerably across jurisdictions. A survey of several key statutes and caselaw illuminates the definitional range:

#### California (CFRA).

Under the 2016 CFRA, good cause is limited to a franchisee’s failure to “substantially comply” with the lawful requirements of the franchise agreement.<sup>22</sup>

#### Minnesota (MFA).

Good cause under the MFA is defined as the failure by the franchisee to substantially comply with the material and reasonable franchise requirements imposed by the franchisor.<sup>23</sup> A franchisee’s failure to comply with unreasonable requirements does not constitute good cause. For example, where a KFC franchisee failed to rebuild or remodel its location, the court found the requirement unreasonable because the franchisor did not impose the same remodeling requirements on the three closest corporate-owned locations.<sup>24</sup>

#### Nebraska.

Good cause under the Nebraska Act is limited to failure by the franchisee to substantially comply with the requirements imposed by the franchise.<sup>25</sup> Because no court has interpreted in detail what “substantially comply” means under the Nebraska Act, New Jersey case law construing the virtually identical NJFPA standard provides the closest available guidance.

#### New Jersey (NJFPA).

The NJFPA grants a nearly indefeasible property right to the franchisee: once a franchise relationship begins, all that a franchisee must do is substantially comply with the terms of the agreement to receive the benefit of an ongoing franchise. Substantial compliance “is something less than absolute adherence to every nuanced term of an agreement, but, at a minimum, requires that the franchisee refrain from acting in direct defiance of a term of the franchise agreement.”<sup>26</sup> Critically, even if the franchisor “acts in good faith and for a bona fide reason,” it violates the NJFPA by terminating on any basis other than lack of substantial compliance.<sup>27</sup>

#### Puerto Rico (Law 75).

Puerto Rico’s Law 75 imposes the highest standard, requiring “just cause,” which exists only when the franchisee fails to perform an essential provision of the agreement or when the franchisee’s

---

<sup>22</sup> Cal. Bus. & Prof. Code §§ 20020–20021.

<sup>23</sup> Minn. Stat. § 80C.14 subdiv. 3(b).

<sup>24</sup> *Delaria v. KFC Corp.*, No. CIV. 4-94-116, 1995 WL 17079305 (D. Minn. Jan. 13, 1995).

<sup>25</sup> Neb. Rev. Stat. § 87-404(1); 402(8).

<sup>26</sup> *Maintainco, Inc. v. Mitsubishi Caterpillar Forklift America, Inc.*, 408 N.J. Super. 461, 473 (App. Div. 2009).

<sup>27</sup> *General Motors Corp. v. Gallo Truck Sales, Inc.*, 711 F. Supp. 810, 816 (D.N.J. 1989).

actions adversely and substantially affect the interests of the franchisor in promoting its merchandise or services. The burden of proving just cause lies with the franchisor.<sup>28</sup>

#### Washington (FIPA).

FIPA does not expressly define good cause but provides that it “includes” the franchisee’s breach of a material provision of the franchise agreement or other agreement with the franchisor, and the failure to cure such breach after reasonable notice.<sup>29</sup>

#### Virginia (VRFA).

Virginia requires “reasonable cause” for cancellation, which is a slightly lower formulation than the good cause standard used in other states.<sup>30</sup> Notably, however, notifying a franchisee of termination for failure to pay disputed amounts prior to the term’s expiration does not constitute reasonable cause under the VRFA.<sup>31</sup>

### **2. Curable Defaults - Notice and Cure Periods**

Franchise relationship statutes typically impose notice and cure requirements that may exceed what the franchise agreement provides. Where a conflict exists between the statutory minimum and the contractual provision, the franchise relationship law controls. Before issuing any default or termination notice, franchisors must identify both the contractual notice and cure obligations under the franchise agreement and any statutory minimum that applies to the specific type of default in question. The franchisor must provide the longer of the two periods.

Mandatory cure periods vary, but three general trends exist. First, a number of states do not require a cure period but do require notice of termination (also known as a “wind down” period). Second, some states mandate a “reasonable” cure period but not a specific number of days to cure. Finally, some states require a specific number of days to cure certain types of defaults.

The first group of states (Connecticut, Delaware, Indiana, Mississippi, Missouri, Nebraska, New Jersey, and the Virgin Islands) do not require any cure period but do require, with certain exceptions, notice before termination becomes effective. In Connecticut, Nebraska, and New Jersey, the wind down period is 60 days, with certain exceptions. In Delaware, Mississippi, and Missouri, the wind down period is 90 days, with certain exceptions. Although Indiana’s statute contains a 90 day-notice requirement, it rarely applies because any different notice period in the franchise agreement, including no notice period, overrides the statutory requirement. The Virgin Islands require 120 days’ notice.

---

<sup>28</sup> *R.W. International Corp. v. Welch Foods, Inc.*, 88 F.3d 49, 51 (1st Cir. 1996)(once the dealer shows that the principal unilaterally terminated the agreement, the burden of persuasion on just cause under Puerto Rico Law 75 shifts to the principal).

<sup>29</sup> Wash. Rev. Code § 19.100.180.

<sup>30</sup> Va. Code Ann. § 13.1-564.

<sup>31</sup> *G.M. Garrett Realty, Inc. v. Century 21 Real Estate Corp.*, 17 F. App’x 169 (4th Cir. 2001).

The second group of states (California,<sup>32</sup> Hawaii, Illinois, Michigan, and Washington) require a cure period of unspecified duration. These states require a “reasonable” cure period, which generally means that the period need not be longer than 30 days.<sup>33</sup> These states also require that a franchisor provide a notice of termination but, unlike the prior group, do not require any notice period before termination becomes effective.

The final group of states (Arkansas, California, Iowa, Minnesota, Rhode Island, and Wisconsin) specify a cure period for certain defaults. Arkansas and Rhode Island require a 30-day cure period for such defaults. Minnesota and Wisconsin require a 60-day cure period for such defaults. California requires a “reasonable” cure period of at least 60 days but not more than 75 days for such defaults<sup>34</sup> Iowa requires a “reasonable” cure period between 30 and 90 days long. These states also require franchisors to provide notice of termination to the franchisee. The termination notice period generally ranges from 60 to 90 days depending on the state. Certain states allow for the termination notice period to run concurrently with the cure period.<sup>35</sup>

It is important to reiterate that the cure and termination notice periods discussed above apply to specified types of defaults. These statutes often provide for shorter (or even no<sup>36</sup>) cure/termination notice periods for other types of defaults. Before issuing a default to which one or more state relationship laws applies, franchisors must carefully review the statute and determine if the cure/termination notice applies to the specific default. A chart of notice periods under the various state relationship laws is included for reference at the end of this paper.

### 3. *Incurable Defaults*

Not every default can or should be subject to a cure period. Many franchise relationship statutes recognize that certain breaches are so fundamental that they cannot be remediated through a cure process.<sup>37</sup> Common examples recognized both by statute and case law include: voluntary abandonment of the franchised business; bankruptcy or insolvency; conviction of a felony or crime related to the franchise business; fraud or material misrepresentation; conduct that creates an imminent danger to public health or safety; and conduct that materially impairs the goodwill associated with the franchisor’s marks.

---

<sup>32</sup> This requirement applies to franchise agreements entered into before January 1, 2016. For franchise agreements entered into or renewed after January 1, 2016 or that are for an indefinite period of time, California requires a “reasonable” cure period of at least 60 days or more than 75 days. California Business and Professions Code, Division 8, Chapter 5.5, §20020

<sup>33</sup> Washington provides that, with respect to defaults that cannot be cured within the statutorily mandated cure period, the franchisee must initiate “substantial and continuing action” to cure the default within the 30-day cure period. *See* Wash. Rev. Code § 19.100.180(2)(j).

<sup>34</sup> This requirement applies to franchise agreements entered into or renewed on or after January 1, 2016. For franchise agreements entered into or renewed prior to January 1, 2016, California requires a “reasonable” cure period which need not be longer than 30 days. California Business and Professions Code, Division 8, Chapter 5.5, §20020.

<sup>35</sup> These states include Arkansas, California, Minnesota, Rhode Island, and Wisconsin.

<sup>36</sup> For example, Arkansas’s notice provisions do not apply if the basis of termination is one of certain specific examples of “good cause” under the statute. Ark. Code. Ann. §§ 4-72-202(7)(C)-(H), 4-72-204(c).

<sup>37</sup> Arkansas, California, Illinois, Minnesota, Rhode Island, Washington, and Wisconsin are among the states that permit termination without the state’s required notice/opportunity to cure in certain circumstances.

Franchisors relying on incurable default provisions should carefully document the basis for concluding that the default is incurable and comply with any residual procedural requirements. Even where a default permits immediate termination, some statutes still require written notice of the termination itself. A form letter stating only that the board had decided to “cancel all aspects of the property’s membership effective immediately” without specifying reasons or effective date was found insufficient under the CFRA.<sup>38</sup> Importantly, procedural requirements for the termination notice itself are not excused merely because the underlying default is incurable.

#### 4. *Buyback Provisions*

Some state relationship laws also require the franchisor to repurchase or “buyback” certain items upon termination of the franchisee. The states with these provisions are Arkansas, California, Connecticut, Hawaii, Rhode Island, Washington, and Wisconsin. As with the good cause and notice/cure provisions, these buyback provisions vary.

Hawaii, Rhode Island, Washington, and Wisconsin have absolute buyback provisions that apply in all cases of termination, but generally at the option of the franchisee. In contrast, Arkansas requires a franchisor to repurchase items if the franchisee was not terminated with good cause. In California, even upon a lawful termination, the franchisor must repurchase items from the franchisee except under certain defined scenarios.<sup>39</sup>

In Rhode Island and Wisconsin, the franchisor must repurchase only the inventory items sold by the franchisor to the franchisee for resale that bear the franchisor’s name, trademark, label, or other mark identifying the franchisor. In Arkansas, Connecticut, Hawaii, and Washington,<sup>40</sup> the franchisor has to buyback inventory, supplies, equipment, and furnishings that were purchased from the franchisor or its approved suppliers. In California, the franchisor must repurchase the franchisee’s inventory, supplies, equipment, fixtures, and furnishings that were purchased from the franchisor or its approved suppliers and sources that are, at the time of the notice of termination, in possession of the franchisee or used by the franchisee in the franchised business.<sup>41</sup> Arkansas, California, Connecticut, Hawaii, and Washington do not require the repurchase of any personalized items of the franchisee. In Washington, franchisors do not have to repurchase items that are not reasonably required in the operation of the franchise business.

