

**RETAIL FRANCHISING IN VIRGINIA**

---

**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL  
TO  
THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



HD 2, 1972

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1972



## MEMBERS OF COUNCIL

---

ROBERT C. FITZGERALD, *Chairman*  
ARTHUR H. RICHARDSON, *Vice-Chairman*  
M. CALDWELL BUTLER  
RUSSELL M. CARNEAL  
C. W. CLEATON  
HENRY E. HOWELL, JR.  
EDWARD E. LANE  
LEWIS A. McMURRAN, JR.  
WILLARD J. MOODY  
GARNETT S. MOORE  
SAM E. POPE  
JAMES M. THOMSON  
JAMES C. TURK  
EDWARD E. WILLEY

---

## STAFF

JOHN B. BOATWRIGHT, JR.  
WILDMAN S. KINCHELOE, JR.

JOHN A. BANKS, JR.	LAURENS SARTORIS
ROBERT B. COUSINS, JR.	SALLY T. WARTHEN
KATHERINE L. GOOLSBY	G. WILLIAM WHITE, JR.
ARTHUR H. HORWITZ	ROGER C. WILEY
L. WILLIS ROBERTSON, JR.	



**RETAIL FRANCHISING IN VIRGINIA**  
REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia  
November 24, 1971

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*  
and  
THE GENERAL ASSEMBLY OF VIRGINIA

*I. INTRODUCTION*

The widespread sale of franchises is a relatively new form of business which has created numerous problems, both from an investment and a business point of view in the United States. Some members of the Virginia General Assembly have been told that franchisees in the Commonwealth have suffered substantial losses where the franchisor, or his representative, has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor. In order to study the need for legislation in this matter, the General Assembly enacted House Joint Resolution No. 79 at its 1970 Session.

HOUSE JOINT RESOLUTION NO. 79

Directing the Virginia Advisory Legislative Council to make a study and report on retail franchising in Virginia.

Whereas, retail franchising is and has been for an extended period an important segment of business and commercial activity in the Commonwealth; and

Whereas, retail franchising has expanded in recent years at the phenomenal rate of fifteen per centum per year, accounting for ten per centum of the total output of goods and services in the United States, and nearly twenty-eight per centum of all retail sales; and

Whereas, a similar growth in franchising is evident in Virginia, with a considerable effect on the economy and commerce of the Commonwealth and on the general welfare of the citizens thereof; and

Whereas, a study of the franchising industry is necessary to determine what adverse effects, if any, it has had at the State level on free trade and competition, the adverse effects, if any, that such industry has had on existing commercial enterprises within the Commonwealth, and to assess the adequacy of existing Virginia laws to deal with these problems; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study of retail franchising and the franchising industry generally in Virginia, with particular emphasis on any unfair or anticompetitive practices existing in franchising, oppressive franchise creations and cancellations,

and the relative rights and obligations as between franchisers and franchisees; and to recommend legislation, if any, which the Council may deem desirable and proper to deal with such problems.

The Council shall conclude its study and make its report to the Governor and the General Assembly by November first, nineteen hundred seventy-one.

Delegate Russell M. Carneal of Williamsburg, a member of the Council, was selected as Chairman of a committee to conduct the initial study. Also selected to serve on this committee were: Delegate C. W. Cleaton of South Hill; Mr. Stephen Hartwell of Fairfax County; Mr. Lewis A. Haskell, Jr. of Arlington; Mr. Tom M. Hook of Alexandria; Delegate Frank E. Mann of Alexandria; Mr. Russell W. Miller of Richmond; Senator Willard J. Moody of Portsmouth; Mr. Paul E. Mullinix of Richmond; Delegate Stanford E. Parris of Fairfax; Mr. J. Linwood Rice of Richmond; Mr. Harold H. Scott of Richmond; Mr. William C. Vaughan of Lynchburg; and Senator Edward E. Willey of Richmond.

Mr. Parris was elected Vice-Chairman of the Committee.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study; they assigned the necessary employees to assist the members and the study group at all times.

