

House Bill 809

By: Representatives Jenkins of the 110<sup>th</sup>, Coleman of the 142<sup>nd</sup>, Walker of the 141<sup>st</sup>, Twiggs of the 8<sup>th</sup>, Parrish of the 144<sup>th</sup> and others

A BILL TO BE ENTITLED  
AN ACT

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
13 amended by inserting at the end thereof the following:

14 "CHAPTER 15  
15 ARTICLE 1

16 10-15-1.

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

19 10-15-2.

20 As used in this chapter, the term:

21 (1) 'Area franchise' means any contract or agreement between a franchisor and a  
22 subfranchisor whereby the subfranchisor is granted the right, for consideration given in

1 whole or in part for such right, to sell or negotiate the sale of franchises in the name or  
2 on behalf of the franchisor.

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

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

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

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

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

14 (i) Lease departments, licenses, or concessions at or with a general merchandise retail  
15 establishment where the lease department, licensee, or concessionaire is incidental  
16 and ancillary to the general commercial operation of the retail establishment. Sales  
17 of a lease department, license, or concessionaire are incidental and ancillary to the  
18 general commercial operation of the retail establishment if they amount to less than  
19 10 percent of the establishment's sales; or

20 (ii) A nonprofit organization operated on a cooperative basis by and for independent  
21 retailers which wholesales goods and services primarily to its member retailers and  
22 in which:

23 (I) Control and ownership of each member is substantially equal;

24 (II) Membership is limited to those who will use the services furnished by the  
25 organization;

26 (III) Transfer of ownership is prohibited or limited;

27 (IV) Capital investments receive no return;

28 (V) Substantially equal benefits pass to the members on the basis of patronage of  
29 the organization;

30 (VI) Members are not personally liable for obligations of the organization in the  
31 absence of a direct undertaking or authorization by them;

32 (VII) Services of the organization are furnished primarily for the use of the  
33 members;

34 (VIII) Each member and prospective member is provided with an offering circular;

35 (IX) No part of the receipts, income, or profit of the organization is paid to any  
36 profit-making entity, except for arm's length payments for necessary goods and

1 services, and members are not required to purchase goods or services from any  
2 designated profit-making entity; and

3 (X) The nonprofit organization is subject to an action for rescission or damages if  
4 the organization fraudulently induced the plaintiff to join the organization.

5 (3) 'Franchisee' means a person to whom a franchise is granted.

6 (4) 'Franchise fee' means any fee or charge that a franchisee or subfranchisor is required  
7 to pay or agrees to pay for the right to enter into a business under a franchise agreement,  
8 including, but not limited to, any such payment for such goods and services; provided,  
9 however, that the following shall not be considered the payment of a franchise fee:

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

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

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

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

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

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

## 27 ARTICLE 2

28 10-15-20.

29 Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior  
30 to the expiration of its term, except for good cause. Good cause shall include, but not be  
31 limited to, the failure of the franchisee to comply with any lawful requirement of the  
32 franchise agreement after being given at least 90 days' notice to cure the failure. If the  
33 franchisor is the sole provider of goods or services under the terms of the franchise  
34 agreement, the franchisor may not suspend the sale of goods or the provision of services  
35 during the period allowed to cure any such failure.

1 10-15-21.

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

3 (1) Be in writing;

4 (2) Be posted by registered, certified, or other receipted mail, delivered by telegram, or  
5 personally delivered to the franchisee; and

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

8 10-15-22.

9 If during the period in which the franchise is in effect there occurs any of the following  
10 events which is relevant to the franchise, immediate notice of termination without an  
11 opportunity to cure shall be deemed reasonable:

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

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

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

20 (4) The franchisee repeatedly fails to comply with one or more requirements of the  
21 franchise, but in no event where the franchisee takes corrective action pursuant to Code  
22 Section 10-15-20 to remedy such failure after proper notice;

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

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

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

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

1 10-15-23.

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

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

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

10 10-15-24.

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

16 ARTICLE 3

17 10-15-40.

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

22 10-15-41.

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

26 10-15-42.

27 No franchisor shall deny the surviving spouse, heirs, or estate of a deceased franchisee or  
28 the majority shareholder of the franchisee the opportunity to continue to participate in the  
29 ownership of the franchise under the franchise agreement between the franchisee and  
30 franchisor. No franchisor shall require any training or qualification for any such person for  
31 a period of six months following the death of the franchisee or principal shareholder;

1 provided, however, that during such period the surviving spouse, heirs, or estate of the  
2 deceased shall maintain all lawful standards and obligations of the franchise.

3 10-15-43.

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

6 10-15-44.

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

9 10-15-45.

10 Any violation of this chapter by a franchisor shall be unfair trade practice subject to the  
11 provisions of Article 1 of Chapter 6 of this title. In addition, any individual who is harmed  
12 as a result of a violation of this chapter shall have a cause of action against the person  
13 whose violation caused the harm."

14 **SECTION 2.**

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