---

<sup>38</sup> *Mahroom v. Best Western International*, 2010 U.S. Dist. LEXIS 160279 (N.D. Cal. Mar. 29, 2010).

<sup>39</sup> This requirement applies to franchise agreements entered into or renewed on or after January 1, 2016 or that are for an indefinite period of time. For franchise agreements entered into or renewed prior to January 1, 2016, California requires a franchisor to repurchase items if the franchisee was not terminated with good cause and if the franchisor fails to meet any of the terms of the California Franchise Relations Act.

<sup>40</sup> Under the Washington state relationship law, the franchisor is required to purchase inventory and supplies not purchased from the franchisor or on its express requirement only if the franchisee is to retain control of the premises of the franchised business.

<sup>41</sup> This requirement applies to franchise agreements entered into or renewed on or after January 1, 2016 or that are for an indefinite period of time. For franchise agreements entered into or renewed prior to January 1, 2016, California requires the franchisor to repurchase items if the franchisee was not terminated with good cause, as well as requires buybacks if the franchisor fails to comply with the California Franchise Relations Act.

State buyback provisions differ as to what price a franchisor must pay to repurchase the required items. The fair market value or the fair wholesale market value is commonly used as a valuation method. Other states use a different valuation calculation. In Arkansas, the purchase price for the applicable items is the franchisee's net cost less a reasonable deduction for depreciation or obsolescence. In California, the price is the price paid minus depreciation.

It is important to evaluate whether there are any available exclusions to these repurchase requirements. For example, in California, the repurchase obligation does not apply: (i) if the franchisor does not prevent the franchisee from retaining control of the principal place of the franchised business; (ii) to any termination due to a publicly announced and nondiscriminatory decision by the franchisor to withdraw from all franchise activity within the applicable geographic market in which the franchise is located; (iii) to any personalized items, inventory, supplies, equipment, fixtures, or furnishings not reasonably required to conduct the operation of the franchise business; or (vi) to inventory, supplies, equipment, fixtures, or furnishings to which the franchisee, cannot lawfully, or does not, grant the franchisor clear title and possession.<sup>42</sup>

#### **4. *Content of Default and Termination Notices***

Several franchise relationship statutes impose specific requirements on the content of default and termination notices. For instance, in California, a notice of termination must: (1) be in writing; (2) be sent by registered, certified, or other receipted mail, telegram, or personal delivery; (3) contain a statement of the franchisor's intent to terminate; (4) state the reasons for termination; and (5) state the effective date of termination.<sup>43</sup>

Minnesota courts require that any notice state all applicable reasons for termination with particularity.<sup>44</sup> Where termination is based on nonpayment, the notice must state the exact amount the franchisee must pay to cure the default.<sup>45</sup> New Jersey, Nebraska and Wisconsin all require that the notice state "all the reasons" for the termination.<sup>46</sup> Notably, in New Jersey, termination for reasons not specifically enumerated in the notice is an independent violation of the NJFPA.<sup>47</sup>

#### **5. *Practical Guidance***

When navigating the termination provisions of franchise relationship laws, franchisors should:

- Conduct an initial jurisdictional analysis before issuing any notice. Identify every state relationship law that may apply to the specific franchise relationship, considering the location of the unit, the franchisee's domicile, and where the offer to purchase was made or accepted.

---

<sup>42</sup> Cal. Bus. & Prof. Code § 20022(d), (e).

<sup>43</sup> *Id.* at § 20030.

<sup>44</sup> *Culligan International Co. v. Culligan Water Conditioning of Carver County, Inc.*, 563 F. Supp. 1265, 1270 (D. Minn. 1983); Minn. Stat. § 80C.14 subdiv. 3.

<sup>45</sup> *Culligan*, 563 F. Supp. at 1270.

<sup>46</sup> N.J. Stat. Ann. § 56:10-5; Neb. Rev. Stat. § 87-404(1); Wis. Stat. § 135.04.

<sup>47</sup> N.J. Stat. Ann. § 56:10-5.

- Confirm good cause. Ensure that the basis for termination constitutes good cause (or reasonable cause, or just cause, as applicable) under each potentially applicable statute. Document the facts supporting good cause before the notice is issued.
- Apply the most protective notice and cure period. Where the franchise agreement and applicable statutes differ, provide the longer of the two periods. Where multiple statutes apply with different requirements, comply with the most demanding standard.
- Confirm that the notice content satisfies all applicable requirements. Include a clear statement of the factual basis for the termination, the effective date, the steps required to cure (if applicable), and all reasons—given that many states prohibit reliance on reasons not stated in the notice.
- Consult litigation counsel before issuing the notice. Even a well-founded termination can become expensive litigation if the notice is procedurally defective.
- Preserve the factual record. Maintain complete records of all communications with the franchisee, inspection reports, financial data, prior default notices, and any improvement plans or workout agreements.

### **C. Transfers Under Relationship Laws**

In addition to governing terminations and non-renewals, a significant subset of state franchise relationship statutes regulate the transfer or assignment of a franchised business interest. These provisions operate on multiple levels. They define the procedural prerequisites that a franchisee must satisfy before a transfer may be effectuated, impose substantive constraints on the franchisor’s exercise of its consent right, and in some states specify the consequences of inaction or unreasonable refusal. These statutory requirements generally supersede any less protective transfer provisions in the franchise agreement itself, so franchisors must identify the applicable statutes and calibrate their transfer approval process accordingly.

Eight states with general franchise relationship statutes address transfer consent: Arkansas, California, Hawaii, Iowa, Michigan, Minnesota, Nebraska, and New Jersey.<sup>48</sup> The remaining states with general relationship laws (Connecticut, Delaware, Illinois, Mississippi, Missouri, Rhode Island, Virginia, and Wisconsin) regulate termination and non-renewal but do not include a freestanding provision governing the franchisor’s consent right in the transfer context. In those states, transfer rights are governed by the franchise agreement, subject to the implied covenant of good faith and fair dealing under general contract law.

#### ***1. The Franchisor’s Consent Standard: Reasonableness and Good Cause***

---

<sup>48</sup>Ark. Code Ann. § 4-72-205(b)–(c); Cal. Bus. & Prof. Code §§ 20028–20029; Haw. Rev. Stat. § 482E-6(2)(I); Iowa Code § 523H.5; Mich. Comp. Laws § 445.1527(g); Minn. Stat. § 80C.14(5); Neb. Rev. Stat. § 87-405; N.J. Stat. Ann. § 56:10-6.

The first question to address in any transfer dispute concerns the standard by which a franchisor's decision will be evaluated. The applicable statutes fall into two categories based on how that standard is framed.

The first group (Arkansas, California, Iowa, Minnesota, and Nebraska) prohibits franchisors from unreasonably withholding (or arbitrarily and capriciously in Iowa's case) consent to a proposed transfer (with some statutes clarifying what *would not* constitute unreasonably withholding approval). In California, for example, a franchisor's consent to transfer cannot be withheld unless the buyer, transferee, or assignee does not meet the standards for new or renewing franchisees or does not comply with the transfer conditions specified in the franchise agreement.<sup>49</sup>

The second group (Hawaii, Michigan, and New Jersey) require "good cause" to refuse a termination (with most defining good cause for disapproval of a transferee before rejecting). Michigan, for example, declares void and unenforceable a provision that permits the franchisor to refuse to allow a transfer without good cause.<sup>50</sup> Good cause includes, but is not limited to, failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications, the fact that the proposed transferee is a competitor of the franchisor, the unwillingness of the proposed transferee to agree to comply with lawful obligations, or the failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or cure any default.<sup>51</sup>

Similarly, in Hawaii, the HFIL makes it an "unfair or deceptive act or practice or an unfair method of competition" for a franchisor to decline to consent to a proposed transfer "except for good cause."<sup>52</sup> Good cause includes but is not limited to (1) the proposed transferee not satisfying the franchisor reasonable, standard requirements; (2) the proposed transferee being, or being affiliated with, a competitor of the franchisor; (3) the inability or unwillingness of the proposed transferee to sign the franchisor's current form of franchise agreement; and (4) the failure of the proposed transferee to cure any existing defaults at the time of the transfer.<sup>53</sup>

A chart of substantive and procedural (discussed below) transfer requirements under generally applicable state franchise laws is included at the end of this paper.

## ***2. Procedural Requirements: Notice, Timing, and Written Reasons***

Six of the statutes (Arkansas, California, Hawaii, Iowa, Nebraska, and New Jersey) impose a procedural framework in addition to a substantive framework. These statutes define not only what a franchisor may consider, but also how the franchisor must respond (i.e. in writing) and within what timeframe. These requirements fall into three categories: advance notice by the franchisee, response deadlines for the franchisor, and documentation of the reasons for any rejection.

---

<sup>49</sup> Cal. Bus. & Prof. Code § 20029(b).

<sup>50</sup> Mich. Comp. Laws § 445.1527(g).

<sup>51</sup> *Id.*

<sup>52</sup> Haw. Rev. Stat. § 482E-6(2)(I).

<sup>53</sup> *Id.*

Advance franchisee notice requirements appear in the six statutes addressing the procedural framework (all but Michigan and Minnesota). Arkansas, Nebraska, and New Jersey specifically require the franchisee to initiate the process by providing the franchisor with written notice identifying certain enumerated information.<sup>54</sup> This notice requirement is a condition precedent: a purported transfer effectuated without proper notice to the franchisor is invalid under each of these statutes. In practice, this imposes on the franchisee an affirmative obligation to supply sufficient information before the franchisor’s response clock begins to run.