The Study included numerous meetings in Richmond; conferences with representatives of the Federal Trade Commission, the Senate Subcommittee on Antitrust and Monopoly and franchisee and franchisor organizations; and public hearings in Arlington, Roanoke and Norfolk.

## II. PROBLEMS IN RETAIL FRANCHISING

Mr. Harold Brown, an attorney from Boston, Massachusetts, who has assumed the role as a leading national spokesman for all franchisees, spoke before this Study, and has spoken before Congressional studies and throughout the country, on the "gross imbalance" which exists between the franchisor and its franchisees. In his book, *Franchising: Trap for the Trusting* (Little, Brown and Company, 1969, p. 41), he says:

"There is a marked, intentional, and constantly emphasized disparity in the positions of the parties—the franchisor combining the roles of father, teacher, and drill sergeant, with the franchisee relegated to those of son, pupil, and buck-private, respectively. At the core of the franchise relationship is the contractual control exercised by the franchisor over every aspect of the franchisee's business. Starting with the advertisement which calls for no experience, the franchisor inculcates the franchisee with the necessity of being taught, guided, and controlled not only during the initial training period but throughout the existence of the franchise. The franchisor controls the site, commissary purchases, purchases from other vendors, method of business operations, labor practices, quality control, merchandising, and even record keeping. This control is buttressed by the contractual requirement that the franchisee must obey the commands of the Operating Manual as expounded by the franchisor's supervisor, on pain of losing the franchise if he disobeys them and under constant threat

of such termination. And upon termination, or failure to renew, the franchisee is confronted with the covenant not to compete and forfeiture of his equity in the business.”

At his appearance before this Study, Mr. Brown enumerated the following as types of unconscionable acts which are perpetrated against franchisees as a result of this “gross imbalance”:

1. Fraud and abuse in the sale of franchises, in some cases where the franchisee is doomed to lose his entire investment.
2. Franchisors’ engaging in direct competition with their own franchisees at the retail level through “company” stores which they control, and direct sales to large consumers at below dealer’s cost.
3. The purchase of merchandise being forced upon franchisees, often at inflated prices.
4. Restrictions upon franchisees from selling goods and services at their retail outlet other than those covered by the franchise agreement.
5. Cancellations of franchise agreements or failure to renew them without just cause.
6. “Kickbacks” to franchisors from third party vendors.
7. A proliferation of franchise outlets.
8. A premeditated plan of franchisors to reacquire their franchise outlets at little or no cost.

The major complaints made by franchisees who appeared at the Public Hearings of the Study Committee also concerned the unequal bargaining position between them and their franchisors and alleged pressures that were brought against them as a result of such unequal economic positions. These were all traditional type of franchisees; they were predominantly gasoline station operators. Their main complaints were:

1. Discrimination between competing retailers.
2. Unfair or discriminatory rental increases.
3. Nonrenewal of short-term franchise agreements or leases, or threats of such nonrenewal for a variety of reasons, such as failure to stay open during unprofitable hours, failure to give trading stamps or participate in other types of promotional programs, and failure to purchase a sufficient quantity of company-sponsored merchandise.
4. Unfair competition from “commission-manager” or company-owned and operated retail outlets.
5. Restrictive franchise provisions which prohibit franchisees from engaging in other merchandising or retail operations on his premises.

### III. POSSIBLE SOLUTIONS TO THE PROBLEMS

Many forms of legislation have been suggested by various interests.

Mr. Gale P. Gotschall, Counsel for Federal-State Cooperation, Federal Trade Commission, recommended that the State enact a “little FTC Act”

enabling the State Attorney General or other designated officials to investigate and obtain injunctions with respect to "unfair methods of competition and unfair and deceptive acts or practices" in the conduct of any trade or commerce.

Mr. Charles Bangert, General Counsel, United States Senate Subcommittee on Antitrust and Monopoly, expressed his belief that if any substantial retail franchising legislation is to be enacted, it will be done by the states, considering the general feelings of Congress that this is a state rather than a federal matter. His Subcommittee has drafted and sponsored three separate bills on retail franchising, dealing with a principal objective, as follows: (1) To insure that adequate compensation be made to a franchisee by a franchisor upon termination of a franchise agreement unless the franchisee acted in bad faith, (2) to require 90 days' notice before cancellation or failure to renew a franchise agreement without good cause, and (3) to require certain disclosures by franchisors who are offering a franchise for sale.

