IS THIS REALLY THE END? DEALING WITH RENEWAL AND NONRENEWAL OF FRANCHISE RELATIONSHIPS

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I. Introduction

Virtually all franchise agreements have a finite term. Even so, franchise relationships often entail a significant investment from both the franchisor and franchisee. The franchisor invests time, attention, and money to identify, screen, and negotiate with the franchisee, and, after the relationship is entered into, to train and develop the franchisee, and often to help select and develop a location for the franchisee's business. The franchisee likewise invests its time, attention, and money into the relationship, often to the exclusion of any other business or employment that the franchisee's owner might otherwise pursue.

When the franchise agreement approaches expiration, the parties have to decide whether to renew for an additional term. For the franchisor, that can be an opportunity to weed out franchisees that are underperforming or that require too much of the franchisor's time and oversight, to update aging facilities to new system standards, or to secure long-term relationships with strong operators. For the franchisee, expiration can be an opportunity to wind down a flagging business, switch to a different concept (to the extent permitted by noncompetition restrictions), or re-up with the franchisor and reinvest in the future of the brand.

The expiration and renewal of a franchise can be fraught with legal danger. Many franchise agreements contain renewal provisions, but those are often ambiguous, overwrought, and inconsistently administered, if they are administered at all. In addition, many states regulate the renewal and nonrenewal of franchise agreements, adding a statutory layer to a contract that may contradict terms or install terms that the parties never explicitly negotiated. Currently, eighteen U.S. jurisdictions have adopted statutes regulating franchise renewals.[1]

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[1] Arkansas (ARK. CODE ANN. § 4-72-204); California (CAL. BUS. & PROF. CODE §§ 20025-20026); Connecticut (CONN. GEN. STAT. § 42-133f); Delaware (DEL. CODE ANN. tit. 6, § 2552(b)); Hawaii (HAW. REV. STAT. § 482E-6); Illinois (815 ILL. COMP. STAT. 705/20); Indiana (IND. CODE § 23-2-2.7-1(8)); Iowa (IOWA CODE § 523H.8, IOWA CODE § 523A.10(8)); Michigan (MICH. COMP. LAWS § 445.1527); Minnesota (MINN. STAT. § 80C.14(4)); Mississippi (MISS. CODE ANN. § 75-24-53); Missouri (MO. REV. STAT. § 407.405); Nebraska (NEB. REV. STAT. § 87-404); New Jersey (N.J. STAT. ANN. § 56:10-5); Puerto Rico (P.R. LAWS ANN. tit. 10, § 278a); the Virgin Islands (V.I. CODE ANN. tit. 12A, §§ 131-132); Washington (WASH. REV. CODE § 19.100.180(2)(i)); and Wisconsin (WIS. STAT. § 135.03). It is unclear whether the Arkansas Act would be enforced against a traditional franchise, however, because at least one court has held that the statute does not apply to a business arrangement that meets the definition of a franchise under the FTC Rule. J.K.P. Foods, Inc. v. McDonald's Corp., 420 F. Supp. 2d 966, 973 (E.D. Ark. 2006); *but see* Lodging Dev. & Mgmt. Inc. v. Days Inn Worldwide, Inc., Bus. Franchise Guide (CCH) ¶ 12,180

This paper examines the legal framework for franchise renewals under U.S. law, and identifies the challenges and opportunities that both franchisors and franchisees face as the expiration of their franchise agreement draws near.

II. What Is a Franchise "Renewal"?

In common parlance, the term "renewal" implies the continuation of something already in existence.[2] Consequently, in most areas outside franchising, "renewal" connotes the extension of an existing agreement or the execution of a new agreement on similar or identical terms.[3] Some franchisees have argued that a renewal therefore must be limited to the execution of a new agreement on the same or identical terms as the expiring agreement.[4] Nonetheless, franchisors commonly require franchisees to renew using a franchise agreement with materially different terms from the original. Commentators have therefore noted that the concept of "renewal" is seemingly inconsistent with the common industry practice.[5] Some courts have even seized upon this to hold that a renewal necessarily requires execution of a new agreement on terms substantially similar to those of the expiring agreement.[6]

In large part, the disconnect between the common understanding of the word "renewal" and the common industry practice is driven by the business of franchising. Because of the upfront cost of investing in a new franchise, "most franchises are

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(E.D. Ark. 2001) (noting, in dicta, that if the Arkansas Franchise Practices Act did not apply to business arrangements meeting the definition of a franchise under the FTC Rule, the statute would be superfluous).

[2] The primary definition of the term "renewal" in Black's Law Dictionary is "[t]he act of restoring or reestablishing." BLACK'S LAW DICTIONARY 1488 (10th ed. 2014). Perhaps in acknowledgment of the different use of the term in the franchising context, it also contains a related definition for the term as "[t]he re-creation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract." *Id.*

[3] *See, e.g.*, Borders v. Great Falls Yosemite Ins. Co., 72 Cal. App. 3d 86, 140 Cal. Rptr. 33 (1977) (holding that to renew a policy of insurance, an insurer is obligated to make the same coverage available on the same terms for an additional period); McCuen v. Am. Cas. Co. of Reading, Pa., 946 F.2d 1401 (8th Cir. 1991) (insurer's offer of a new policy containing significant changes, including different term, increased deductible, and increased premium, amounted to a "refusal to renew"); 2 MILTON R. FRIEDMAN, FRIEDMAN ON LEASES § 14.1 (Patrick A. Randolph, Jr., ed., 5th ed. 2014) (a bare renewal clause implies renewal on the same terms and rent).

[4] Test Servs., Inc. v. Princeton Review, Inc., Bus. Franchise Guide (CCH) ¶ 13,450 (D. Colo. 2005); Corp v. Atl. Richfield Co., 122 Wash. 2d 574, 860 P.2d 1015 (1993).

[5] John R.F. Baer & Pamela J. Mills, *Renewals: Questions and Pitfalls for Franchisors and Some Distributors*, 10 FRANCHISE L.J. 1, 16 (1990) (The "concept of a new form franchise agreement is fundamentally at odds with the terminology of 'renewal' or 'extension' used in the relationship laws and most franchise agreements.").

[6] *See, e.g.*, Carlos v. Philips Bus. Sys., 556 F. Supp. 769 (E.D.N.Y.), *aff'd*, 742 F.2d 1432 (2d Cir. 1983) (holding that under New Jersey statute, a new agreement that changed relationship of deal from exclusive to nonexclusive was effectively a refusal to renew or a termination).

intended to be long-term arrangements."[7] Yet the business world is a dynamic, rapidly changing environment, and "[t]o prosper long-term, franchisors must adapt to changing demographics, consumer preferences, competitors, and technology by modifying their business concepts, operating procedures, products, and services."[8] This inevitably results in tension as "franchisees entering long-term franchise agreements may assume that the concept and products will remain substantially the same for the life of the contract."[9] But "successful franchisors have no choice but to continually adapt their systems to evolving circumstances."[10] "[T]he franchisor views renewal as an opportunity to clean the slate and modernize its system by conditioning renewal on such things as a release of claims and facility upgrades."[11]

In a tacit acknowledgment of the franchising industry's modified definition of the term "renewal," franchise statutes regulating renewal in Indiana and Nebraska expressly state that a renewal may be conditioned on a franchisee's satisfaction of specified conditions, including the execution of a new form of franchise agreement.[12] Other state statutes, such as those in California, Hawaii, Iowa, and Michigan, provide that a renewal is proper if it does not discriminate against the renewing franchisee in the terms then being offered by the franchisor to new franchisees.[13] In other words, so long as the proposed new franchise has substantially similar terms to those being offered by the franchisor to new franchisees, the franchisee's rejection of the changes to the proposed agreement from the expired agreement will not be construed as a failure by the

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[7] Gillian K. Hadfield, *Problematic Relations: Franchising and the Law of Incomplete Contracts*, 42 STAN. L. REV. 927, 937 (1990); *see also* Peter C. Lagarias & Robert S. Boulter, *The Modern Reality of the Controlling Franchisor: The Case for More, Not Less, Franchisee Protections*, 29 FRANCHISE L.J. 139, 143 (2010) (noting that the Petroleum Marketing Practices Act (PMPA) was enacted out of concern that petroleum franchisors might unfairly terminate or nonrenew franchise relationships, thereby injuring franchisees who had invested substantial sums of money and personal labor in their franchised businesses).

[8] Edward Wood Dunham & Kimberly S. Toomey, *The Evolution of the Species: Successfully Managing Franchise System Change*, 24 FRANCHISE L.J. 231, 231 (2005).

[9] *Id.*

[10] *Id.*

[11] Craig R. Tractenberg, Robert B. Calihan & Ann-Marie Luciano, *Legal Considerations in Franchise Renewals*, 23 FRANCHISE L.J. 198, 198 (2004).

[12] IND. CODE ANN. § 23-2-2.7-1(8) ("This chapter shall not prohibit a franchise agreement from providing that the agreement is not renewable upon expiration or that the agreement is renewable if the franchisee meets certain conditions specified in the agreement."); NEB. REV. STAT. § 87-404 ("This section shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.").