Franchisor response deadlines are expressly prescribed in Arkansas, California, Hawaii, Iowa, Nebraska, and New Jersey.<sup>55</sup> Hawaii imposes a 30-day response window<sup>56</sup>, as does Arkansas for franchise agreements entered into from August 1, 2023 on (but 60 days for franchise agreements entered into between March 4, 1977 and before August 1, 2023).<sup>57</sup> The remaining states require a 60 day response window. In each state that imposes a fixed deadline, the consequence of silence is significant: the transfer is deemed approved by operation of law.<sup>58</sup> Franchisors operating in these jurisdictions must therefore maintain an organized intake and tracking system for transfer requests to avoid inadvertent deemed approvals.

Written reasons for rejection are required in all but Michigan and Minnesota. Arkansas, Nebraska, and New Jersey, each require the franchisor to specify permissible grounds for rejection based on the “character, financial ability, or business experience” of the proposed transferee.<sup>59</sup> This enumeration matters: a franchisor that rejects a proposed transfer on grounds not related to these three criteria, for example, citing a desire to bring the unit in-house, concerns about system size, or a general preference not to approve a transfer at a particular time, may find itself unable to defend the rejection in subsequent litigation.

### ***3. Right of First Refusal Provisions***

Many franchise agreements include a right of first refusal allowing the franchisor to acquire the franchise on the same terms as any bona fide third-party offer received by the franchisee. Where a franchise relationship statute applies, the right of first refusal must be exercised in a manner consistent with the statutory framework. California courts have confirmed that franchisors may

---

<sup>54</sup> Ark. Code Ann. § 4-72-205(b)(1); Neb. Rev. Stat. § 87-405; N.J. Stat. Ann. § 56:10-6.

<sup>55</sup> Cal. Bus. & Prof. Code §§ 20028–20029; Neb. Rev. Stat. § 87-405; N.J. Stat. Ann. § 56:10-6.

<sup>56</sup> Haw. Rev. Stat. § 482E-6(2)(I) (requiring franchisor to approve or disapprove a proposed transfer in writing within 30 days after receiving written notification of the proposed transfer).

<sup>57</sup> Ark. Code Ann. § 4-72-205(b)–(c).

<sup>58</sup> Deemed approval by operation of law upon the franchisor’s silence within the prescribed period applies in California, Hawaii, Nebraska, and New Jersey. *See* Cal. Bus. & Prof. Code § 20029; Haw. Rev. Stat. § 482E-6(2)(I); Neb. Rev. Stat. § 87-405; N.J. Stat. Ann. § 56:10-6.

<sup>59</sup> Ark. Code Ann. § 4-72-205(b)(1); Neb. Rev. Stat. § 87-405; N.J. Stat. Ann. § 56:10-6. The enumeration of permissible rejection criteria—character, financial ability, and business experience—functions as a negative limitation: it not only specifies what the franchisor may consider, but by implication precludes rejection on grounds not related to those factors. Courts in New Jersey have applied this limitation strictly. *See* n.8, *supra*.

ordinarily enforce contractual right of first refusal provisions without restriction under the CFRA, provided that the triggering offer is genuine.<sup>60</sup> An offer conditioned on future performance is not a “bona fide offer” for purposes of triggering the right of first refusal.<sup>61</sup>

Franchisors exercising a right of first refusal in a state with a transfer relationship statute should also ensure that the exercise is not used as a vehicle to circumvent the statutory good faith standard. Where the franchisor’s decision to exercise the right of first refusal follows a pattern of unreasonably rejecting prior transfer requests, a franchisee may argue that the exercise itself is a bad-faith attempt to prevent a legitimate sale.

#### ***4. Practical Guidance***

- Identify the applicable statute before the franchisee submits a request. Many transfer requests are received informally before any formal notice has been provided. Franchisors should proactively identify, for each franchised unit, the relationship statute or statutes that may apply to a proposed transfer so that the response process can be calibrated in advance.
- Start the response clock carefully. In states with 60- or 30-day response windows, the clock typically begins when the franchisor has received “all necessary information” or sufficient information about the proposed transferee. Franchisors should confirm in writing what information has been received and whether the submission is complete before the clock starts running, but should not use information requests as a delay tactic, which courts are likely to treat as bad faith.
- Apply transfer criteria consistently. Franchisors should maintain records of all transfer approvals and rejections, including the criteria applied and the outcome, to enable a consistent and defensible review process for subsequent requests.
- State all reasons for rejection in writing. In states that require written reasons for disapproval, the rejection must identify all applicable grounds. A franchisor that articulates one reason in its rejection letter and later attempts to add additional grounds in litigation will face the same “use it or lose it” problem that afflicts procedurally deficient termination notices.
- Review transfer provisions in the franchise agreement for consistency with applicable statutes. Transfer approval criteria, response periods, and consequences of inaction should be synchronized with the requirements of the applicable state statutes. Where a state statute provides that deemed approval follows silence within 60 days, the franchise agreement should not purport to preserve the franchisor’s right to reject after that period has elapsed.

#### **D. Encroachment and Territorial Issues**

Encroachment—the franchisor’s decision to open a competing unit, authorize a competing channel, or otherwise compete within or adjacent to an existing franchisee’s operating area—is a common theme in franchise litigation. Unlike termination and non-renewal, which are extensively regulated by state relationship statutes, encroachment protections under franchise relationship laws

---

<sup>60</sup> *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867 (9th Cir. 2000).

<sup>61</sup> *IJLSF, LLC v. It’s Just Lunch International, LLC* E071940, 2021 WL 3012850 (Cal. App. 2021).

are more limited and are distributed unevenly across the states that have them. Several states have enacted specific statutory provisions that regulate territorial competition; others rely on the implied covenant of good faith and fair dealing under general contract law, and a number of states address encroachment only indirectly, through prohibitions on unreasonable standards, discriminatory treatment, or substantial changes to competitive circumstances.

In any encroachment analysis, the primary consideration is the language of the franchise agreement itself. Where the franchise agreement grants the franchisee an exclusive territory and prohibits the franchisor from operating or licensing competing units within that territory, a subsequent act of encroachment is primarily a contract breach claim—though it may also implicate applicable relationship statutes. Where the franchise agreement is silent on territorial exclusivity, or contains an express non-exclusivity clause, the franchisee’s statutory and common law remedies become correspondingly more significant.

### ***1. Statutory Protection for Specifically Granted Territories***

Hawaii, Indiana, Iowa, and Minnesota include specific statutory protections for encroachment of a franchisee’s exclusive territory.<sup>62</sup> In Hawaii for example, the HFIL makes it an “unfair or deceptive act or practice or an unfair method of competition” for a franchisor to directly or indirectly establish a competing business within an existing franchisee’s exclusive territory; other than to the extent expressly contemplated by the franchise agreement.<sup>63</sup> The provision makes clear that the solicitation of sales by the franchisor or another franchisee in a franchisee’s exclusive territory “shall not constitute the establishment of a similar business within the exclusive territory.”<sup>64</sup>

Similarly, in Indiana, subject to certain specific statutory exceptions, franchisors are prohibited from establishing “a franchisor-owned outlet engaged in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement, or if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable area.”<sup>65</sup> The statute does not address, and therefore does not expressly prohibit, encroachment by other franchisees on a franchisees’ exclusive territory.

Minnesota’s MFA provides one of the clearest statutory encroachment prohibitions of any general franchise relationship law. Under the Commissioner’s rules promulgated under the MFA, it is an unfair or inequitable practice for a franchisor to “compete with the franchisee in an exclusive territory or grant competitive franchises in the exclusive territory.”<sup>66</sup> The protection is meaningful

---

<sup>62</sup> Haw. Rev. Stat. § 482E-6(2)(E); Ind. Code § 23-2-2.7-2(2); Iowa Code §§ 523H.6(1), 5327A.10(6)(a); Minn. R. 2860.4400(C).

<sup>63</sup> Haw. Rev. Stat. § 482E-6(2)(E).

<sup>64</sup> *Id.*

<sup>65</sup> Ind. Code § 23-2-2.7-2(2).

<sup>66</sup> Minn. R. 2860.4400(C). The Commissioner’s rules define it as an unfair or inequitable practice for a franchisor to “compete with the franchisee in an exclusive territory or grant competitive franchises in the exclusive territory[.]” The

but expressly bounded: it applies only to territories that are “specifically granted” in the written terms of the franchise agreement, and does not extend to informal or implied exclusivity understandings that were not reduced to writing. A franchisee relying on verbal assurances, course of dealing, or system-wide custom will not be able to invoke the MFA’s territorial protection absent a written grant.

The written requirement has been applied rigorously in litigation. One court held that a franchisor’s online sales operation did not violate the franchisee’s exclusive territory where the franchise agreement expressly limited the territorial prohibition to the physical operation of retail stores and made no mention of e-commerce.<sup>67</sup>

## ***2. Implied Covenant Claims in the Absence of Statutory Encroachment Prohibition***

In the absence of a specific statutory protection for encroachment, some courts have applied the covenant of good faith and fair dealing to address franchisee encroachment issues. For example, while the California Franchise Relations Act does not contain a provision specifically addressing encroachment or territorial exclusivity, California courts have recognized that the implied covenant of good faith and fair dealing may be breached by a franchisor’s decision to compete with an existing franchisee, even where the franchise agreement does not expressly grant a protected territory. The Ninth Circuit has held that constructing a competing restaurant within a mile and a half of a franchisee’s location, where the agreement was silent on exclusivity, could breach the covenant, because the conduct frustrated the franchisee’s reasonable expectations at the time of contracting.<sup>68</sup> The standard is inherently contextual: the question is not whether the franchise agreement technically permitted the franchisor’s conduct, but whether that conduct, in light of the entire relationship, frustrated the reasonable expectations on which the franchisee’s investment decision was based.

California courts have also addressed the limits of implied covenant encroachment claims where the franchise agreement expressly disclaimed any territorial exclusivity. Courts have generally held that where the parties negotiated and agreed to an express non-exclusivity clause, the implied covenant cannot be used to supply the very protection the parties chose to omit.<sup>69</sup> This boundary is significant: a franchisee who signed an agreement with an explicit non-exclusivity clause, and

---

protection is expressly limited to territories that are “specifically granted” in the written franchise agreement and does not extend to informal or implied exclusivity understandings.