Mr. Harold Brown called for legislation to regulate the sale of franchises, to include public disclosure, the licensing of salesmen, and broad anti-fraud provisions now applicable to the sale of other securities. He also spoke of the necessity of prohibiting the cancellation or failure to renew franchise agreements without good cause.

Mr. James W. Heizer, Executive Secretary, Virginia Gasoline Retail Association, Incorporated, was the leading spokesman for Virginia gasoline dealers during the Study and he suggested many legislative changes to cure the problems involved, such as:

1. Amending §§ 59.1-17 and 59.1-18 of the Code of Virginia to remove the requirement that a complainant bear the cost of investigating alleged violations of the Virginia Unfair Sales Act, and the cost of prosecuting such alleged violations when the costs are not properly taxable against the violator.

2. Amending § 59.1-19 of the Code of Virginia to remove the requirement that an association of wholesalers or retailers bear the expense of publishing and circulating the Virginia Unfair Sales Act when this is done at the instance of such association.

3. Amending § 59.1-11 (2) of the Code of Virginia, which defines the term "cost to the retailer" to raise the markup to cover in part the cost of doing business, in the absence of proof of a lesser amount, from six percent to ten or fifteen percent.

4. New legislation to: (a) Require that franchise agreements run for a minimum of five years, (b) require a franchisor to give at least 90 days written notice prior to termination, cancellation or failure to renew a franchise agreement, (c) prohibit a franchisor from terminating, canceling or failing to renew a franchise except for good cause, (d) prohibit a franchisor from engaging in methods of competition with their franchisees when this constitutes methods of unfair competition, (e) create a board of arbitration to settle disputes between the franchisee and franchisor which cannot be otherwise amicably settled.

Mr. Heizer also recommended that the Attorney General of Virginia vigorously prosecute illegal acts of price discrimination and price fixing under the power vested in him by the Code of Virginia.

#### IV. ANALYSIS OF SOLUTIONS

Before beginning to analyze any specific solution which has been developed during the course of this Study, it seems necessary to recognize a basic



philosophical principle which seems to be ascribed to by a vast majority of Virginians and by a vast majority of the members of the General Assembly — that free trade and commerce within our society should be stimulated as much as possible and that nothing should unnecessarily be done to interfere with a full pursuit of our total economic capacity. The Laissez-Faire philosophy, a policy of governmental noninterference with business, is now but a memory of yesteryear. In today's society, even in our so-called capitalistic society, businessmen are constantly faced with various forms of governmental control which have been imposed from time to time to meet specific problems. Much caution should be exercised before more restrictions are imposed to determine if the ends justify the means.

Many of the provisions of the Federal Trade Commission Act are presently in Title 59.1, Trade and Commerce, of the Code of Virginia. Certain unfair methods of competition are prohibited by the Unfair Sales Act, which is found in Chapter II of that Title. The Attorney General of Virginia is authorized to investigate complaints of violations of this Act and to institute and conduct prosecutions against violators. It does not seem reasonable to increase the present Virginia laws to include all of the federal provisions without a sufficient need, and this body does not see such a need.

The legislative proposals of Mr. Bangert's Subcommittee regarding compensation upon termination of a franchise agreement and 90 days' notice before cancellation or failure to renew a franchise agreement seem to be unreasonable and an unnecessary interference by government. The parties to a franchise agreement are free to include such provisions in their agreement if they feel inclined to do so.

A disclosure act, such as Mr. Bangert referred to, does seem to have some value. The principal idea here is to let everyone know that the State has an interest in and is concerned with franchise operations, but it will not do anything to interfere with contract rights other than to help insure that all parties to an agreement have full knowledge of the circumstances surrounding such agreement. Neither franchisor nor franchisee interests seem to object to this type of legislation. The State of California enacted disclosure-type legislation late last year, and their act was recommended by several people to this Study. After full consideration, the California act does not seem appropriate for Virginia's needs. That act covers only the sale of franchises and would offer no relief to the problems of traditional franchisees. It also excludes all of the large franchisors and would have no effect on those complained about most at this Study's public hearings — the major oil companies and automobile and tire manufacturers.