[13] CAL. BUS. & PROF. CODE § 20025(f); HAW. REV. STAT. § 482E-6(2)(h); IOWA CODE § 523H.8(2) ("As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises . . . ."); MICH. COMP. LAWS § 445.1527.

franchisor to renew the contract in violation of the statute. And although not expressed in the statute, courts have reached the same conclusion in Wisconsin.[14]

There is also substantial confusion over the difference between a franchise termination and the nonrenewal of a prior existing franchise agreement. The confusion stems from the patchwork statutory restrictions on nonrenewal, which variously require: (1) advance written notice to the franchisee of the franchisor's intent not to renew the franchise agreement, often contrary to the terms of the franchise agreement; (2) good cause justifying nonrenewal of a franchise agreement; or (3) both. When franchisors fail to provide the requisite advance written notice, or there are disputed factual issues over the existence of good cause, and the term of the existing franchise agreement has expired, it is unclear whether a subsequent ending of the franchise relationship is a "nonrenewal" or a "termination," and courts seem to use the terms interchangeably.[15]

State franchise statutes shed some light on the issue. In some jurisdictions, including Delaware, Hawaii, Mississippi, Missouri, Nebraska, New Jersey, Puerto Rico, the Virgin Islands, and Wisconsin, "termination" and "nonrenewal" are essentially synonymous, and a franchisor must satisfy the same statutory criteria for properly effecting a termination or nonrenewal.[16] In other jurisdictions, including Illinois, Indiana, Iowa, Michigan, and Washington, termination and nonrenewal are treated differently.[17] And in yet others, such as Arkansas, Connecticut, California, and Minnesota, termination and nonrenewal are treated the same in some instances, but not others.[18] Ultimately, however, "nonrenewal" is best understood as the refusal to offer a new agreement at the end of the term, as opposed to "termination," which is the cancellation of the franchise agreement during the term.[19] Practitioners should be very careful when

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[14] *See, e.g.*, Wis. Music Network, Inc. v. Muzak L.P., 5 F.3d 218 (7th Cir. 1993) (noting that a franchisor's implementation of a systemwide change to its renewing franchise agreements was permissible notwithstanding statutory prohibition on nonrenewal except for good cause, since renewal agreement was substantially identical in terms to the agreements that the franchisor was offering to new franchisees).

[15] ABA SECTION OF ANTITRUST LAW, FRANCHISE AND DEALERSHIP TERMINATION HANDBOOK 8 (2d ed. 2012) [hereinafter HANDBOOK] ("Many state statutes equate termination with a failure or refusal to renew a franchise or dealership agreement at the expiration of its stated term.").

[16] DEL CODE ANN. tit. 6, § 2552(b); HAW. REV. STAT. § 482E-6; MISS. CODE ANN. § 75-24-53; MO. REV. STAT. § 407.405; NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5; P.R. LAWS ANN. tit. 10, § 278a; V.I. CODE ANN. tit. 12A, §§ 131-132; WIS. STAT. § 135.03.

[17] 815 ILL. COMP. STAT. 705/20; IND. CODE § 23-2-2.7-1(8); IOWA CODE § 523H.8; IOWA CODE § 523A.10(8); MICH. COMP. LAWS § 445.1527; WASH. REV. CODE § 19.100.180(2)(i).

[18] ARK. CODE ANN. § 4-72-204 (noting that nonrenewal is proper upon a showing of good cause, just as it is for termination, but also noting that nonrenewal is proper if it is done in accordance with "the current policies, practices, and standards established by the franchisor"); CAL. BUS. & PROF. CODE § 20025; CONN. GEN. STAT. § 42-133f (permitting nonrenewal of a franchise agreement in certain circumstances involving property leased by the franchisor to the franchisee); MINN. STAT. § 80C.14(4).

[19] HANDBOOK, *supra* note 15, at 8-9 (noting that the "language of the FTC Franchise Rule supports the argument that expiration and termination are distinct concepts").

confronting a nonrenewal and carefully read the applicable state statute to make sure that the franchisor is not required to comply with the procedures for termination.

III. Do Franchisees Have a Right to Renew Their Franchise Agreements?

In the majority of U.S. jurisdictions, the right to renew a franchise is governed by the terms of the franchise agreement. If the contract gives the right to renew, the franchisee has the right to renew.[20] Conversely, if the franchise agreement disclaims any right to renew, the franchisee generally cannot circumvent that disclaimer by bringing a common law or equitable claim.[21] Nearly all courts have held that the common law does not afford the franchisee any right to renew the franchise agreement. Since most franchise agreements include a fixed term, if courts were to imply a right to renew under the common law, they would need to expressly contradict the parties' intention to enter into a relationship with a limited term.[22]

In the remaining 18 U.S. jurisdictions that have adopted statutes regulating franchise renewals, whether the franchisee has a right to renew the franchise agreement depends on the language of the statute and, in some instances, decisional authorities.[23]

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[20] "[A] franchisor would be obligated to renew a franchise if the franchise agreement granted the franchisee the contractual right to renew the franchise or to negotiate for the renewal of the franchise." Theodore M. Becker & Michael J. Boxerman, *Franchise Renewals: Considerations for Franchisors and Franchisees*, 19 FRANCHISE L.J. 45, 70 (1999).

[21] Charles S. Modell & Genevieve A. Beck, *Franchise Renewals—"You Want Me to Do* What*?*," 22 FRANCHISE L.J. 4, 7 (2002) ("When a franchise agreement expressly negates any right to renew upon expiration, no right of renewal will be implied under either statutes or common law."). A handful of older cases, discussed *infra*, hold that the franchisee is entitled to renew the franchise agreement, notwithstanding language in the agreement to the contrary. The clear trend in the case law, however, provides that franchisees are not entitled to renew their franchise agreement if the agreement disclaims that right. *See* Watkins & Son Pet Supplies v. Iams Co., 254 F.3d 607 (6th Cir. 2001); Wright-Moore Corp. v. Ricoh Corp., 908 F.2d 128, 141 (7th Cir. 1990); Payne v. McDonald's Corp., 957 F. Supp. 749, 756 (D. Md. 1997).

[22] *See* Tractenberg, Calihan & Luciano, *supra* note 11, at 207 n.3 ("To imply that the term would be extended in contradiction to the expressed duration of the contract would defeat the reasonable expectations of the parties and, in most cases, would violate the parol evidence rule that maintains the integrity of the terms the parties negotiated.") (citing Chang v. McDonald's Corp., 105 F.3d 664 (9th Cir. 1996)).

[23] Although beyond the scope of this article, many jurisdictions have adopted industry-specific franchising laws relating to motor vehicle distributorships, marine watercraft distributorships, recreational vehicle dealerships, heavy equipment dealerships, agricultural implement dealerships, gasoline distributorships and dealerships, and beer, wine, and hard liquor distributorships. Many of these industry-focused laws have restrictions and limitations on the renewal of dealer agreements. *See* Appendix 2 for a comprehensive list of nonrenewal provisions in state dealership laws. Generally even fewer cases address these statutes, but to the extent that cases apply the renewal provisions of these statutes, those cases may provide persuasive authority for untested legal issues under the renewal provisions of general franchise statutes.

A. Common Law

1. Duty of Good Faith and Fair Dealing

In the absence of a contractual right to renew or disclaimer of renewal rights, franchisees have a long history of invoking the common law duty of good faith and fair dealing in an effort to force their franchisors to renew an expiring franchise agreement. In one of the earliest cases to address the issue, *In re Vylene Enterprises, Inc.*,[24] a franchisor sent its franchisee a proposed renewal agreement before original franchise agreement expired. The franchisee objected to many of the terms in the proposed renewal agreement, believing them to be less favorable than those in the expiring agreement.[25] Relying on a term in the expiring franchise agreement that allowed for renewal only upon "terms and conditions to be negotiated within said sixty (60) days" of the franchisee's notice of intent to renew, the franchisor refused to make any changes to the proposed renewal agreement, and allowed the franchise relationship to expire.[26] The United States Bankruptcy Court for the Central District of California held that the franchisor had breached the duty of good faith by failing to renew the franchise agreement.[27] The Ninth Circuit Court of Appeals affirmed the bankruptcy court's decision on appeal, noting that the franchisor had a duty to act in good faith in negotiating the terms of a renewal agreement, based on the language in the expiring agreement allowing renewal of the franchise agreement on mutually acceptable terms.[28]

The *In re Vylene* case appears to be an outlier.[29] In virtually every other reported case in which a franchisee has argued that the duty of good faith and fair dealing gives rise to a right to renew, the argument has failed.[30] That is consistent with the rule, in

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[24] *In re* Vylene Enters., Inc., 63 B.R. 900 (Bankr. C.D. Cal. 1986), *rev'd on other grounds* (June 25, 1987).

[25] *Id.* at 903.

[26] *Id.* at 908.

[27] *Id.* at 909 ("Good faith bargaining is a condition precedent to the expiration of the franchise after notice has been given to exercise the renewal right.").

[28] *In re* Vylene Enters., Inc., 90 F.3d 1472 (9th Cir. 1996).

[29] The court noted that the proposed renewal agreement's terms were so onerous that the franchisee's failure would have been a near certainty has the agreement been accepted.