<sup>67</sup>*Newspaper LLC v. Party City Corp.*, 2014 WL 2986653 (D. Minn. 2014). The court held that the franchisor’s online sales operation did not violate the franchisee’s exclusive territory because the franchise agreement expressly limited the territorial prohibition to the physical operation of retail party supply stores and did not address e-commerce. The decision underscores the importance of drafting territorial provisions that specifically address alternative distribution channels, including internet sales and third-party platforms. *See also* Minn. R. 2860.4400(C) (territorial protection applies only to terms “specifically granted” in the franchise agreement).

<sup>68</sup>*See In re Vylene Enterprises, Inc. v. Naugles, Inc.*, 90 F.3d 1472 (9th Cir. 1996).

<sup>69</sup>*Coldwell Banker Real Estate Corp. v. Bellmarc Group, Inc.*, 2001 WL 1456613 (Cal. App. 2001).

who was clearly on notice of the franchisor's right to place additional units, will face a difficult implied covenant claim. By contrast, where the agreement is genuinely silent, neither granting nor expressly disclaiming exclusivity, the claim remains viable.

### ***3. Shoehorning Other Statutory Protections in the Absence of Specific Encroachment Prohibition***

Several states have recognized the applicability of other statutory protections to address franchisee encroachment issues. New Jersey's Franchise Practices Act, for example, does not contain an express prohibition on encroachment, but it provides two overlapping provisions that New Jersey franchisees have invoked in territorial disputes. The first is the prohibition on unconscionable conduct, which courts have applied to franchisor behavior that is sufficiently one-sided or oppressive in the context of the franchise relationship. The second is the prohibition on unreasonable standards of performance (discussed more fully below), which can be implicated where the proximity of a new competing unit creates an economic environment in which the franchisee's compliance with existing operational standards becomes effectively impossible.<sup>70</sup>

New Jersey courts have recognized that while the NJFPA does not expressly prohibit encroachment absent a contractual exclusivity grant, the statute's broad protections may be invoked where the franchisor's conduct in establishing a competing unit constitutes bad faith or an unconscionable exercise of the franchise relationship. The strength of the claim depends heavily on the specific facts: the degree of market overlap, the economic impact on the existing franchisee's revenues, and whether the franchisor made any representations during the sales process about the scope or nature of the franchisee's market area.

Similarly, Washington's Franchise Investment Protection Act does not contain a standalone encroachment provision, but its broad prohibition on unreasonable standards of conduct and its anti-discrimination provisions may both be relevant where a franchisor's site selection decisions affect existing franchisees. Where a franchisor imposes location-specific operational or financial requirements that become economically untenable as a result of competitive cannibalization by a nearby company-owned or franchised unit, the franchisee may argue that those requirements, applied in that context, constitute an unreasonable standard of conduct that the franchisor cannot prove is reasonable and necessary.<sup>71</sup>

### ***7. Practical Guidance***

- Audit existing franchise agreements for territorial clarity. Older form franchise agreements frequently omit any reference to e-commerce, ghost kitchens, delivery-only formats, or

---

<sup>70</sup>N.J. Stat. Ann. § 56:10-7(e) (prohibiting a franchisor from engaging in conduct or practices that are "unconscionable" in the context of the franchise relationship, broadly construed by courts to encompass territorial encroachment where the conduct is sufficiently one-sided or oppressive). *See also* N.J. Stat. Ann. § 56:10-7(d) (prohibiting imposition of unreasonable standards of performance).

<sup>71</sup>Wash. Rev. Code § 19.100.180(2)(h) (making it an unfair or deceptive practice for a franchisor to impose "any standard of conduct" that it cannot prove is reasonable and necessary).

other alternative distribution channels that now represent significant revenue streams. Franchisors should assess whether existing territorial provisions address these channels and, where they do not, whether the gap creates exposure in relationship law states.

- Ensure consistency between Item 12 and the franchise agreement. The FTC Amended Franchise Rule requires Item 12 of the FDD to disclose the nature and scope of any territorial rights granted, the conditions under which the franchisor may establish company-owned units or competing franchises in the franchisee’s area, and any restrictions on the franchisor’s right to use alternative channels within the territory.<sup>72</sup> Franchisors whose FDD and franchise agreement territorial descriptions are not fully consistent are exposed both to FTC disclosure claims and to implied covenant arguments based on the franchisee’s reliance on the FDD.
- Treat silence in the franchise agreement as a liability, not a defense. Franchisors operating in states without specific statutory protections for encroachment should not assume that the absence of an express exclusivity grant insulates them from territorial claims. Where the franchise agreement is silent and pre-sale representations or marketing materials suggested some measure of geographic protection, the franchisee may have a viable implied covenant claim regardless of the absence of a written territorial right. Franchisors should ensure that any non-exclusivity position is expressly disclosed in the FDD and acknowledged in writing by the franchisee at signing.

## **E. System-Wide Considerations and Selective Enforcement**

### ***1. Unreasonable Standards of Performance***

A small but significant group of states (Hawaii, Minnesota, Nebraska, New Jersey, and Washington)<sup>73</sup> have enacted statutory prohibitions on the imposition of unreasonable performance standards--provisions that franchisees may invoke as an affirmative defense to a termination, as an independent cause of action against the franchisor, or as a challenge to system-wide standard changes imposed during the course of the franchise relationship.

The New Jersey Franchise Practices Act (“NJFPA”) contains perhaps the most widely known and developed unreasonable standards protection, making it unlawful for a franchisor “to impose unreasonable standards of performance upon a franchisee.”<sup>74</sup> The prohibition is freestanding, it is not limited to standards that result in termination, and courts have interpreted it broadly.<sup>75</sup> The NJFPA does not require a franchisee to prove bad intent; the inquiry focuses on the objective

---

<sup>72</sup> See 16 C.F.R. § 436.5(l) (FTC Franchise Rule Item 12 disclosure requirements for territory).

<sup>73</sup> Haw. Rev. Stat. § 482E-6(2)(G); Minn. R. 2860.4400.G; Neb. Rev. Stat. §87-406; N.J. Stat. Ann. § 56:10-7(e); Wash. Rev. Code § 19.100.220.

<sup>74</sup> N.J. Stat. Ann. § 56:10-7(e).

<sup>75</sup> In *Dunkin’ Donuts, Inc. v. Dough Boy Management, Inc.*, the court held that whether standards imposed by franchisor constituted an unreasonable standard of performance was a question for the jury. 2006 WL 20521, at \*11 (D.N.J. Jan. 3, 2006). In *Beilowitz v. General Motors Corp.*, it was determined that the franchisor imposed an unreasonable performance requirement when it required the franchisee to sustain a loss of \$11 million or 40 percent of sales by implementing a new marketing program. 233 F. Supp. 2d 631, 643–44 (D.N.J. 2002). Similarly, in *Gelardi Corp. v. Miller Brewing Co.*, the franchisor’s standards were unreasonable where they “made [franchisee’s] business life sufficient[ly] miserable that [the franchisee] was forced to quit its distribution of [franchisor’s] products in its primary area of responsibility.” 502 F. Supp. at 652–53.

reasonableness of the standard and its economic impact on the franchisee. A franchisee's ability to bring a claim under the NJFPA for unreasonable standards of performance provides meaningful leverage to challenge operations changes, quota requirements, capital expenditure mandates, and other franchisor-imposed obligations.<sup>76</sup>

New Jersey is not alone, though comparable protections are narrower in scope and the body of caselaw is less developed. Washington provides the strongest statutory analogue. The Washington Franchise Investment Protection Act prohibits a franchisor from imposing "any standard of conduct" by contract, rule, or regulation unless the franchisor "can sustain the burden of proving such to be reasonable and necessary."<sup>77</sup> Washington's formulation is notably more protective than New Jersey's in one critical respect: the burden of proof is placed squarely on the franchisor to affirmatively justify the standard, rather than on the franchisee to demonstrate unreasonableness. A franchisor seeking to enforce a contested performance standard in Washington must therefore be prepared to demonstrate not only that the standard is reasonable, but that it is necessary to the franchise system.

Minnesota's MFA generally prohibits franchisors from imposing unreasonable standards of conduct, although like other states with similar prohibitions, there is little guidance on how to determine the reasonableness of a particular standard. The Commissioner's rule defines it as an unfair and inequitable practice for a franchisor to "impose on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable."<sup>78</sup> Despite the rule's potential breadth, courts have noted the "dearth of authority"<sup>79</sup> on the issue and that "[g]uidance . . . is limited."<sup>80</sup> Whether a standard of conduct is reasonable is obviously a fact-intensive inquiry.<sup>81</sup> And it is equally obvious that a franchisor must impose some brand standards, which franchisees reasonably agree to follow as a condition to operating the franchise. Courts have avoided the issue by narrowly interpreting the phrase "standards of conduct." One court held that "standards of conduct" refers only to "the conduct of the franchisee while operating the franchise, rather than any rights that the franchisee has under the franchise agreement," and a mere "disparity between the rights of the parties . . . does not seem to be enough to render a franchise agreement unreasonable."<sup>82</sup> Another court has held that a franchisee's general claims about a franchisor's unreasonable conduct did not state a claim when it "fail[ed] to identify any standard of conduct" and instead "accuse[d] [the franchisor] of frustrating [its] ability to perform," which was more appropriately considered and dismissed under the franchisee's implied covenant of good faith and fair dealing claim.<sup>83</sup> And another court has held that a practice was not "imposed" on a franchisee

---

<sup>76</sup> The NJFPA expressly provides a private right of action, including injunctive relief and damages, for violations of its provisions. N.J. Stat. Ann. § 56:10-10.

<sup>77</sup> Wash. Rev. Code § 19.100.180(2)(h).

<sup>78</sup> Minn. R. § 2860.4400.G.