Legislation to regulate the sale of franchises, as Mr. Brown suggested, would give no relief to the problems complained of by the traditional-type franchisees during the course of this Study. Legislation recommended should include some help for all types of franchise operations. As to his recommendation of legislation to prohibit cancellation of a franchise agreement without good cause, § 8-513 of the Code of Virginia provides sufficient civil remedies. Prohibiting a person from renewing a franchise agreement if they are not contractually liable to do so does not seem wise, since all men should be free to engage in business activities with whomever they wish and to terminate business relationships which they feel are unprofitable or undesirable.

Mr. Heizer's suggestion of amending §§ 59.1-17 and 59.1-18 to remove the requirement that the complainant bear the cost of investigating violations of the Virginia Unfair Sales Act and the cost of prosecution in certain cases is well received. Since these are violations of criminal sanctions, it does not seem

proper that an innocent party should suffer any costs. Such costs should be borne by the State unless they can properly be charged to a violator.

§ 59.1-19 of the Code of Virginia, which permits the Attorney General to publish and circulate the Virginia Unfair Sales Act, should be entirely removed. This is not the proper function of that office. If an association of wholesalers or retailers wishes to have this law disseminated to their members or to others, they may do so.

The purpose of defining "cost to the retailer" in § 59.1-11 (2) is to establish a minimum price for the retail sale of merchandise. If a retailer sells at a price below this, he is in violation of the Virginia Unfair Sales Act. Mr. Heizer's contention that a minimum allowance of six percent of the sale price for the cost of doing business is unreasonable, mainly because this law has been in effect for a long time, does not seem reasonable. This law, including this percentage was enacted in 1938. The fact that costs and prices have skyrocketed since that time is not a logical argument that a minimum markup of six percent is not as practical today as it was in 1938. Since this minimum markup is expressed as a percentage of price, the actual amount of markup rises in direct proportion to the rise in price. With the development of modern and large-scale retail methods, the trend in most retailing fields has actually been to operate on a decreasing markup. Although a six percent minimum markup is not realistic for gasoline or many other retail goods, it must be realized that this is a "rock bottom" minimum which is set for the retail of all goods.

The new legislation recommended by the Virginia Gasoline Retail Association, Incorporated, does not seem wise. Their suggestion to require that franchise agreements run for a minimum of five years, that at least 90 days' notice be given prior to cancellation, termination or failure to renew a franchise agreement, and that such cancellations, terminations or failures to renew not be allowed except for good cause, is unreasonable interference with contract rights and much of this has been discussed elsewhere in this report. Provisions now exist in the Code of Virginia and in the common law to prohibit unfair competition.

It does not seem practical to expand an already large State government by creating a board of arbitration to settle disputes between franchisees and franchisors. These disputes can now be settled in the courts, and if the parties to a franchise agreement want them to be settled by arbitration, they can provide for this in the franchise agreement.

There are sufficient provisions in the present laws to prosecute violations of price discrimination and price fixing laws. By § 59.1-32, the attorney for the Commonwealth of any city or county is required to prosecute any violation he knows of; by § 59.1-33, ten or more citizens of any county or city may institute proceedings against a violator and may recover all of their damage and cost, to include reasonable attorney's fees; and by § 59.1-34, the Attorney General must institute proceedings against a violator upon the affidavit of 50 or more citizens of the Commonwealth.

## V. RECOMMENDATIONS

The General Assembly of Virginia has often recognized its obligation to protect the interests and welfare of all consumers of goods and services throughout the Commonwealth. The direct benefits of the following recommendations will be realized only by one group of consumers — the franchisees as consumers of services of the franchisors. However, by making such assurances of a fair and competitive market between all franchisors and franchisees, much benefit will accrue indirectly to all eventual consumers of goods and services which are distributed by the franchise method.

1. That §§ 59.1-17 and 59.1-18 of the Code of Virginia be amended to remove the requirement that complainants bear the costs of investigating and prosecuting violations of the Virginia Unfair Sales Act.