[30] Bryant Corp. v. Outboard Marine Corp., Bus. Franchise Guide (CCH) ¶ 10,604 (W.D. Wash. 1994) (franchisor's failure to renew not a breach of duty of good faith where franchise agreement provided no right to renew); Chang v. McDonald's Corp., 105 F.3d 664 (9th Cir. 1996) (applying Illinois law to hold that where franchise agreement provides no right to renew, franchisor's refusal to renew not a breach of covenant of good faith and fair dealing); Zuckerman v. McDonald's Corp., 35 F. Supp. 2d 135 (D. Mass. 1999); Talamantez v. McDonald's Corp., Bus. Franchise Guide (CCH) ¶ 11,369 (D. Ariz. 1997); Dunkin' Donuts Inc. v. Benita Corp., No. 97 C 2934, 1998 WL 67613 (N.D. Ill. Feb. 10, 1998); Payne v. McDonald's Corp., 957 F. Supp. 749 (D. Md. 1997); Noya v. Frontier Adjusters, Inc., No. WDQ-13-0965, 2013 WL 2490360 (D. Md. June 7, 2013) (court would not enjoin expiration of franchise relationship where franchise agreement scheduled to expire by its own terms, and franchisor did nothing to

most jurisdictions,[31] that the duty of good faith and fair dealing applies only to the parties' compliance with an express term of the contract.[32] Thus, when the franchise agreement does not expressly provide for a right to renew the agreement, the court will not impose one under the duty of good faith and fair dealing. The decision in *Vylene* appears to have been driven by the court's concern over the specific terms of the proposed renewal agreement, which the court noted were onerous and commercially unreasonable.[33] Consequently, subsequent decisions have declined to follow the Ninth Circuit's reasoning.[34] For example, in *Watkins & Son Pet Supplies v. Iams Co*., the court rejected a claim by a franchisee that the franchisor had breached its duty to deal in good faith.[35] The court distinguished *Vylene* based on seemingly inconsequential differences in the language of the expiring franchise agreements. Specifically, in

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terminate); Hubbard Auto Ctr., Inc. v. Gen. Motors Corp., No. 4:05-CV-41-AS-APR, 2008 WL 3874642 (N.D. Ind. Aug. 14, 2008) (not a violation of Indiana statute for franchisor to give notice of nonrenewal on grounds that it was discontinuing Oldsmobile product line; also not a violation of the covenant of good faith and fair dealing); New England Surfaces v. E.I. Du Pont de Nemours & Co., 517 F. Supp. 2d 466, 488 (D. Me. 2007).

[31] Not all jurisdictions, however. For example, "New Jersey courts apply the implied covenant of good faith more broadly than most states." Benjamin A. Levin, Richard S. Morrison & Mark D. Shapiro, *Franchisor "Encroachment" and Implied Covenant of Good Faith and Fair Dealing*, 201 N.J. LAW. 36, 38 (Feb. 2000) ("Unlike other jurisdictions, the implied covenant can stand on its own, independent from an express contractual provision, and a party can violate the implied covenant of good faith and fair dealing without violating an express term of the contract.").

[32] "In a long and growing list of opinions, courts from a number of jurisdictions have parroted the view that the duty of good faith cannot supplant express contract terms." Michael P. Van Alstine, *Of Textualism, Party Autonomy, and Good Faith*, 40 WM. & MARY L. REV. 1223, 1261 (1999) (internal quotation marks and citations omitted) (collecting cases); *see also Payne*, 957 F. Supp. at 758 (noting that the "covenant of good faith and fair dealing is not an independent source of duties but instead 'guides the construction of explicit terms in an agreement'") (quoting Beraha v. Baxter Health Care Corp., 956 F.2d 1436, 1443 (7th Cir. 1992)); Gen. Aviation, Inc. v. Cessna Aircraft Co., 915 F.2d 1038, 1041-42 (6th Cir. 1990) (holding that, under Michigan law, the implied duty of good faith cannot override express contract terms); Grand Light & Supply Co. v. Honeywell, Inc., 771 F.2d 672, 679 (2d Cir. 1985) (applying Connecticut law to the U.C.C.'s good faith provision); Corenswet, Inc. v. Amana Refrigeration, Inc., 594 F.2d 129, 136-39 (5th Cir. 1979) (holding that, under Iowa law, the U.C.C.'s good faith provision could not be invoked to override or strike a specific clause in a franchise agreement permitting termination "at any time for any reason" upon ten days' notice); Neuman v. Pike, 591 F.2d 191, 194 (2d Cir. 1979) ("It is . . . well established in New York that, where the expressed intention of contracting parties is clear, a contrary intent will not be created by implication.").

[33] *In re Vylene*, 90 F.3d at 1477 (noting that the bankruptcy court had "found that the proposed new franchise agreement was commercially unreasonable and that Naugles knew or should have known Vylene would reject it").

[34] The *Payne* court noted that in *In re Vylene*, the Ninth Circuit relied on the discredited decision in *Scheck v. Burger King Corp.*, 756 F. Supp. 543 (S.D. Fla. 1991), in holding that the failure by the franchisor to renew the franchise agreement violated the duty of good faith and fair dealing under California law, and that subsequent cases in the Ninth Circuit have refused to adopt the same logic. 957 F. Supp. at 759 n.14.

[35] Watkins & Son Pet Supplies v. Iams Co., 254 F.3d 607 (6th Cir. 2001).

Vylene, the franchise agreement did not provide an express right of renewal, but instead noted only that a renewal, if any, would be extended only "on such terms and conditions to be negotiated" by the parties.[36] In *Watkins*, the franchise agreement contained similarly noncommittal language, noting that a renewal may be extended based on "mutually agreeable" terms.[37] Although the franchise agreements in both cases did not contain an express right to renew, the ultimate outcome was different, and practitioners representing franchisors must be wary when crafting language in franchise agreements that might be construed as creating an obligation to negotiate in good faith.

Franchisees have also argued that the duty of good faith and fair dealing precludes franchisors from refusing to renew ancillary agreements. Some renewal statutes, including those in Connecticut, Delaware, Hawaii, Nebraska, and New Jersey, have codified this principle, particularly in cases in which the franchisor leases the franchised premises to the franchisee.[38] And commentators have noted that franchisors expose themselves to liability when they attempt "to circumvent the statute under the pretext of not renewing the franchisee's tenancy, either under the statutory prohibition, or under common law theories of tortious interference with contract and breach of covenant of good faith and fair dealing."[39]

Nonetheless, in most cases that have addressed the question, the duty of good faith does not always apply to preclude the franchisor from terminating an ancillary agreement, including a lease. For example, in *Barn-Chestnut, Inc. v. CFM Development Corp*., the franchisee argued that the franchisor breached the duty of

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[36] *In re Vylene*, 90 F.3d at 1473.

[37] *Watkins & Son Pet Supplies*, 254 F.3d at 610.

[38] CONN. GEN. STAT. § 42-133f; DEL. CODE ANN. tit. 6, § 2552(b); HAW. REV. STAT. § 482E-6; NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5. Although the Arkansas statute expressly permits nonrenewal by a franchisor if the franchisee loses the right to occupy the franchised premises, it also prohibits the franchisor from "directly or indirectly" violating the statute. ARK. CODE ANN. § 4-72-204. Similarly, the franchise statutes in Nebraska and New Jersey make it unlawful for the franchisor to include a provision in an ancillary agreement that would otherwise be prohibited if included in the franchise agreement. NEB. REV. STAT. § 87-406(6) (prohibiting "any term or condition in any lease or other agreement ancillary or collateral to a franchise, which term or condition directly or indirectly" would violate a provision of the statute, including the provision dealing with nonrenewal of a franchise); N.J. STAT. ANN. § 56:10-7(f). Therefore, a provision in a lease agreement that allowed for nonrenewal without cause would probably violate those statutes. *See* Kirkwood Kin Corp. v. Dunkin' Donuts, Inc., No. 94C-03-189-WTQ, 1997 WL 529587, at *6 (Del. Super. Ct. Jan. 29, 1997) (noting that the franchisor's demand for unreasonable rent in a lease agreement as a condition to renewal of the franchise agreement stated a claim for unjust failure to renew under the Delaware Franchise Security Law); *see also* Aurigemma v. Arco Petroleum Prods. Co., 698 F. Supp. 1035, 1040 (D. Conn. 1988) ("Allowing Arco to terminate the AM/Pm agreement solely based on the termination of the premises lease, without examining the grounds for termination of the lease, would permit franchisors to circumvent CFCFA by limiting termination of a franchise to a provision in an underlying lease or other collateral agreement.").

[39] Tractenberg, Calihan & Luciano, *supra* note 11, at 207.

good faith when it refused to renew a lease agreement for the franchised premises.[40] The franchisee contended that the refusal to renew the lease constituted a constructive termination or nonrenewal of the franchise agreement because the natural consequence of the nonrenewal of the lease agreement was the termination of the franchise agreement.[41] The court rejected this argument, noting that in the absence of any statutory prohibition, the parties were free to deal with one another as they chose, and that the franchisor's duty to act in good faith under the franchise agreement would not override the express terms of the lease agreement, which did not grant the franchisee an unfettered right to renew.[42] Courts in other jurisdictions have reached the same conclusion.[43] In the absence of an express contractual right to renew, it is unlikely that a court will imply one under the auspices of the common law duty of good faith and fair dealing.[44]

2. Equitable Recoupment

Missouri courts apply the doctrine of equitable recoupment to protect franchisees from damages caused by nonrenewal.[45] "The doctrine imputes to a terminable-at-will

[40] Barn-Chestnut, Inc. v. CFM Dev. Corp., Bus. Franchise Guide (CCH) ¶ 10,670 (W. Va. 1995) (duty of good faith did not require franchisor to renew lease with franchisee, even though cancellation of lease would necessarily make it impossible for franchisee to perform franchise agreement).