<sup>79</sup> *Klosek v. Am. Express Co.*, 2008 WL 4057534 (D. Minn. Aug. 26, 2008), *aff'd*, 370 F. App'x 761 (8th Cir. 2010).

<sup>80</sup> *Newpaper, LLC*, 2014 WL 2986653, at \*9.

<sup>81</sup> *Mainstream Fashions Franchising, Inc. v. All These Things, LLC*, 453 F. Supp. 3d 1167, 1190 (D. Minn. 2020) (denying motion to dismiss because "the reasonableness of this mandate is itself in dispute").

<sup>82</sup> *Klosek*, 2008 WL 4057534.

<sup>83</sup> *Newpaper, LLC*, 2014 WL 2986653, at \*9.

when it was free to decline participation in the program requiring it, even though the program represented “30–40% of [the franchisee’s] revenue.”<sup>84</sup>

Hawaii similarly prohibits franchisors from imposing “any unreasonable and arbitrary standard of conduct” by contract, rule, or regulation.<sup>85</sup> Hawaii’s statute adds a conjunctive requirement that the standard be both unreasonable and arbitrary, making it somewhat narrower than New Jersey’s prohibition, which reaches any “unreasonable” standard standing alone.

Beyond these states, other franchise relationship laws address related concerns through different mechanisms. The Indiana Deceptive Franchise Practices Act prohibits franchise agreements from containing terms that allow “substantial modification of the franchise agreement by the franchisor without the consent in writing of the franchisee,” providing franchisees indirect protection against unilaterally imposed new standards.<sup>86</sup> Indiana also prohibits franchisors from “discriminating unfairly among its franchisees” or “unreasonably failing or refusing to comply with any terms of a franchise agreement,” which can be invoked where a franchisor selectively enforces performance standards.<sup>87</sup>

These statutes have several significant real-world consequences for franchisors and franchisees. For franchisors, these provisions are particularly relevant when introducing new or modified system standards. Franchisors planning system-wide changes to required equipment, technology platforms, renovation specifications, or service protocols should assess the economic burden those changes impose on franchisees in covered states.

The interaction between these statutes and selective enforcement (discussed more fully below) is also noteworthy. Where a performance standard is enforced inconsistently across the franchise system—applied rigorously against some franchisees and overlooked in others—a franchisee facing termination may combine an “unreasonable standards” argument with a discrimination or waiver defense, compounding exposure in covered states. As discussed in Section III.D.2, at least eight states specifically prohibit franchisors from treating similarly-situated franchisees in an inconsistent manner, and the overlap between those prohibitions and an unreasonable standards claim can significantly strengthen a franchisee’s litigation posture.

## **2. *Inconsistent Treatment Risks and Discrimination***

Arkansas, California, Hawaii, Illinois, Indiana, Michigan, Minnesota, and Washington expressly prohibit inconsistent application of system standards or discrimination, statutorily. The differences in statutory mechanisms for the prohibition are rather stark and, accordingly, each state’s application is reproduced below:

### Arkansas

---

<sup>84</sup> *McCabe v. AIR-serv Grp., LLC*, 2007 WL 4591932, at \*5 (D. Minn. Dec. 28, 2007).

<sup>85</sup> Haw. Rev. Stat. § 482E-6(2)(G).

<sup>86</sup> Ind. Code § 23-2-2.7-1(3).

<sup>87</sup> Ind. Code § 23-2-2.7-2(5).

The Arkansas Franchise Practices Act (“AFPA”) does not directly prohibit a franchisor from discriminating against franchisees. However, if a franchisor is terminating or failing to renew a franchise for good cause due to the franchisee’s failure to comply substantially with the franchisor’s requirements, the requirements cannot be discriminatory as compared to requirements imposed on other similarly situated franchisees, either by their terms or how they are enforced.<sup>88</sup> No cases interpret this provision.

### California

In 2022, the legislature amended the CFIL to add a provision virtually identical to section 51.8 of the California Civil Code, except that in addition to prohibiting the discriminatory refusal to grant a franchise, the new provision also prohibits a franchisor from discriminatorily refusing to provide financial assistance “that has been granted or provided to other similarly situated franchisees or prospective franchisees.”<sup>89</sup>

### Hawaii

The HFIL requires franchisors and franchisees to deal with each other in good faith.<sup>90</sup> The HFIL makes it an “unfair or deceptive act or practice or an unfair method of competition” for a franchisor to “[d]iscriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing” in the absence of an applicable justifying exception.<sup>91</sup> Justifiable exceptions for treating franchisees differently are that the differentiation (1) is reasonably related to the franchises having been granted at materially different times; (2) results from the franchisor’s offering different terms “to persons with insufficient capital, training, business experience, education, or lacking other qualifications”; (3) relates to regional, local, or experimental variations; (4) relates to franchisees’ efforts to cure operational deficiencies or contractual defaults; or (5) is based on other reasonable, nonarbitrary distinctions, taking into account the purposes of the HFIL.<sup>92</sup>

### Illinois

The Act prohibits franchisors from “unreasonably and materially” discriminating between franchisees “in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, if such discrimination will cause competitive harm to a franchisee who competes with a franchisee that received the benefit of the discrimination.”<sup>93</sup> Because this language specifically targets price, the Northern District of Illinois has interpreted section 18 of the Act to only cover price discrimination.<sup>94</sup>

---

<sup>88</sup> Ark. Code Ann. § 4-72-202(7)(A).

<sup>89</sup> Cal Corp. Code § 31212.

<sup>90</sup> Haw. Rev. Stat. § 482E-6(1).

<sup>91</sup> *Id.* at § 482E-6(2)(C).

<sup>92</sup> *Id.*

<sup>93</sup> 815 Ill. Comp. Stat. § 705/18.

<sup>94</sup> *P & W Supply Co., Inc. v. E.I. DuPont de Nemours & Co., Inc.*, 747 F. Supp. 1262, 1267 (N.D. Ill. 1990).

Discrimination between franchisees is not a violation of the Act when it is (1) based on franchises granted at different times; (2) related to one or more programs for making franchises available to those with insufficient capital, training, business experience or education, or lacking other qualifications; (3) related to local or regional experimentation with product or service lines or business formats or designs; (4) related to efforts by one or more franchisees to cure deficiencies in their business; or (5) based on other reasonable distinctions “considering the purposes of [the] Act and is not arbitrary.”<sup>95</sup>

### Indiana

The Indiana Franchise Practices Act (“IDFPA”) prohibits unfair discrimination by the franchisor among franchisees in relation to the franchise agreement.<sup>96</sup> Indiana courts, however, have not defined “unfair discrimination” or otherwise discussed what it means.<sup>97</sup> Interpreting Indiana law, the Seventh Circuit Court of Appeals predicted that an Indiana court would find that “discrimination among franchisees means that as between two or more similarly situated franchisees, and under similar financial and marketing conditions, a franchisor engaged in less favorable treatment toward the discriminatee than toward other franchisees.”<sup>98</sup> Thus, in order to prove discrimination, a franchisee was required to make a showing of “arbitrary disparate treatment among similarly situated individuals or entities.”<sup>99</sup> Applying that standard, the court rejected a franchisee’s contention that price concessions were unfair simply because a sampling of price concessions suggested that some were worse than that provided to other franchisees.

### Michigan

Michigan does not have a generally prohibition against disparate treatment of franchisees, but does prohibit such treatment in certain circumstances. The Michigan Franchise Investment Law (“MFIL”) prohibits franchise agreements from including provisions that permit franchisors to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances.<sup>100</sup> This creates a limited equal treatment requirement for franchise renewals, preventing franchisors from offering different renewal terms to similarly situated franchisees without justification. MFIL also protects franchisees' associational rights by voiding any prohibition on a franchisee's right to join an association of franchisees.<sup>101</sup>

### Minnesota

---

<sup>95</sup> 815 Ill. Comp. Stat. § 705/18.

<sup>96</sup> Ind. Code § 23.2-2.7-2(5).

<sup>97</sup> *Andy Mohr Truck Ctr., Inc. v. Volvo Trucks N. Am.*, 869 F.3d 598, 603 (7th Cir. 2017) (“There is a dearth of precedent that might shed light on the meaning of discrimination for purposes of the IDFPA. As best we can tell, Indiana’s courts have not clarified what is meant by ‘unfair discrimination’ in the statute, nor what would be sufficient to make a showing.”).

<sup>98</sup> *Id.* at 604 (citing *Canada Dry Corp v. Nehi Beverage Co., Inc. of Indianapolis*, 723 F.2d 512, 521 (7th Cir. 1983).

<sup>99</sup> *Id.*

<sup>100</sup> Mich. Comp. Laws § 445.1527(e).

<sup>101</sup> *Id.* at (a)

The MFA prohibits discrimination between franchisees without a reasonable basis.<sup>102</sup> To succeed on a discrimination claim, the franchisee must establish that it is similarly situated to those franchisees receiving different treatment. A franchisor, however, may discriminate between franchisees “based on franchises granted at different times, geographic, market, volume, or size differences, costs incurred by the franchisor, or other reasonable grounds considering the purposes” of the MFA.<sup>103</sup> These exceptions may require fact-intensive inquiries that make early dismissal unlikely.<sup>104</sup> While it might appear a franchisor would bear the burden of proving the existence of an exception, one court placed it on the franchisee to prove discrimination by establishing differential treatment between only “similarly situated” franchisees “under similar financial and marketing conditions,” which the franchisee failed to do.<sup>105</sup>

### Washington

Under FIPA, a franchisor may not discriminate between franchisees in charges for royalties, goods, services, equipment, rentals, advertising services, or any other business dealing, unless the discrimination is (1) reasonable; (2) based on franchises granted at materially different times; (3) reasonably related to such differences; and (4) not arbitrary.<sup>106</sup>

### Wisconsin

Wisconsin’s prohibition against discriminatory treatment is expressly incorporated through its definition of “good cause.” Under the WFDL, “good cause” is defined as a “[f]ailure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement.” (emphasis added)<sup>107</sup>

Even in states without an explicit statutory prohibition on inconsistent enforcement, franchisees frequently assert that inconsistent enforcement constitutes a breach of the implied covenant of good faith and fair dealing. Courts generally give franchisors considerable latitude in selective enforcement cases, provided the franchisor can articulate a legitimate, non-arbitrary business reason for treating franchisees differently. Franchisors should document reasons for any differential treatment and should periodically audit their enforcement practices to identify any patterns of inconsistency that could create exposure.