2. That § 59.1-19 of the Code of Virginia, relating to publication and circulation of the Virginia Unfair Sales Act by the Attorney General, be repealed.

3. That a retail franchising law be enacted. This law will have little interference with free economic activities. Each party will be free to enter into franchising agreements as they see fit as long as they do not use fraud or deceit in doing so. Once an agreement is made, the law will provide that all parties abide by the provisions of such agreement. This law will also provide a fast and practical method of investigating alleged violations and prosecuting violators.

### CONCLUSION

We desire to thank the members of the Committee for the time and effort given by them in carefully and thoroughly studying this crucial problem. We also express our appreciation to the many individuals, officials and organizations who afforded the Committee the benefit of their experience, research and suggestions.

Bills to carry out the recommendations made herein are attached.

Respectfully submitted,

ROBERT C. FITZGERALD, *Chairman*

ARTHUR H. RICHARDSON, *Vice-Chairman*

M. CALDWELL BUTLER

RUSSELL M. CARNEAL

C. W. CLEATON

HENRY E. HOWELL, JR.

EDWARD E. LANE

LEWIS A. McMURRAN, JR.

WILLARD J. MOODY

GARNETT S. MOORE

SAM E. POPE

JAMES M. THOMSON

JAMES C. TURK

EDWARD E. WILLEY

A B I L L

*To amend and reenact §§ 59.1-17 and 59.1-18 of the Code of Virginia relating to investigations of violations and prosecution of violations of the Unfair Sales Act, and to repeal § 59.1-19 of the Code of Virginia relating to publication and circulation of the Unfair Sales Act.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-17 and 59.1-18 of the Code of Virginia be amended and reenacted, as follows:

§ 59.1-17. Attorney General may investigate complaint of violation.—Upon complaint of any violation of this chapter made to the Attorney General by any individual wholesaler or retailer or by any association of wholesalers or retailers, incorporated under the laws of the State and recognized by him as fairly representative of the wholesale and retail merchants of this State interested in such complaint, he may investigate such complaint or cause such complaint to be investigated ~~provided the expense and cost of such investigation are borne by the complainant.~~

§ 59.1-18. Report of investigation to Commonwealth's attorney; proceedings against violator.—If it appears from such investigation that any provision of this chapter has been violated, the Attorney General may report the result of the investigation to the attorney for the Commonwealth of the proper county or corporation, who may institute and conduct in the appropriate court such proceedings against the violator as such attorney for the Commonwealth may deem proper. The Attorney General may institute and conduct or cause to be instituted and conducted a suit in the name of the Commonwealth to prevent and restrain violations of this chapter ~~provided that all. The costs and expenses of any such proceedings not properly taxable against the violator, shall be borne by the complainant at whose instance any such proceedings may be instituted. shall be borne as the court may order.~~

2. That § 59.1-19 of the Code of Virginia be repealed.

A B I L L

*To amend the Code of Virginia by adding in Title 13.1 a chapter numbered 8, consisting of sections numbered 13.1-557 through 13.1-574, to regulate certain retail franchising operations in Virginia and to provide penalties for violations.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 13.1 a Chapter 8, consisting of §§ 13.1-557 through 13.1-574, as follows:

CHAPTER 8  
RETAIL FRANCHISING ACT

§ 13.1-557. Short title.—This chapter shall be known as the "Retail Franchising Act."

§ 13.1-558. Policy of the Commonwealth.—It is hereby declared to be the policy of the Commonwealth, through the exercise by the General Assembly of its power to regulate commerce partly or wholly within the Commonwealth of Virginia, to correct as rapidly as practicable such inequities as may exist in the franchise system so as to establish a more even balance of power between franchisors and franchisees; to require franchisors to deal fairly with their franchisees with reference to all aspects of the franchise relationship and to provide franchisees more direct, simple, and complete judicial relief against franchisors who fail to deal in a lawful manner with them.

§ 13.1-559. Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(a) “Commission” means the State Corporation Commission.

(b) “Franchise” means a contract or agreement, either expressed or implied, whether oral or written, whether or not a franchise fee is required, between two or more persons, by 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, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate.

(c) “Franchisee” means a person to whom a franchise is granted.