[41] *Id.*

[42] *Id.*

[43] Zuckerman v. McDonald's Corp., 35 F. Supp. 2d 135, 143 (D. Mass. 1999); Walker v. U-Haul Co. of Miss., 734 F.2d 1068, 1075, *on reh'g*, 747 F.2d 1011 (5th Cir. 1984); *cf.* Coast to Coast Stores, Inc. v. Gruschus, 100 Wash. 2d 147, 150, 667 P.2d 619 (1983) (holding that franchisor did not violate duty of good faith in franchise statute or prohibition against termination when it locked the franchised premises, on the grounds that the cessation of the franchisee's business was distinguishable from the cessation of the franchise relationship).

[44] A franchisee may be able to convince a court to grant a renewal right if the franchise agreement grants the franchisor sole discretion to renew the franchise agreement, and the franchisee is able to prove that the franchisor did not act in good faith in exercising its discretion. Shell Oil Co. v. Marinello, 63 N.J. 402, 408, 307 A.2d 598 (1973); Fortune v. Nat'l Cash Register Co., 373 Mass. 96, 101, 364 N.E.2d 1251 (1977) ("We hold that NCR's written contract contains an implied covenant of good faith and fair dealing, and a termination not made in good faith constitutes a breach of the contract."); deTreville v. Outboard Marine Corp., 439 F.2d 1099, 1100 (4th Cir. 1971) ("It is settled law in [South Carolina] that regardless of broad unilateral termination powers, the party who terminates a contract commits an actionable wrong if the manner of termination is contrary to equity and good conscience."); Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 334-35 (3d Cir. 2001) ("Michigan law, through decisions such as *Burkhardt*, clearly teaches that it is these precise situations—situations in which one party retains unfettered control over part of its performance under a contract—that call most strongly for the application of an implied covenant of good faith."); Burger King Corp. v. Austin, 805 F. Supp. 1007, 1014 (S.D. Fla. 1992); Carlock v. Pillsbury Co., 719 F. Supp. 791, 819 (D. Minn. 1989); Patel v. Dunkin' Donuts of Am., Inc., 146 Ill. App. 3d 233, 496 N.E.2d 1159 (1986).

[45] "Missouri courts apply the recoupment doctrine to protect franchisees." Armstrong Bus. Servs., Inc. v. H & R Block, 96 S.W.3d 867, 878 (Mo. Ct. App. 2002); *see also* Schultz v. Onan Corp., 737 F.2d 339, 343 (3d Cir. 1984).

agreement a duration equal to the length of time reasonably necessary for a dealer to recoup its investment, plus a reasonable notice period before termination."[46] Minnesota has codified the right in its franchise statute, which prohibits the nonrenewal of a franchise agreement without good cause unless the franchisor provides 180 days' written advance notice, and the franchisee has been given an opportunity to operate the franchise over a sufficient period to enable the franchisee to recover the fair market value of the franchise as a going concern, as determined and measured from the date of the failure to renew.[47] Although there are no cases confirming that a franchisee has the right to equitable recoupment in a case of nonrenewal in other jurisdictions, dicta from two decisions applying Illinois and Michigan law have suggested that equitable recoupment may be available to franchisees under the laws in those states.[48]

Courts have imposed equitable recoupment in acknowledgment of the fact that franchisees often invest significant capital and labor in their franchised business, and that as a result, it would be inequitable to allow their agreements to terminate before they have had an opportunity to recoup their original investment.[49] In some states, equitable recoupment will apply only if the franchisee can show that the termination or nonrenewal was "without just cause."[50] Courts applying the equitable recoupment doctrine to temporarily forestall a nonrenewal also require that the franchisor provide the franchisee with a reasonable notice period before a termination.[51]

3. Estoppel

Franchisees have also argued that franchisors are precluded from refusing to renew a franchise agreement by estoppel. In *Atlantic Richfield Co. v. Razumic*, the

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[46] *Armstrong Bus. Servs.*, 96 S.W.3d at 878.

[47] MINN. STAT. § 80C.14(4).

[48] Cox v. Doctor's Assocs., Inc., 245 Ill. App. 3d 186, 201, 613 N.E.2d 1306 (1993); Tractor & Farm Supply, Inc. v. Ford New Holland, Inc., 898 F. Supp. 1198, 1207 (W.D. Ky. 1995) (applying Michigan law and concluding that factual issues precluded summary judgment on equitable recoupment claim, without deciding whether doctrine applied to failure to renew as opposed to termination).

[49] *Armstrong Bus. Servs.*, 96 S.W.3d at 878-79 (noting that following a nonrenewal, the franchisee "'becomes entitled to recoupment or to compensation on a quantum meruit basis where the [franchisee], induced by his appointment, has in good faith incurred expense and devoted time and labor in the matter of the [franchised business] without having had a sufficient opportunity to recoup such expenditures from the undertaking'") (quoting Ernst v. Ford Motor Co., 813 S.W.2d 910, 919 (Mo. Ct. App. 1991)).

[50] *Cox*, 245 Ill. App. 3d at 200 ("After reviewing the authorities concerning the doctrine, we find one significant factor underlying claims for equitable recoupment; there must be a showing by the complainant that termination of the working relationship was *without just cause*."); *Schultz*, 737 F.2d at 343 (noting that Minnesota courts apply the doctrine of equitable recoupment in cases in which any exclusive franchise dealer who has invested in distribution facilities is terminated by the franchisor "without just cause").

[51] *Ernst*, 813 S.W.2d at 918 ("The recoupment doctrine imputes into a contract a duration equal to the length of time reasonably necessary for a dealer to recoup its investment, plus a reasonable notice period before termination.").

franchisor declined to renew a gasoline franchise agreement under the PMPA at the expiration of the agreement's three-year term.[52] After the franchisee sued, the franchisor argued that it had no obligation to renew the agreement because the agreement had a defined term of three years, and made no provision for renewal.[53] Noting that the franchise agreement did not grant the franchisor the right to terminate the agreement at will, and that the franchisee had invested substantial efforts in promoting and operating its business, the court held that the franchisor was estopped from refusing to renew the franchise agreement based on the parties' reasonable expectations.[54]

Again, however, the trend in the case law has been to preclude franchisees from raising estoppel as grounds for renewal in the absence of a contractual provision granting renewal. Both the Sixth and Seventh Circuits have held that a contractual integration clause precludes a franchisee's estoppel claim, even when alleging that the franchisor has made an oral promise or assurance that the franchise will be renewed.[55]

B. Statutory Right to Renew

Most statutes regulating renewal do not grant the franchisee an express right to renew. The statutes in Indiana, Michigan, and Nebraska expressly permit a franchisor to disclaim a right to renew.[56] And courts have rejected franchisees' attempts to argue

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[52] Atl. Richfield Co. v. Razumic, 480 Pa. 366, 390 A.2d 736 (1978).

[53] *Id.*

[54] *Id.* at 381 ("For the above reasons, the writing's leasehold terminology stating a three year term of occupancy does not govern the duration of the comprehensive contractual business relationship between Razumic and Arco. Rather, the language establishes a right of occupancy which the franchisee Razumic can reasonably expect will not be abruptly halted.").

[55] Watkins & Son Pet Supplies v. Iams Co., 254 F.3d 607 (6th Cir. 2001) (holding that under Michigan law, a franchise agreement's integration clause precluded promissory estoppel claim for renewal); Wright-Moore Corp. v. Ricoh Corp., 908 F.2d 128, 141 (7th Cir. 1990) (applying Indiana law and holding that franchise agreement's integration clause precluded promissory estoppel claim for renewal); *see also* Lockard v. Milex Prods., Inc., No. 84AP-849, 1985 WL 10096, at *5 (Ohio Ct. App. July 30, 1985) (noting that an oral promise to extend the franchise agreement would not estop the franchisor from exercising its express right to nonrenew under the terms of the franchise agreement); Domino's Pizza LLC v. Deak, 654 F. Supp. 2d 336, 347 (W.D. Pa. 2009), *rev'd and vacated*, 383 F. App'x 155 (3d Cir. 2010) ("[A] 'promisee cannot be permitted to use [estoppel] to do an end run around . . . the parol evidence rule.'") (quoting All-Tech Telecom, Inc. v. Amway Corp., 174 F.3d 862, 869 (7th Cir. 1999)); Tractor & Farm Supply, Inc. v. Ford New Holland, Inc., 898 F. Supp. 1198, 1205-06 (W.D. Ky. 1995).