---

<sup>102</sup> Minn. R. 2860.4400(B).

<sup>103</sup> *Id.*

<sup>104</sup> *Newspaper LLC v Party City Corp.*, 2014 WL 2986653 (D. Minn. 2014) (denying motion to dismiss even though “[t]he facts may later demonstrate” justification for differential treatment).

<sup>105</sup> *Kieland v. Rocky Mountain Chocolate Factory, Inc.*, 2006 WL 2990336 (D. Minn. 2006) (franchisee’s failure to establish it was similarly situated to franchisees whose royalty fees were waived was fatal to discrimination claim under MFA).

<sup>106</sup> Wash. Rev. Code § 19.100.180(2)(c).

<sup>107</sup> Wis. Stat. § 135.02(4)(a).

### III. Trends in Litigation and Legislation Impacting Franchise Relationship Laws

#### A. Recent Noteworthy Litigation Involving Franchise Relationship Laws

In the last two years, several cases have tested the limits of franchise relationship laws, particularly focusing on the jurisdiction and enforceability of these laws, but also analyzing the applicability of these laws on the franchise relationship. These cases demonstrate the scope of issues that arise under the franchise relationship laws. We address many of these cases below organized by the primary element of the franchise relationship laws addressed by the courts' decisions.

##### Jurisdiction and Enforceability

The jurisdiction and enforceability of a franchise relationship law is a frequently litigated issue. Logically, courts must determine whether a franchise relationship applies to a dispute between a franchisor and franchisee before determining if there has been a violation of that law.

In *Cambria Company, LLC v. M&M Creative Laminants, Inc.* the Minnesota Supreme Court recently held that the Minnesota Franchise Act ("MFA") does not "categorically preclude an out-of-state company from enforcing a claim for unfair practices".<sup>108</sup> A New Jersey federal court then relied upon *Cambria* to determine whether to enforce a New Jersey choice-of-law provision in an action against a Minnesota franchisee operating in Indiana.<sup>109</sup> The New Jersey Court declined to apply the MFA where the franchisee operated entirely outside Minnesota, despite being a Minnesota-based entity. Rather, the New Jersey court applied the New Jersey choice-of-law provision in the parties' franchise agreement, contrasting it with the *Cambria* case which involved a Minnesota choice-of-law provision. The *La Quinta* decision confirms that while the Minnesota Franchise Act may extend to franchisees operating outside Minnesota, its applicability ultimately turns on the specific facts of the relationship, including any contractual choice-of-law provisions.

In *Fiesta Ventures Bevercreek, LLC v. Qdoba Rest. Corp.*<sup>110</sup>, the franchisee claimed that a franchisor could not recover lost future royalties because they violated California public policy set forth in the CFRA. The Court did not decide this argument on the merits as it found that the CFRA did not apply because its application is limited only to those franchises, "when either the franchise is domiciled in this state or the franchised business is or has been operated in this state."<sup>111</sup> The franchise agreements at issue contained a California forum selection clause. But, the Court held that the CFRA simply does not apply in a case with out-of-state franchise locations.<sup>112</sup>

In another matter, a California court invalidated a provision in a Franchise Agreement requiring mediation in Texas.<sup>113</sup> The Court noted that, under the CFRA, if a franchise agreement contains

---

<sup>108</sup> *Cambria Company, LLC v. M&M Creative Laminants, Inc.*, 11 N.W.3d 318 (Minn. 2024).

<sup>109</sup> *La Quinta Franchising LLC v. Shin Hospitality, Inc.*, No. 22-5183, 2025 WL 2751542 (D.N.J. Sept. 29, 2025)

<sup>110</sup> 2025 U.S. Dist. LEXIS 162943, \*7-8

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* (citing Cal. Bus. & Prof. Code § 20015; see e.g., *Taylor v. 1-800-GOT-JUNK?, LLC*, 387 F. App'x 727, 729 (9th Cir. 2010) (stating that, "even though the parties stipulated to the application of Washington law," a Washington statute "was not applicable because of its territorial limitation")

<sup>113</sup> [\*Argus Cap. v. Allison\*, 2025 U.S. Dist. LEXIS 68192, \\*4-5](#)

a provision that is inconsistent with the law, the law will control. Therefore, the Court held that the mediation provision was unenforceable and void for violating the CFRA.

Similarly, a California court interpreted a franchise agreement containing a Florida forum selection clause, Florida choice of law clause, and a California Addendum that noted the application of the CFRA. Reading the various clauses together, the Court concluded that the franchise agreement calls for Florida law to apply except for situations where Florida law is inconsistent with the CFRA. In such situations, the CFRA applies. Here, because the forum selection clause designating Florida as the exclusive forum conflicted with the CFRA prohibition against such clauses, the forum selection clause was void.<sup>114</sup>

In a recent Connecticut matter, a dealer claimed that a manufacturer violated the Connecticut Franchise Act (“CFA”) by terminating a distribution agreement with insufficient notice, without cause, and in bad faith.<sup>115</sup> The Court noted that the CFA applies to “franchise agreements . . . , the performance of which contemplates or requires the franchisee to establish or maintain a place of business in this state.”<sup>116</sup> The Court found that the distribution agreement was not a “franchise agreement” within the meaning of the statute. In doing so, the Court evaluated the definition of a “franchise” under the CFA. The CFA defines “franchise” as:

"[A]n oral or written agreement or arrangement in which (1) a franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor . . . ; and (2) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, tradename, logotype, advertising or other commercial symbol designating the franchisor or its affiliate . . . ."<sup>117</sup>

The Court reviewed the amount of control exerted by the defendant manufacturer over the plaintiff dealer and concluded that plaintiff could not establish the first element above. The Court went on to find that plaintiff could not meet the second element either, noting the plaintiff’s sales of defendant’s product only amounted to 27.7% of its revenue.<sup>118</sup>

### Termination and Non-Renewal

As explained throughout this paper, most of the franchise relationship laws seek to regulate the termination process in an effort to protect a franchisee from arbitrary or wrongful terminations by the franchisor. These laws use a variety of methods to regulate the termination process including the imposition of a good cause standard and notice and cure periods. Many franchise relationship

---

<sup>114</sup> *Rocksolid Granit USA, Inc. v. Kingdom Renovations, Inc.*, 2024 U.S. Dist. LEXIS 251488, \*10-11

<sup>115</sup> *Bryka, LLC v. Holt Integrated Cirs., Inc.*, 2024 U.S. Dist. LEXIS 171031

<sup>116</sup> *Id.* (citing Conn. Gen. Stat. § 42-133h).

<sup>117</sup> Conn. Gen. Stat. § 42-133e(b)

<sup>118</sup> *Bryka, LLC v. Holt Integrated Cirs., Inc.*, 2024 U.S. Dist. LEXIS 171031, \*4-5

laws also seek to define the scope of an incurable default. Consequently, termination issues are a frequently contested aspect of litigation involving franchise relationship laws.

In *Dhillon v. 7-Eleven, Inc.*,<sup>119</sup> a California federal court evaluated an issue involving an incurable default under a series of franchise agreements. Specifically, the court was called upon to determine a franchisor's right to terminate without notice of opportunity to cure when a franchisee engages in conduct that reflects poorly upon the franchisor. The parties disputed whether the CFRA and the Franchise Agreements have parallel provisions permitting 7-Eleven to terminate without notice or opportunity to cure. Section 20021(d) of the CFRA and Paragraph 26(a)(7) of the Franchise Agreements both allowed for immediate termination where the franchisee engages in conduct which reflects materially and unfavorably upon the franchise. The Franchise Agreements, however, included language that 7-Eleven could terminate a franchisee when its conduct, "in [7-Eleven's] sole opinion," had a material adverse effect on the reputation of 7-Eleven. The franchisee argued that this language was violative of the CFRA. The Court found that while this provision of the Franchise Agreements includes subjective language, reading the provision as a whole, it conforms with the CFRA.

An Illinois Court recently addressed the good cause standard imposed on franchisors by the Illinois Franchise Disclosure Act ("IFDA") in response to a claim by the franchisee that the franchisor's termination of the franchise agreement was wrongful.<sup>120</sup> The IFDA prohibits termination of a franchise without good cause and defines "good cause" to include repeated failures to comply with the agreement. The interpretation of the term "repeatedly" was central to the court's decision. The court held that "repeatedly" means "more than once," so two defaults within twelve months constituted repeated failures. The agreements and the Illinois Act provide that, after repeated defaults, the franchisor may terminate without further notice or opportunity to cure. The court found that franchisor followed the contractual and statutory requirements for notice and termination.

A recent New Jersey case evaluated whether the "non-renewal" provision in a franchise agreement, which stated there were "absolutely no rights of license renewal or extension whatsoever," was enforceable under the New Jersey Franchise Practices Act (NJFPA).<sup>121</sup> The court held that this provision was unenforceable because it operated as a release that would relieve the franchisor from liability imposed by the NJFPA, specifically the requirement to show "good cause" for non-renewal. "Good cause" was defined as a failure by the franchisee to substantially comply with the franchise agreement. By this ruling, the court reaffirmed that any contractual provision violating the NJFPA is superseded by the statute and will be disregarded as unenforceable.

The Third Circuit vacated the District Court's grant of summary judgment for the franchisor because there was a genuine dispute of material fact regarding whether the franchisee substantially

---

<sup>119</sup> 2025 U.S. Dist. LEXIS 38829, \*17-18

<sup>120</sup> *In re Neely Grp., Inc.*, 2024 Bankr. LEXIS 1382

<sup>121</sup> *Scion Hotels LLC v. Holiday Hosp. Franchising LLC*, 2025 U.S. App. LEXIS 19129

complied with the agreement. The evidence did not indisputably show that the franchisee operated a competing franchise or directly defied the agreement during its term.