(d) “Franchisor” means a person who grants a franchise.

(e) A franchise is made in this State and subject to the provisions of this chapter when the offer to grant the franchise is made or accepted in this State or when the franchised business is being or will be carried on in this State by a resident of this State; provided, however, that an offer is not deemed to be made in this State merely because it is advertised in a newspaper or periodical of general circulation published outside this State or in a radio or television program originating outside this State, unless the offeror mails or delivers a copy of the advertisement to an offeree in this State or otherwise solicits franchise agreements in this State.

§ 13.1-560. Registration requirement.—It shall be unlawful for a franchisor to grant or offer to grant a franchise in this Commonwealth unless he is registered under the provisions of this chapter.

§ 13.1-561. Procedure for registration.—(a) A franchisor may be registered after filing with the Commission an application containing such relevant information as the Commission may require. He shall be registered if the Commission finds that he (and, in the case of a corporation or partnership, the officers, directors or partners) is a person of good character and reputation, that he has a regular place of business in this State, that his financial responsibility is such that he is a suitable person to engage in the business, that he has supplied all information required by the Commission and that he has paid the required fee.

(b) The Commission may require as a condition of registration or renewal

of registration the filing by a franchisor of a surety bond conditioned upon the payment of all criminal and civil penalties provided in this chapter in an amount as the Commission may determine but not in any case exceeding an amount equal to the total investment of all franchisees in business activities which are regulated by franchise agreements with the particular franchisor who is required to obtain such bond.

(c) All registrations and renewals thereof shall expire at midnight on the following thirtieth day of June.

(d) Each application for a registration or renewal of a registration as a franchisor shall be accompanied by a fee of twenty-five dollars, payable to the Treasurer of Virginia. If the registration or renewal is not granted the application fee shall not be returnable.

(e) For the purposes of registration as a franchisor, a partnership shall be treated as the same partnership so long as two or more members of the partnership named in the application continue the business without change of location, and if the partnership, within one month after a change in the partnership, files with the Commission a copy of a certificate filed in compliance with § 50-74.

§ 13.1-562. Revocation of registration.—The Commission may, by order entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, revoke the registration of a franchisor (or refuse to renew a registration if an application for renewal has been or is to be filed) if it finds that such an order is in the public interest and that such franchisor or any partner, officer or director of such franchisor (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling such franchisor:

(1) Has engaged in any fraudulent transaction;

(2) Is insolvent, or in danger of becoming insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature;

(3) Has been adjudicated mentally incompetent or is a person for whom a committee or guardian has been appointed and is acting;

(4) Has been convicted, within or without this State, of any misdemeanor involving a franchise, or any felony;

(5) Has failed to furnish information requested by the Commission concerning the conduct of his business;

(6) Has no regular place of business in this State; or

(7) Has violated any of the provisions of this chapter.

§ 13.1-563. Unlawful offers.—It shall be unlawful for any person in making an offer to grant a franchise, whether or not a franchise fee is required, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud,

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to avoid misleading the offeree, or

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the franchisee.

§ 13.1-564. Unlawful cancellations; coercion.—It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right given to him by any provision contained in the franchise.

§ 13.1-565. Voidable franchises.—Any franchise may be declared void by the franchisee at his option if:

(1) The franchisor's offer was unlawful, provided that the franchisee make such declaration within ninety days after execution of the franchise.

(2) The franchisee was not afforded the opportunity to negotiate with the franchisor on all provisions within the franchise, provided that the franchisee make such declaration within ten days after execution of the franchise; or

(3) The franchisee was not furnished a copy of the final draft of the franchise after negotiation and seventy-two hours prior to execution, provided that the franchisee make such declaration within ten days after execution of the franchise.