[56] IND. CODE § 23-2-2.7-3; MICH. COMP. LAWS § 445.1527(e) ("This section does not require a renewal provision."); NEB. REV. STAT. § 87-404 ("This section shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions."); RWJ Cos., Inc. v. Equilon Enters., LLC, No. 105CV1394 DFH/TAB, 2005 WL 3544295, at *9 (S.D. Ind. Dec. 28, 2005) ("Either party, including Shell, could decline to renew 'for any reason or no reason.' The terms of the agreement fall within the reasoning of *Wright-Moore*. Shell therefore appears to have preserved its right not to renew RWJ's contract at the end of June 2006, even if the contract between RWJ and Shell is deemed subject to the Indiana Deceptive Franchise Practices Act.").

that the Illinois, Washington, Virginia,[57] or Missouri statutes create a right to renew their franchise agreements.[58]

Conversely, in Arkansas, Wisconsin, New Jersey, and Puerto Rico, a franchisee has an automatic right to renew the franchise agreement, in perpetuity, unless the franchisor can show that there is good cause to terminate the agreement.[59] In New

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[57] Virginia's statute does not officially make reference to "nonrenewal" or "termination," noting only that a franchisor may not "cancel" a franchise without reasonable cause. VA. CODE ANN. § 13.1–564. Courts construing the statute have concluded that it applies only to termination of existing contracts, not renewal of expiring contracts. Grandstaff v. Mobil Oil Corp., No. 78-512-A, 1978 WL 1458, at *16 (E.D. Va. Dec. 7, 1978) ("Instead the Court agrees with defendant that the use of the term 'cancel' in the Retail Act was intended to prohibit abrogation of an existing contractual relationship between a franchisor and franchisee before the end of its term."); Turner v. Subaru of Am., Inc., 566 F. Supp. 143, 149 (W.D. Va. 1983).

[58] Thompson v. Atl. Richfield Co., 649 F. Supp. 969, 971 (W.D. Wash. 1986) (holding that Washington franchise statute "does not create an automatic right to renew a franchise"); Betsy-Len Motor Hotel Corp. v. Holiday Inns, Inc., 238 Va. 489, 492, 385 S.E.2d 559 (1989) ("The [Virginia Retail Franchising] Act does not, however, require renewal or extension of a franchise after it lawfully terminates according to its terms."); Hamden v. Total Car Franchising Corp., 548 F. App'x 842 (4th Cir. 2013) (under Virginia law, "termination," as used in franchise agreement for the operation of automobile paint restoration business, as event triggering restrictive covenants applicable to franchisee, did not include expiration of the agreement through franchisee's passive failure to renew it, since agreement used "termination" to include only the end of the parties' relationship before its natural expiration); Armstrong Bus. Servs., Inc. v. H & R Block, 96 S.W.3d 867, 877-78 (Mo. Ct. App. 2002) ("The franchise agreements are not indefinite contracts. Instead, they have definite, fixed terms. The parties explicitly provided for five-year terms. A franchise agreement has an initial period beginning on the date of its formation and expiring five years later. Thereafter, if renewed, the agreement will run for another term of five years. The franchise agreements' renewal provision will not, however, be enforced without assurance of mutual assent. . . . To enforce the automatic renewal provision would enable one party to coerce the other into a perpetual cycle of five-year obligations and would render the five-year provisions of the duration provision meaningless."); H & R Block Tax Servs. LLC v. Franklin, 691 F.3d 941 (8th Cir. 2012) (holding that Missouri statute does not contain automatic right of renewal, and that Missouri cases do not look favorably on perpetual contracts); *Lockard*, 1985 WL 10096, at *6 (noting that the franchisor "had a right not to renew the franchise agreement so long as he complied with Section 404.4 of the Illinois Act"); *see also* David R. McGeorge Car Co. v. Leyland Motor Sales, Inc., 504 F.2d 52, 56 (4th Cir. 1974) (holding that the Automobile Dealers' Day in Court Act does not "curtail the manufacturer's right to cancel or not renew an inefficient or undesirable dealer's franchise") (internal quotation marks and citation omitted).

[59] Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co., 510 F.3d 474, 482 (4th Cir. 2007) (noting that the grounds for terminating a franchise agreement set forth in the Arkansas Franchise Practices Act are exclusive, and that a termination without satisfying the statutory definition of "good cause" constitutes a violation of the statute, even if in conformity with the franchise agreement); Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 185, 495 A.2d 66 (1985) ("With the advent of the New Jersey Franchise Practices Act, once a franchise relationship begins, all that a franchisee must do is comply substantially with the terms of the agreement, in return for which he receives the benefit of an 'infinite' franchise—he cannot be terminated or refused renewal."); Kealey Pharmacy & Home Care Serv., Inc. v. Walgreen Co., 539 F. Supp. 1357, 1366 (W.D. Wis. 1982) *aff'd*, 761 F.2d 345 (7th Cir. 1985) ("Under the Fair Dealership Law, all terminations, cancellations, or failures to renew dealership agreements are violative of the statute unless they are effected for 'good cause.'"); Gemco Latinoamerica, Inc. v. Seiko Time Corp., 623 F. Supp. 912, 918 (D.P.R. 1985) ("The Supreme Court of Puerto Rico explained . . . that 'the practical effect of Act No. 75 is to extend the contract indefinitely, unless there is just cause for its termination or unless the principal is willing to pay damages.'") (quoting Warner Lambert Co. v. Superior

Jersey, the good-cause analysis is limited to conduct by the franchisee, and courts will not consider the franchisor's situation in determining whether the franchisee has a right to renew the franchise agreement.[60] Franchisors in Puerto Rico also have had difficulty showing good cause for nonrenewal with anything other than bad conduct by the franchisee.[61] In these jurisdictions, franchisors that attempt to disclaim a right to renew in the franchise agreement do so at their peril.[62] In Wisconsin, the franchisee has a right to renew the franchise agreement, but the franchisor has more discretion in deciding not to renew.[63]

IV. Overview of Requirements of State Renewal Statutes

All franchise-renewal statutes require written notice by the franchisor of its intent not to renew the franchise relationship, good cause for the termination, the payment of compensation to the franchisee, or some combination of the three.

A. Notice Statutes

Franchisors must provide written notice of their intent not to renew the franchise agreement in Arkansas,[64] California, Connecticut, Delaware, Iowa, Mississippi,

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Court of Puerto Rico, 101 D.P.R. 378, 399 (1973)). In a very early decision by the Delaware Supreme Court, the Delaware Franchise Securities Law was held to be unconstitutional under the Contracts Clause as applied to a franchise agreement that contained a set one-year term. Globe Liquor Co. v. Four Roses Distillers Co., 281 A.2d 19, 21 (Del. 1971). The court held that the statute would violate the contracts clause because it would convert the one-year term to an indefinite term agreement, terminable only upon certain conditions. *Id.* Although the case does not address the right to renew, it arguably stands for the proposition that the Delaware statute also imposes an evergreen renewal requirement.

[60] Gen. Motors Corp. v. Gallo GMC Truck Sales, Inc., 711 F. Supp. 810, 816 (D.N.J. 1989) ("It is a violation of the [New Jersey Franchise Practices] Act . . . to cancel a franchise for any reason other than the franchisee's substantial breach . . . .").

[61] R.W. Int'l Corp. v. Welch Foods, Inc., 88 F.3d 49, 52 (1st Cir. 1996) ("Although Law 75, by its plain terms, makes the 'just cause' inquiry turn solely on the *dealer's* actions or omissions, *see* P.R. Laws Ann. tit. 10, § 278, the Puerto Rico Supreme Court has read a 'third' 'just cause' into the statute to avoid constitutional invalidation, by holding that a principal's own circumstances may permit its unilateral termination of an ongoing dealership, irrespective of the dealer's conduct."); *see also* Medina & Medina v. Country Pride Foods, Ltd., 858 F.2d 817, 821 (1st Cir. 1988) (acknowledging constitutional limitations requiring that franchisor be capable of nonrenewing based on franchisor's circumstances).

[62] *See* Tractenberg, Calihan & Luciano, *supra* note 11, at 200 ("It is a violation of each of these evergreen laws to have the franchisee disclaim or limit its ability to renew for an additional term."); BP Prods. N. Am., Inc. v. Hillside Serv., Inc., Nos. 9-4210, 9-5143, 2011 WL 4343452 (D.N.J. Sept. 14, 2011) (holding that a franchisor's failure to renew a franchise agreement that contains no express right of renewal violates the prohibition of the New Jersey Franchise Practices Act (NJFPA) against a franchisor's terminating, canceling, or failing to renew a franchise agreement without good cause).

[63] Ziegler Co. v. Rexnord, Inc., 147 Wis. 2d 308, 318, 433 N.W.2d 8 (1988).