The Third Circuit also vacated the District Court's determination that the franchisee failed to present evidence of damages attributable to the franchisor. The court found that if the franchisee prevails on the wrongful non-renewal claim, the franchisor may be liable for costs incurred by the franchisee as a result of the non-renewal.<sup>122</sup>

Notably, this case also involved claims by the franchisee alleging that the franchisor imposed unreasonable standards of performance and constructively terminated the franchisee. The Third Circuit rejected these claims and affirmed the District Court's summary judgment for the franchisor on the constructive termination and unreasonable standards of performance claims, but vacated and remanded on the wrongful non-renewal claim and the damages determination.

### Consent to Transfer

Another frequently litigated issue in state's with franchise relationship laws is whether a franchisor unreasonably withheld consent to the franchisee's transfer of the franchise.

In one recent California case, the CFRA was utilized to benefit a franchisor who had withheld consent to a franchise transfer because the proposed transferee did not meet the franchisor's standards for new franchisees.<sup>123</sup> While noting that a franchisor cannot unreasonably withhold consent if the transferee meets the standards and conditions, the Court concluded that the franchisor here did not unreasonably withhold consent. In the same case, the court rejected arguments that the CFRA preempts or excludes the Lanham Act, finding that both laws can coexist and both provide independent bases for the franchisor to withhold consent.

The Michigan Court of Appeals recently evaluated the enforceability of a consent to transfer provision in a franchise agreement under the Michigan Franchise Investment Law ("MFIL").<sup>124</sup> The franchisee contended that the MFIL rendered the consent-to-assign provision unenforceable. The court determined that the MFIL does not void such provisions if the franchisor has good cause for withholding consent at the time of the proposed transfer. The court examined whether the franchisor had good cause to require new franchisees to sign updated franchise agreements as a condition for consenting to the transfer. The court held that the franchisor's requirement was commercially reasonable and constituted good cause. This was especially true in the instant matter because the prior franchise agreement was decades old and the franchisor had a legitimate need for an updated agreement to address modern legal, technological, and competitive issues and to ensure brand consistency.

---

<sup>122</sup> *Id.*

<sup>123</sup> *In re Pinnacle Foods of Cal., LLC*, 2024 Bankr. LEXIS 3046

<sup>124</sup> *Oakland Fam. Rests., Inc. v. Am. Dairy Queen Corp.*, 2025 U.S. App. LEXIS 5980

## Non-Compete

The scope and enforceability of a non-compete provision is often evaluated by the courts in the context of a franchise relationship law dispute.

An Ohio Court recently evaluated the applicability of the Connecticut Franchise Act (“CFA”) to a claim by a franchisor that the franchisee violated a non-compete clause.<sup>125</sup> The court found that, even if the franchise agreement included terms relating to termination and therefore under the purview of the CFA, it would only matter if the noncompete provision was inconsistent with the CFA. In this case, the court found that noncompete provision at issue was not inconsistent with the CFA.

## Statutory Interpretation

In some instances, courts have been required to assess the validity of a claim under a franchise relationship statute, not in the sense of jurisdiction, but to determine whether a private right of action even exists.

An extremely interesting case in Michigan recently found that a private right of action does not exist under § 445.1527 of the MFIL.<sup>126</sup> The case was venued in the United States District Court for the eastern District of Michigan. The franchisee in that case asserted a counterclaim alleging violations of the MFIL, which restricts certain provisions in franchise agreements, including termination without good cause. The legal issue centered on whether a private right of action exists for violations of the MFIL, specifically § 445.1527. Earlier Sixth Circuit decisions had implied such a right. However, in 1997, the Michigan Court of Appeals held that the MFIL does not create a private right of action for these violations, based on the statute’s plain language.<sup>127</sup> The Michigan Supreme Court refused to review the decision. The federal court in this case determined that, when interpreting state law, federal courts must follow the most authoritative statement of state law, which in this case is the Michigan Court of Appeals’ decision. The Michigan Supreme Court’s refusal to review that decision further solidified its authority. As a result, the court dismissed the MFIL counterclaim, holding that no private right of action exists under Michigan law for violations of MFIL § 445.1527.

## Unreasonable Standards of Performance

Several recent cases have also explored the issue of whether a franchisor has imposed unreasonable standards of performance upon its franchisee.

---

<sup>125</sup> *H.H. Franchising Sys., Inc. v. Missionera LLC*, 2024 U.S. Dist. LEXIS 213075, \*11-12

<sup>126</sup> *Benjamin Franklin Franchising SPE LLC v. David Michael Plumbing Inc.*, 2024 U.S. Dist. LEXIS 155703

<sup>127</sup> *Franchise Management Unlimited, Inc. v. America's Favorite Chicken*, 221 Mich. App. 239, 561 N.W.2d 123, 129 (Mich. Ct. App. 1997)

In *Bank United, NA v. GC of Vineland, LLC*<sup>128</sup>, franchisees alleged a violation of the New Jersey Franchise Practices Act (“NJFPA”) claiming that the franchisor imposed unreasonable standards of performance. The NJFPA bars franchisors from imposing “unreasonable standards of performance” on franchisees. The court found that the franchisees’ NJFPA claims failed because the franchisees could not show that the franchisor’s conduct caused the franchisees any substantial loss. Although neither the statute nor case law provides a precise definition of this phrase, the *Bank United* court noted that other courts had identified arbitrariness, bad intent, or severe economic harm as common indicators of an unreasonable standard. In practical terms, the franchisor must require the franchisee to undertake a measurable action that is objectively unreasonable. The Court found that most of the standards challenged by the franchisees were not actually standards of performance. The remaining standards were found to be insufficient because they were not arbitrary, motivated by bad faith, or financially ruinous.

In another New Jersey case, the franchisee alleged that its franchisor violated the NJFPA arguing that the imposition of penalty fees and a 24-hour operation requirement constituted unreasonable standards of performance.<sup>129</sup> The NJFPA prohibits franchisors from imposing unreasonable standards but provides a defense if the franchisee fails to substantially comply with the agreement.<sup>130</sup> Here, the franchisee’s admitted breach of the minimum net worth provision gave the franchisor a statutory defense. The court held that the franchisee’s noncompliance gave the franchisor a statutory defense and eliminated any reasonable dispute about its liability.

In the franchisee’s view, the court ignored that an unreasonable standard of performance caused its breach in the first place. The franchisee claimed that by penalizing it for failing to operate twenty-four hours per day when it was prohibited by local law from so operating, the franchisor left the franchisee with a “Hobson’s choice - either operate the Princeton [s]tore at a loss or not at all.”<sup>131</sup> This Third Circuit agreed with the District Court finding that the franchisor’s behavior did not rise to the level of arbitrariness, bad intent, or economic ruin. This was a fact specific finding because the court considered that the franchisor had offered to waive the penalty during the period when the franchisee’s net worth fell below the minimum. The franchisee simply chose not to accept the extension because it wanted a permanent waiver. The Court concluded that the franchisor’s imposition of the fee after the franchisee turned down the franchisor’s waiver offer was not unreasonable, but was rather the product of the parties’ original agreement, which did not promise a permanent waiver.<sup>132</sup>

## **B. Recent or Proposed Legislation Involving Franchise Relationship Laws**

Several states have recently proposed legislation that would create a franchise law or impact existing franchise relationship laws if passed.

---

<sup>128</sup> Bus. Franchise Guide (CCH) ¶ 17,475, No. 18cv12879, 2024 WL 1299024 (D.N.J. Mar. 27, 2024), *aff’d*, 2025 WL 636306 (3d Cir. Feb. 26, 2025).

<sup>129</sup> *SAT Agiyar, LLC v. 7 Eleven, Inc. V. Naresh R. Patel*, 2026 U.S. App. LEXIS 6407, \*5

<sup>130</sup> N.J. Stat. Ann. § 56:10-7(e), § 56:10-9

<sup>131</sup> *SAT Agiyar, LLC v. 7 Eleven, Inc. V. Naresh R. Patel*, 2026 U.S. App. LEXIS 6407, \*5

<sup>132</sup> *Id.*, \*5-7

New Mexico does not currently have a franchise relationship law, but current proposed legislation is proposing the adoption of a franchise relationship law that is similar to the Indiana Deceptive Franchise Practices Act.<sup>133</sup> The proposed legislation prohibits, among other things: certain limitations on supply chain, substantial modification of the franchise agreement without franchisee's consent, termination or non-renewal without good cause, and non-competes of longer than 2 years. The proposed legislation also seeks to prevent a franchisor from establishing a franchisor-owned outlet within the exclusive territory and from discriminating unfairly among its franchisees.

Virginia Senate Bill 798 sought amend the Virginia Retail Franchising Act to prohibit a franchise agreement from restricting a franchisee's right to operate a competing business after termination or expiration, require all franchise agreements for Virginia locations to be governed by Virginia law.<sup>134</sup> This bill passed the Virginia Senate unanimously on Jan. 17, 2025 but was killed in the House Labor & Commerce Committee.

Several other states, including New Jersey, Alaska, and North Carolina have proposed legislation that would amend their respective motor vehicle franchise statutes.

#### **IV. Best Practices to Maintain Compliance and Strengthen Franchise Relationships**

Navigating the patchwork of state franchise relationship laws requires more than reactive compliance at the moment of termination or non-renewal. The best franchisors treat relationship law compliance as an ongoing operational discipline, embedded in franchise agreement design, franchisee communications, and field operations long before any dispute arises. This section identifies the core practices that enable franchise systems to stay ahead of the legal landscape and manage franchisee relationships in a manner that minimizes the risk of costly disputes.

##### **A. Monitor Changes in State Franchise Relationship Laws**

The franchise relationship law landscape is not static. Legislatures regularly amend existing statutes, courts issue decisions that alter the interpretation of key provisions, and new legislation is introduced in states that have not previously regulated the franchise relationship. The Arkansas General Assembly amended the Arkansas Franchise Practices Act in 2023 to clarify its applicability and to expand the scope of the statute.<sup>135</sup> California amended the CFRA in 2022, effective January 1, 2023, to add additional restrictions on termination and nonrenewal, including a prohibition on any franchise agreement provision requiring the franchisee to waive CFRA rights, and a bar on franchisors modifying a franchise agreement in exchange for any assistance related

---

<sup>133</sup> New Mexico S.B. 439, 57<sup>th</sup> Leg. (2025).