§ 13.1-566. Consent to service of process.—Every nonresident registered as a franchisor which is not a corporation complying with § 13.1-111 shall appoint in writing the clerk of the Commission as his agent upon whom may be served any process, notice, order or demand except one issued by the Commission. Every nonresident franchisor registered hereunder who enters into a franchise in this State shall be deemed to have appointed the clerk of the Commission as his agent upon whom may be served, in any matter arising under this chapter any process, notice, order or demand except one issued by the Commission. Service may be made on the clerk or any of his staff at his office. He shall forthwith cause it to be sent by registered or certified mail addressed to the nonresident at his latest address on file and keep a record thereof. Any process, notice, order or demand issued by the Commission shall be served by being mailed by the clerk of the Commission or any of his staff by registered or certified mail addressed to the nonresident at his latest address on file.

§ 13.1-567. Investigations.—The Commission may make such investigations within or outside of this State as it deems necessary to determine whether any person has violated the provisions of this chapter or any order or injunction of the Commission, and any franchisor found guilty of such a violation may be required to pay the actual costs of the investigation including the time of the investigator. The Commission shall have power to issue subpoenas and subpoenas duces tecum to require the attendance of any person and the production of any papers for the purposes of such investigation. No person shall be excused from testifying on the ground that his testimony would tend to incriminate him, but if, after asserting his claim to the privilege, he is required to testify, he shall not be prosecuted or penalized on account of any transactions concerning which he does testify.

§ 13.1-568. Injunctions.—The Commission shall have all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution to issue temporary and permanent injunctions against violations or attempted violations of this chapter or any order issued pursuant to this chapter. For the violation of any injunction or order issued under this chapter it shall have the same power to punish for contempt as a court of equity, and the procedure therein shall be as set forth in § 12.1-34.

§ 13.1-569. Crimes.—Any person who shall knowingly make or cause to be

made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a misdemeanor, and on conviction, be punished by a fine of not less than one hundred nor more than five thousand dollars or by confinement in jail for not less than thirty days nor more than one year, or by both such fine and imprisonment.

§ 13.1-570. Offenses punishable by the Commission.—The Commission may, by judgment entered after a hearing on notice duly served on the defendant not less than thirty days before the date of the hearing, if it be proved that the defendant has knowingly made any misrepresentation of a material fact for the purpose of inducing the Commission to take any action or to refrain from taking action, or has violated any provision of this chapter or any order of the Commission issued pursuant to this chapter, impose a penalty not exceeding five thousand dollars, which shall be collectible by the process of the Commission as provided by law.

Each franchise entered into in violation of the provisions of this chapter shall constitute a separate offense. The Commission may request the franchisor to rescind any franchise and to make restitution to the franchisee, and if the franchisor complies with the request, no penalty shall be imposed on him on account of that illegal franchise.

§ 13.1-571. Civil Remedies.—(a) A franchisee who has been granted a franchise by an unregistered franchisor or who has declared the franchise void under § 13.1-565, shall be entitled to recover at law or in equity the consideration paid for the franchise with legal interest, damages, court costs and attorney's fees. A franchisee who has sustained damages as a result of a violation of § 13.1-564 shall be entitled to recover his damages, court costs and attorney's fees and, in the discretion of the jury or the judge trying the case without a jury, the consideration paid for the franchise with legal interest.

(b) No suit shall be maintained to enforce any liability created under this section unless brought within four years after the cause of action upon which it is based arose.

(c) Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void.

(d) The rights and remedies provided by this section shall be in addition to any and all other rights and remedies that may exist at law or in equity.

§ 13.1-572. Rules and forms.—(a) The Commission shall have authority from time to time to make, amend and rescind such rules and forms as may be necessary to carry out the provisions of this chapter. For the purpose of rules and forms, the Commission may classify franchises, persons and matters within its jurisdiction and prescribe different requirements for different classes.

(b) All such rules and forms shall be printed or mimeographed and available for distribution at the office of the Commission.

§ 13.1-573. Certain records of Commission available to public; admissibility of copies; destruction.—The information contained in or filed with any registration statement, application or report shall be available to the public at the office of the Commission. Copies thereof certified by the clerk under the seal of the Commission shall be admissible in evidence in lieu of the originals, and the originals shall not be removed from the office of the Commission.



However, papers, documents and files may be destroyed by the Commission when, in its opinion, they no longer serve any useful purpose.

§ 13.1-574. Effective date.—The provisions of this chapter shall apply to grants and offers to grant franchises on and after July one, nineteen hundred seventy-two.