[64] The Arkansas statute provides that notice is not required for a "termination or cancellation" that is based on one of the statutorily enumerated grounds for good cause set forth in Section 4-72-202(7)(C)-(H) of the Arkansas Code. ARK. CODE ANN. § 4-72-204(c). A plain reading of the section suggests that

Missouri, Nebraska, New Jersey, the Virgin Islands, and Wisconsin.[65] The period for providing the advance written notice varies, depending on the jurisdiction and the reason that the franchisor is providing the notice. In some jurisdictions, the franchisor is required to provide written notice within a set time for all nonrenewals, including Arkansas (90 days), California (180 days), Delaware (90 days), Indiana (90 days),[66] Iowa (6 months), and the Virgin Islands (120 days).[67]

Other states vary the time for notice depending on the grounds for the nonrenewal, generally providing for short periods in cases in which the franchisee has abandoned the franchise, been convicted of a crime, engaged in fraud or falsification of records, or been found insolvent or filed for bankruptcy protection.[68] In Mississippi and Missouri, a franchisor must give 90 days' written notice of nonrenewal, unless the nonrenewal is based on the franchisee's criminal misconduct, fraud, abandonment of the franchise, bankruptcy or insolvency, or failure to pay amounts owing under the franchise agreement, in which case no notice of nonrenewal is required.[69] Wisconsin similarly waives a notice requirement if the nonrenewal is based on the franchisee's bankruptcy, insolvency, or assignment for the benefit of creditors.[70]

And in Illinois, Michigan, Minnesota, and Washington, notice is optional depending on the facts at issue in each case. For example, in Illinois, Michigan, and Washington, the franchisor's duty to compensate the franchisee for a nonrenewal applies only if the franchise agreement contains a post-term noncompetition covenant, and the franchisor failed to provide the franchisee with the statutorily required advance

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notice would still be required for nonrenewals, however, since the preceding section distinguishes between terminations, cancellations, and failure to renew. *See* ARK. CODE ANN. § 4-72-204(b) ("No franchisor shall directly or indirectly *terminate, cancel, or fail to renew* . . . .") (emphasis added). Although there are no cases addressing the issue, a court would likely conclude that a franchisor must provide notice of nonrenewal, even if the nonrenewal is based on one of the grounds for good cause set forth in Section 4-72-202(7)(C)-(H) of the Arkansas Code.

[65] ARK. CODE ANN. § 4-72-204(b); CAL. BUS. & PROF. CODE § 20025; CONN. GEN. STAT. § 42-133f(a); DEL. CODE ANN. tit. 6, § 2555; IOWA CODE § 523H.8(1)(a); MISS. CODE ANN. § 75-24-53; MO. REV. STAT. § 407.405; NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5; V.I. CODE ANN. tit. 12A, §§ 131-132; WIS. STAT. § 135.04.

[66] Franchisors may dispense with the required notice in Indiana if the franchise agreement expressly provides that the franchisee is not entitled to notice of nonrenewal. IND. CODE § 23-2-2.7-3.

[67] ARK. CODE ANN. § 4-72-204(b); CAL. BUS. & PROF. CODE § 20025; DEL. CODE ANN. tit. 6, § 2555; IND. CODE § 23-2-2.7-3; IOWA CODE § 523H.8(1)(a); V.I. CODE ANN. tit. 12A, §§ 131-132; WIS. STAT. § 135.04.

[68] CONN. GEN. STAT. § 42-133f(a); NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5. Connecticut also requires an extended notice period of six months in cases in which the franchisee leases the franchised premises from the franchisor. CONN. GEN. STAT. § 42-133f(a).

[69] MISS. CODE ANN. § 75-24-53; MO. REV. STAT. § 407.405.

[70] WIS. STAT. § 135.04.

notice of intent not to renew.[71] In Minnesota, the franchisor must show good cause for the nonrenewal if it fails to provide the statutory 180 days' written notice of its intention not to renew.[72]

Notice of nonrenewal is not required in Delaware, Hawaii, and Puerto Rico.[73]

B. Good-Cause/Just-Cause Statutes

Franchise-renewal statutes in Arkansas, California, Connecticut, Delaware, Hawaii, Indiana, Iowa, Minnesota, Nebraska, New Jersey, Puerto Rico, the Virgin Islands, and Wisconsin require some showing of "good cause" or "just cause" in some or all cases in which the franchisor does not want to renew the franchise relationship.[74] What constitutes "good cause" depends on the text of the renewal statute and case law.[75] Often, however, there is a dearth of authority addressing the issue of what constitutes "good cause," resulting in potential ambiguities.

For example, as noted earlier,[76] Connecticut, Nebraska, New Jersey, and Wisconsin each provide for different notice periods for nonrenewal depending on the

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[71] 815 ILL. COMP. STAT. 705/20; MICH. COMP. LAWS § 445.1527; WASH. REV. CODE § 19.100.180(2)(i). The Michigan statute also requires the expiring franchise agreement to have had a term of not less than five years.

[72] MINN. STAT. § 80C.14(4).

[73] DEL. CODE ANN. tit. 6, § 2552(b); HAW. REV. STAT. § 482E-6; IND. CODE § 23-2-2.7-1(8); Baer & Mills, *supra* note 5, at 14.

[74] ARK. CODE ANN. § 4-72-204(a)(2); CAL. BUS. & PROF. CODE § 20025(c) (citing CAL. BUS. & PROF. CODE §§ 20020-20021); CONN. GEN. STAT. § 42-133f(a); DEL. CODE ANN. tit. 6, § 2552(h); HAW. REV. STAT. § 482E-6(2)(H); IND. CODE § 23-2-2.7-1(8); IOWA CODE § 523H.8(1)(b); MINN. STAT. § 80C.14(4); NEB. REV. STAT. § 87-404; N.J. STAT. ANN. § 56:10-5; P.R. LAWS ANN. tit. 10, § 278a; V.I. CODE ANN. tit. 12A, § 131; WIS. STAT. § 135.03. Good cause is not always required under each statute, however. *See, e.g.*, Dale Carnegie & Assocs., Inc. v. King, 31 F. Supp. 2d 359, 363 (S.D.N.Y. 1998) (noting that the California statute "does not necessarily require cause" for nonrenewal).

[75] Michigan contains no just-cause or good-cause requirement, although it expressly prohibits discrimination by the franchisor. Gen. Aviation, Inc. v. Cessna Aircraft Co., 13 F.3d 178, 180-83 (6th Cir. 1993). The prohibition on discrimination can sometimes require a similar showing of good cause for nonrenewal, however. *Id.* (noting that although the statute does not require good cause, not all nonrenewals without cause are permissible, because compensation is not the lone requirement of the statute). In particular, the nonrenewal provision in the statute has been held to apply to prohibit both objective discrimination (different terms in a franchise agreement) and subjective discrimination (franchisor's motive to not renew the agreement). Tractor & Farm Supply, Inc. v. Ford New Holland, Inc., 898 F. Supp. 1198, 1205 (W.D. Ky. 1995). Thus, for example, if the franchisee alleges that the failure to renew is based on the franchisor's animosity to the franchisee, the nonrenewal may be unlawful, even if it is supported by express contractual grounds for nonrenewal. *Id.*; *see also* Witt v. Union Oil Co. of Cal., 99 Cal. App. 3d 435, 438, 160 Cal. Rptr. 285 (1979) (noting that nonrenewal provision contained in California Franchise Relations Act was designed to prevent franchisors from arbitrarily refusing to renew).

[76] *See* statutes cited *supra* note 68.

grounds cited by the franchisor for the nonrenewal (voluntary abandonment, conviction of a crime, etc.). Each statute also independently requires good cause for nonrenewal. But no language in any of the statutes connects the definition of "good cause" to the enumerated grounds for the different notice periods. Thus, while the Connecticut statute requires "good cause" for nonrenewal, it contains only a vague definition of "nonrenewal" as "including" the franchisee's failure to substantially comply with a provision of the franchise agreement,[77] and it is therefore unclear whether "good cause" includes the franchisee's voluntary abandonment of the franchise, an act for which the statute allows the franchisor to provide a reduced 30-day notice of nonrenewal (as opposed to the generally applicable 60-day period).[78]

The legislature in Minnesota appears to have noticed this potential ambiguity, because it contains parallel sections with virtually identical language identifying acts that allow for reduced-duration notice and acts constituting good cause.[79] Nonetheless, given that the Connecticut statute does not limit the definition of "good cause," but rather defines the term in a broad way as "including" failure to comply with the franchise agreement as a grounds for nonrenewal, a court would probably conclude that other things meet the definition of "good cause," such as the voluntary-abandonment provision in the statute's notice provision.[80]

Conversely, although the text of the Connecticut statutes allows some wiggle room for courts to conclude that the reduced-notice provisions can satisfy the statutes' respective good-cause requirements for nonrenewal, the same cannot be said for Nebraska, New Jersey, and Wisconsin. For example, in New Jersey, a franchisor is permitted to reduce the generally applicable 60-day notice period for nonrenewals to 15 days if the grounds for nonrenewal are the franchisee's voluntary abandonment of the franchise.[81] And a notice of nonrenewal is effective upon delivery if it is based on the franchisee's conviction of a crime directly related to the franchised business.[82] Yet the New Jersey statute has an extremely narrow definition of what constitutes good cause:

> For the purposes of this act, good cause for terminating, canceling, or failing to renew a franchise *shall be limited to* failure by the franchisee to

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[77] CONN. GEN. STAT. § 42-133f(a).

[78] NEB. REV. STAT. § 87-404.

[79] *Compare* MINN. STAT. § 80C.14(3)(a) *with* MINN. STAT. § 80C.14(3)(b).

[80] *See, e.g.*, Petereit v. S.B. Thomas, Inc., 63 F.3d 1169, 1184 (2d Cir. 1995) ("If the Connecticut legislature intended good cause to result only from franchisee breach, it failed to use language expressing such a policy decision.").

[81] N.J. STAT. ANN. § 56:10-5.