<sup>134</sup> Virginia S.B. 798 (2025 session).

<sup>135</sup> Ark. Code Ann. §§ 4-72-201 to 4-72-212, as amended by Act 579 of 2023, effective August 1, 2023 (clarifying applicability and expanding scope of the Arkansas Franchise Practices Act).

to a declared state or federal emergency.<sup>136</sup> At the time of this publication, pending legislation in New Mexico, New Jersey, and Maryland, may significantly affect the notice, good cause, and cure requirements applicable to franchisors in those states. Franchisors should establish a systematic process for tracking legislative and judicial developments in every state where they have franchised units.

## **B. Customize Franchise Agreements for States with Franchise Relationship Laws**

The most effective form of compliance preparation is drafting franchise agreements that are properly calibrated for the regulatory environment in which they will be used. A one-size-fits-all franchise agreement that fails to account for the requirements of the states in which franchisees will be located exposes the franchisor to avoidable risk.

### **1. State-Specific Addenda**

Most franchise systems use a master franchise agreement supplemented by state-specific addenda or riders that modify the agreement's terms to comply with applicable state law. These addenda should address, at a minimum: the good cause standard applicable in the state, the required notice and cure periods for various types of defaults, buyback obligations, non-compete restrictions, and any renewal rights or obligations imposed by the state statute. Addenda should be updated whenever the applicable law changes.

### **2. Choice-of-Law Provisions**

Choice-of-law provisions must be carefully drafted to account for anti-waiver provisions in states with relationship laws. California's domicile-based jurisdiction cannot be overridden by a choice-of-law provision.<sup>137</sup> Minnesota's anti-waiver provision voids choice-of-law provisions for Minnesota resident franchisees.<sup>138</sup> The WFDL's effect may not be varied by contract.<sup>139</sup> Virginia's anti-waiver provision prevents even contractual waiver of the VRFA's protections.<sup>140</sup>

Where the franchisor's home state has a relationship law, the choice-of-law provision should expressly state whether that law is intended to apply and, if so, whether it applies in addition to or in lieu of the law of the state where the franchise unit is located. Where the home state relationship law's jurisdictional elements are not met, the provision should expressly exclude its application.

### **3. Notice Provisions**

Notice provisions in the franchise agreement should comply with, and ideally exceed, the minimum requirements imposed by applicable state law. Franchisors should specify the method and address for delivery of notices, the events that trigger the running of cure periods, and the

---

<sup>136</sup> Cal. Bus. & Prof. Code § 20044 (added by 2022 CFRA amendments, effective January 1, 2023) (prohibiting franchisor from modifying a franchise agreement in exchange for any assistance related to a declared state or federal emergency; also prohibiting franchise agreement provisions requiring the franchisee to waive CFRA rights).

<sup>137</sup> Cal. Corp. Code § 31512.

<sup>138</sup> Minn. Stat. § 80C.21.

<sup>139</sup> Wis. Stat. § 135.025(3); Wis. Stat. § 553.76.

<sup>140</sup> Va. Code Ann. § 13.1-571(c).

standards for determining when notice is deemed received. These provisions should be reviewed periodically to ensure that they remain consistent with current statutory requirements.

#### **4. *Transfer Provisions***

Transfer provisions in the franchise agreement should align with applicable statutory response windows (i.e. 60-days for Arkansas (before August 1, 2023) California, Iowa, New Jersey, Nebraska, and New Jersey and 30-days for Arkansas (August 1, 2023 and after) and Hawaii) and should address the consequence of failing to respond within the statutory period (deemed approval). Transfer criteria should be documented, applied consistently, and capable of withstanding the objective scrutiny imposed by the NJFPA standard of substantial objective evidence showing that the proposed transferee is materially deficient.

#### **5. *Non-Compete and Post-Termination Obligations***

Non-compete covenants and other post-termination restrictions are subject to increasing scrutiny at both the state and federal levels. California renders most post-term covenants not to compete unenforceable. Washington regulates non-compete covenants under RCW § 49.62. Minnesota requires that post-term noncompetes serve a legitimate business purpose and be reasonable in scope, time, and geography. Franchisors should work with counsel to ensure that their non-compete provisions are tailored to comply with applicable state law and to maximize the likelihood of enforcement in the event of a post-termination dispute.

### **C. *Create a Predictable Business Environment for Franchisees***

Perhaps the most underappreciated strategy for minimizing franchise relationship law risk is investing in the quality of the franchise relationship itself. Franchisors that maintain open lines of communication, enforce their standards consistently, support franchisees who are struggling in good faith, and demonstrate genuine commitment to franchisee success are far less likely to face termination disputes—and far better positioned to prevail in any dispute that does arise.

#### **1. *Consistent and Transparent Enforcement***

As discussed in Section II.E, selective enforcement is one of the most common franchisee defenses in termination litigation. The best antidote to this defense is consistent enforcement of standards across the system. Franchisors should audit their enforcement practices periodically to identify any patterns of inconsistency, and should document the reasons for any differential treatment.

#### **2. *Early Warning Systems and Proactive Communication***

Many terminations could be avoided if potential problems were identified and addressed at an early stage. Franchisors should implement systematic processes for monitoring franchisee performance, including regular review of financial data, field inspection reports, customer complaint trends, and royalty payment history, and for escalating concerns through appropriate channels before they ripen into defaults. When a potential problem is identified, the first response should generally be a direct, constructive conversation with the franchisee rather than a formal

notice. Where the franchisee is experiencing genuine financial or operational difficulty, exploring a workout agreement or other alternative to termination may produce a better outcome for both parties.

### **3. *Regular Cross-Functional Reviews***

Effective management of the franchise relationship requires coordination across multiple functions within the franchisor's organization. Legal, operations, finance, field support, and franchise development teams may each have visibility into aspects of a franchisee's performance that are not apparent to the others. Franchisors should establish a regular cadence of cross-functional meetings at which franchisee performance issues are surfaced, discussed, and addressed in a coordinated manner. Monthly meetings, at a minimum, are advisable for systems of any meaningful scale.

### **4. *Documentation as a Cultural Practice***

Throughout the franchise relationship, franchisors should maintain thorough written records of their interactions with franchisees. This includes inspection reports, correspondence about performance concerns, records of assistance provided, and notes from significant conversations. The importance of a complete documentary record cannot be overstated: under Minnesota law, a notice of termination citing nonpayment must state the exact amount owed.<sup>141</sup> Under the WFDL, a grantor may not rely on a reason not stated in the termination notice.<sup>142</sup> Both requirements can only be satisfied by a franchisor that has maintained accurate, contemporaneous records throughout the relationship.

### **5. *Staying Current on Litigation Trends***

The judicial interpretation of franchise relationship laws evolves continuously. Decisions from state and federal courts regularly refine the standards for good cause, the scope of permissible notice and cure periods, the enforceability of non-compete covenants, and the remedies available for violations of relationship statutes. Franchisors should monitor these developments through participation in IFA educational programs, engagement with franchise counsel, and review of industry publications. When significant decisions are issued in key markets, the franchisor should assess whether changes to its agreements or practices are warranted.

## **V. Conclusion**

Franchise relationship laws reflect a legislative judgment that the power imbalance inherent in the franchisor-franchisee relationship, combined with the substantial investments franchisees make at the outset, warrants special legal protection. These statutes share a common purpose but diverge substantially in their mechanics, thresholds, and remedial frameworks. For franchisors, these laws

---

<sup>141</sup> Minn. Stat. § 80C.14.

<sup>142</sup> Wis. Stat. § 135.04.

are not merely compliance requirements to be managed reactively--they are a framework within which the entire franchise relationship must be structured and operated.

The practical implications of franchise relationship laws touch nearly every aspect of system management: the drafting of franchise agreements, the design of territorial rights, the enforcement of brand standards, the handling of struggling franchisees, and the management of system-wide changes. Franchisors that approach these laws as obstacles to be navigated around are likely to find themselves in costly and avoidable litigation. Those that treat compliance as a core business practice will be better positioned to build durable, high-performing franchise systems.

Several themes emerge from the analysis in this paper that warrant particular emphasis as practitioners and franchise executives work through the legal landscape. First, the jurisdictional complexity of franchise relationship laws demands constant vigilance. The analysis does not end with identifying the state where the franchise unit is located; it must account for the franchisee's domicile, where the franchise was offered and accepted, and the choice-of-law provisions of the franchise agreement. Anti-waiver provisions in multiple states render contractual attempts to displace statutory protections void. With new legislation pending in multiple states, this analysis will need to be revisited regularly.

Moreover, the good cause standard, whatever its specific formulation in a given state, requires substantive justification for termination, not merely technical breach. Franchisors that build a strong evidentiary record over the course of the relationship are far better positioned to satisfy this standard than those that scramble to document deficiencies after a termination decision has been made. In addition, procedural compliance with notice content, delivery requirements, cure periods, and post-termination obligations is not a secondary consideration. Many terminations that are substantively justified fail to withstand legal challenge because of procedural errors that could have been avoided with careful pre-notice review.

Lastly, and perhaps most importantly, the best compliance strategy is a strong franchise relationship. The legislative policy underlying virtually all of these statutes is the protection of franchisees against unfair treatment by grantors who inherently have superior economic and bargaining power. Franchisors that invest in franchisee success, enforce their standards fairly and consistently, communicate transparently, and treat their franchisees as genuine business partners are far less likely to face the situations in which franchise relationship laws become relevant. When disputes do arise, those franchisors will be in a far stronger position to resolve them efficiently and on favorable terms.

We hope that this overview provides a useful foundation for understanding the role of franchise relationship laws in the management of franchise systems. As with all areas of franchise law, the specific facts of each situation and the current state of applicable law must be carefully evaluated before any action is taken.