[82] *Id.*

substantially comply with those requirements imposed upon him by the franchise.[83]

Courts have strictly construed the New Jersey "good cause" definition, holding that a franchisor can show good cause only if the franchisee has violated an express provision of the franchise agreement.[84] As a result, a franchisor may not have good cause for nonrenewal, despite the language in the notice section of the statute, if a franchise agreement does not expressly provide that the franchisee's voluntary abandonment of the franchised location, or the franchisee's conviction of a crime directly related to the franchise agreement, constitutes grounds for nonrenewal. Nebraska has a nearly identical definition of "good cause."[85] And the Wisconsin statute also has a restrictive definition of the phrase,[86] although courts have construed it more broadly, and it is likely that the statutory grounds for shorter-duration notice periods would be construed as "good cause."[87] Nevertheless, practitioners should be especially careful when drafting nonrenewal provisions in these jurisdictions.

The following sections identify the types of "good cause" for nonrewewal that currently apply in the various jurisdictions requiring good cause.

1. Voluntary Abandonment of the Franchise

The renewal statutes in Arkansas, California, and Minnesota include the franchisee's voluntary abandonment of the franchised premises within the definition of "good cause" for nonrenewal.[88] Under the California statute, a franchise is not deemed

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[83] *Id.* (emphasis added).

[84] *See* Westfield Ctr. Serv., Inc. v. Cities Serv. Oil Co., 86 N.J. 453, 465, 432 A.2d 48 (1981) ("The plain meaning of the language, supported by the legislative history, sharply curtails a franchisor's right to end the franchise in the absence of a breach by the franchisee. Thus when the franchisee has complied with the terms of the agreement the franchisor does not possess an unrestricted authority to close out the arrangement in accordance with its terms."); Gen. Motors Corp. v. Gallo GMC Truck Sales, Inc., 711 F. Supp. 810, 817 (D.N.J. 1989) (noting that a franchisor's good-faith nonrenewal under the New Jersey statute may still violate the statute's good-cause requirement if the nonrenewal is based on grounds other than the franchisee's breach of the franchise agreement).

[85] NEB. REV. STAT. § 87-402(8) ("Good cause for terminating, canceling, or failure to renew a franchise shall be limited to failure by the franchisee to substantially comply with the requirements imposed upon him or her by the franchise.").

[86] WIS. STAT. § 135.02(4).

[87] Ziegler Co. v. Rexnord, Inc., 147 Wis. 2d 308, 318, 433 N.W.2d 8 (1988); Morley-Murphy Co. v. Zenith Elecs. Corp., 142 F.3d 373, 377 (7th Cir. 1998) (noting that the concept of good cause contained in Section 135.02(4) of the Wisconsin Statutes covers "at least some cases in which the grantor's economic circumstances impelled the proposed change").

[88] ARK. CODE ANN. § 4-72-202(7)(C) (defining "good cause" as the franchisee's "[v]oluntary abandonment of the franchise"); CAL. BUS. & PROF. CODE § 20021(b); CONN. GEN. STAT. § 42-133f(a); MINN. STAT. § 80C.14(3)(b)(3); N.J. STAT. ANN. § 56:10-5.

to be "abandoned" unless the franchisee has failed to operate it for at least five consecutive days.[89] Voluntary abandonment probably constitutes good cause for nonrenewal under the Connecticut, Nebraska, and New Jersey statutes, as long as it is expressly identified as a grounds for nonrenewal in the franchise agreement.[90]

2. Nonpayment

A franchisor has good cause not to renew a franchise agreement with a franchisee that has failed to pay amounts due and owing to the franchisor within five days after receiving notice in California,[91] or ten days in Arkansas.[92] Nonpayment of amounts due and owing to the franchisor is probably also sufficient to establish good/just cause for nonrenewal in Indiana, Puerto Rico, and Nebraska, if the franchise agreement expressly states that the franchisee's failure to remit payment within a specified period is grounds for nonrenewal.[93]

3. Conviction of a Crime

Several states provide that a franchisee's criminal conviction constitutes good cause for nonrenewal. In Arkansas, the criminal conviction must be for a crime that is punishable by a sentence of more than one year, and the crime must be "substantially related" to the franchised business.[94] Similarly, in California, a franchisee's felony conviction of a crime "relevant" to the franchise constitutes good cause for nonrenewal.[95] In Minnesota, a franchisor has good cause to not renew a franchise agreement if the franchisee is convicted of or pleads no contest to any crime "relating" to the franchised business.[96] Conviction of a crime directly related to the franchised business probably constitutes good cause for nonrenewal under the Connecticut,

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[89] CAL. BUS. & PROF. CODE § 20025.

[90] *See* discussion *supra* P.IV.B.

[91] CAL. BUS. & PROF. CODE § 20021(j).

[92] ARK. CODE ANN. § 4-72-202(7)(H).

[93] Casco Sales Co. v. Maruyama U.S., Inc., 901 F. Supp. 2d 311, 318 (D.P.R. 2012) ("Because the Agreement, which was negotiated and agreed upon by the parties (and indeed signed by Casco's Rive), explicitly forewarned Casco that failing to remit payments exceeding 90 days constituted grounds for termination, it follows that such a covenant was an 'essential obligation' that falls under the statutory definition of just cause."); *see also* Greenville Funeral Supply, LLC v. Rockvale, Inc., 597 F. Supp. 2d 241, 245 (D.P.R. 2008) (noting that there was just cause for termination because franchise agreement required payment of credit terms within 60 days, and franchise breached those terms by failing to timely remit payment); NEB. REV. STAT. § 87-402; Two Men & a Truck/Int'l Inc. v. Two Men & a Truck/Kalamazoo, Inc., 949 F. Supp. 500, 505 (W.D. Mich. 1996).

[94] ARK. CODE ANN. § 4-72-202(7)(D).

[95] CAL. BUS. & PROF. CODE § 20021(i).

[96] MINN. STAT. § 80C.14(3)(b)(4).

Nebraska, and New Jersey statutes, as long as it is expressly identified as a grounds for nonrenewal in the franchise agreement.[97] A petroleum franchisor also has good cause for nonrenewal under the PMPA if the franchisee has engaged in criminal misconduct related to the franchise, or has otherwise been convicted of a crime of "moral turpitude."[98]

4. Insolvency/Bankruptcy/Assignment for the Benefit of Creditors

In Arkansas, the franchisor has good cause to refuse to renew a franchise agreement if the franchisee files for bankruptcy, makes an assignment (or attempts to make an assignment) for the benefit of creditors, or is otherwise insolvent.[99] It does not appear that a franchisee's insolvency in Arkansas is enough, standing alone, to give rise to good cause because the statute specifically requires "[t]he institution of insolvency" proceedings by or against the franchisee.[100] In addition, the statute prohibits a franchisor from "directly or indirectly" refusing to renew a franchise agreement.[101] As a result, it appears that the franchisor is precluded from instituting insolvency proceedings against the franchisee, and then using that as grounds for not renewing the franchise agreement.

The Nebraska statute is similar to that of Arkansas in that it identifies franchisee insolvency or the institution of bankruptcy proceedings as grounds for providing reduced notice of nonrenewal. A court would probably find that a bankruptcy filing or adjudication of insolvency constitutes good cause for nonrenewal, if it is expressly identified as a grounds for nonrenewal in the franchise agreement.[102]

In California, the franchisor has good cause for nonrenewal if the franchisee has been adjudicated as bankrupt or insolvent, has in fact made an assignment for the benefit of creditors, or otherwise admits that it is unable to pay its debts as they come due.[103] Wisconsin's statute is similar, although it does not appear to require a final adjudication of bankruptcy or insolvency, and it is unclear whether it would constitute good cause for nonrenewal if bankruptcy, insolvency, or an actual assignment for the

[97] *See* discussion *supra* P.IV.B.

[98] Rising Micro, L.L.C. v. Exxon Mobil Oil Corp., No. 06-572 (GK), 2006 WL 1193839, at *6 (D.D.C. May 3, 2006).

[99] ARK. CODE ANN. § 4-72-202(7)(F).

[100] *Id.* There are no reported decisions addressing this issue.

[101] *Id.* § 4-72-204(b).

[102] NEB. REV. STAT. § 87-404.

[103] CAL. BUS. & PROF. CODE § 20025(a).

benefit of creditors is not included as a grounds for nonrenewal in the franchise agreement.[104]

Minnesota's statute notes only that good cause includes "the bankruptcy or insolvency" of the franchisee.[105] It is unclear whether the provision requires a final adjudication, or something less, and the statute does not identify which party ultimately bears the burden of demonstrating insolvency.[106]

5. Compliance with Franchise Agreement

In Arkansas, Connecticut, New Jersey, and the Virgin Islands, the franchisee's failure to "comply substantially" with the terms of the expiring franchise agreement constitutes good cause for nonrenewal.[107] The Arkansas and Wisconsin statutes provide that franchisees need not "substantially" comply with contractual provisions that the state legislatures have deemed to be contrary to public policy, namely, provisions that are discriminatory.[108]

To properly refuse to renew in California and Puerto Rico, a franchisor need only show that the franchisee failed to "comply" with an essential provision of the franchise agreement following notice and an opportunity to cure.[109] In California, the franchisee must cure the breach of the franchise agreement within a "reasonable" time.[110] In Puerto Rico, the franchisor must attempt to bargain with the franchisee in good faith regarding the default.[111]

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[104] WIS. STAT. § 135.02(4); *see also* discussion *supra* P.IV.B.

[105] MINN. STAT. § 80C.14(3)(b)(1).

[106] Given the statute's purpose, however, it is likely that the franchisor bears the burden of proving that the franchisee is bankrupt or insolvent to establish that there was good cause for nonrenewal.

[107] ARK. CODE ANN. § 4-72-202(7)(A); CONN. GEN. STAT. § 42-133f(a); N.J. STAT. ANN. § 56:10-5; V.I. CODE ANN. tit. 12A, §§ 131-132.

[108] ARK. CODE ANN. § 4-72-202(7)(A); WIS. STAT. § 135.04.

[109] CAL. BUS. & PROF. CODE § 20020; P.R. LAWS ANN. tit. 10, § 278(d); Dunkin' Donuts Franchised Rests. LLC v. Wometco Donas Inc., No. 14-10162-NMG, 2014 WL 4542956, at *6 (D. Mass. Sept. 11, 2014) (holding that franchisee's failure to pay amounts owing under the franchise agreement following notice and opportunity to cure constituted good cause for nonrenewal); PPM Chem. Corp. of P.R. v. Saskatoon Chem. Ltd., 931 F.2d 138, 139 (1st Cir. 1991) (noting that timely payments to the franchisor are normally "one of the essential obligations of the dealer's contract") (internal quotation marks and citation omitted).

[110] CAL. BUS. & PROF. CODE § 20020. The California statute defines a "reasonable" time as no more than 30 days. *Id.*

[111] R.W. Int'l Corp. v. Welch Foods, Inc., 88 F.3d 49, 53 (1st Cir. 1996) ("[*A*] *supplier has just cause to terminate if it has bargained in good faith but has not been able to reach an agreement as to price, credit, or some other essential element of the dealership*.") (internal quotation marks and citation omitted).

The statute in Hawaii notes that "good cause" in a *termination* case includes the franchisee's failure to comply with a lawful or material provision in the franchise agreement following written notice and reasonable opportunity to cure.[112] The preceding sentence in the statute notes that good cause is required for *both* terminations and nonrenewals,[113] suggesting that the legislature intended to limit the opportunity to cure to termination claims. Although no cases address the issue, based on the plain language of the statute, a franchisor can probably show good cause for nonrenewal based on the franchisee's breach of a material and lawful provision of the franchise agreement without first providing notice and an opportunity to cure.

Similarly, the statute in Indiana has an express definition of "good cause" in the context of a termination as including "any material violation of the franchise agreement" by the franchisee.[114] It is unclear why the state legislature would limit the definition to terminations, and it may be the result of unintended drafting errors.

6. Action That Impairs Franchisor's Trademarks or Goodwill

In Arkansas, California, Minnesota, and Puerto Rico, any action by the franchisee that materially impairs the franchisor's trademarks or trade name, or that otherwise reflects unfavorably on the operation and reputation of the franchise system, constitutes good cause for nonrenewal of the franchise relationship.[115] This justification for nonrenewal or termination can be limited to damage specifically to the franchisor's trademark or trade name,[116] or can more broadly encompass damage to reputation or goodwill.[117]

In *Jordan K. Rand, Ltd. v. Lazoff Bros.*,[118] the trademark owner and clothing manufacturer agreed to allow the defendant to sell its branded jeans in Puerto Rico. In addition to purchasing the jeans for resale, the defendant also registered the trademark in Puerto Rico under its own name, and began producing and promoting other, low-quality garments using the same name and logo. The court held that those facts constituted "just cause" under Puerto Rico's dealership law because, among other

[112] HAW. REV. STAT. § 482E-6(2)(H).

[113] *Id.*

[114] IND. CODE § 23-2-2.7-1(7).

[115] ARK. CODE ANN. § 4-72-202(7)(E); CAL. BUS. & PROF. CODE § 20021(d); MINN. STAT. § 80C.14(3); P.R. LAWS ANN. tit. 10, § 278.

[116] ARK. CODE ANN. § 4-72-202(7)(E).

[117] CAL. BUS. & PROF. CODE § 20021(d); MINN. STAT. § 80C.14(3).

[118] 537 F. Supp. 587 (D.P.R. 1982).

things, the evidence demonstrated that "such violations may adversely affect plaintiff's goodwill and reputation in the [manufacturer's] trademark."[119]

7. Franchisee Failure to Act in Good Faith/Franchisee Bad Faith

In Arkansas, the Virgin Islands, and Nebraska,[120] the franchisee's failure to perform its obligations under the franchise agreement in good faith, or its bad-faith conduct in carrying out the franchise agreement, constitutes good cause for nonrenewal.[121]

In general, the duty of good faith in franchise relationships has been construed as a gap-filler in areas where a party has discretion, to ensure that the party exercises that discretion reasonably based on the expectations of the parties.[122] While most decisions addressing bad faith or lack of good faith concern the franchisor's conduct, a franchisee could act without good faith in the way it observes operational standards, avoids creating business or territorial conflicts with other franchisees, participates in mandatory franchisee co-ops or councils, participates in mandatory marketing programs or promotions, or maintains the general integrity and goodwill of the brand.

8. Mutual Agreement

Although not denominated as "good cause" for nonrenewal, the statutes in California and Iowa expressly provide that a nonrenewal is proper, regardless of the good-cause requirement, if the parties mutually agree to the nonrenewal.[123] It is likely that courts in virtually all jurisdictions would hold that a nonrenewal is proper if the parties mutually agree to part ways, in the absence of any evidence of coercion.[124]

9. Public Health or Safety

California and Nebraska provide that nonrenewal is appropriate if the franchisee's continued operation presents an imminent danger to public health or safety.[125] As a practical matter, these circumstances are more likely to result in termination, because a conscientious franchisor concerned about damage to the

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[119] *Id.* at 598.

[120] As with all good-cause requirements in Nebraska, it may depend on whether the franchisor has expressly included failure to act in good faith as grounds for nonrenewal in the franchise agreement.

[121] ARK. CODE ANN. § 4-72-202(7)(B); NEB. REV. STAT. § 87-404; V.I. CODE ANN. tit. 12A, § 132.

[122] Carmen D. Caruso, *Franchising's Enlightened Compromise: The Implied Covenant of Good Faith and Fair Dealing*, 26 Franchise L.J. 207, 209 (2007).

[123] CAL. BUS. & PROF. CODE § 20025; IOWA CODE § 523H.8(1)(b)(2).

[124] See Appendix 3 for an example of a provision confirming mutual agreement on termination.

[125] CAL. BUS. & PROF. CODE § 20021(k); NEB. REV. STAT. § 87-404.

brand's reputation will not stand by and wait for an expiration date in the face of genuine danger to the public's health or safety. Both statutes explicitly allow the franchisor to terminate the franchise in these cases.[126]

10. Legitimate Business Reasons

There is a distinct split of authority on whether the franchisor's legitimate business concerns may be factored into the good-cause analysis. In Iowa, the statute expressly provides that a franchisor has good cause not to renew a franchise relationship if it is exercising its judgment to pursue legitimate business reasons.[127] In most of the remaining jurisdictions that require a showing of good cause, but that do not expressly require the franchisor to have legitimate business reasons to discontinue a franchise relationship, the courts have held that it is appropriate to consider the franchisor's situation.[128] In Connecticut, the courts have held that the legislature's decision to define "good cause" broadly as only "including" specified grounds left the door open for other potential grounds for good cause, including the franchisor's legitimate business reasons.[129]

Courts have held that consideration of the franchisor's circumstances is proper even in two of the evergreen jurisdictions, Puerto Rico and Wisconsin, both of which have restrictive definitions of "good cause" that on their face appear to limit nonrenewal to the franchisee's violations of the terms of the franchise agreement.[130] For example, although the plain text of the Wisconsin statute would not appear to allow for consideration of the franchisor's circumstances in determining whether there is good cause for nonrenewal, in *Ziegler Co. v. Rexnord, Inc.*, the Wisconsin Supreme Court rejected such a narrow reading. The court noted that in enacting the statute, "the legislature intended to equalize the power of grantors and dealers; it did not intend to

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[126] *Id.*

[127] IOWA CODE § 523H.8(1)(b)(1).

[128] *See* McCabe v. AIR-serv Grp., LLC, Bus. Franchise Guide (CCH) ¶ 13,788 (D. Minn. 2007) (noting that franchisor's decision to change business model to corporate chain from independent distribution was a legitimate business reason that was sufficient grounds for nonrenewal under Minnesota statute); *cf.* Anand v. BP W. Coast Prods. LLC, 484 F. Supp. 2d 1086 (C.D. Cal. 2007) (noting that under the PMPA, refiner's decision in the normal course of business to decide not to renew dealer in good faith constituted proper grounds for nonrenewal).

[129] Petereit v. S.B. Thomas, Inc., 63 F.3d 1169, 1184 (2d Cir. 1995) (noting that the legislature's broad definition of "good cause" indicated "that franchisors' economic interests must be accounted for in striking a balance between franchisee protection and attracting and retaining franchisors to do business in the state"); Hartford Elec. Supply Co. v. Allen-Bradley Co., 250 Conn. 334, 363, 736 A.2d 824 (1999) ("[I]n order to prove 'good cause,' a franchisor would have to show that the franchisee either failed or refused to comply substantially with a material and reasonable term of the franchise agreement, or that the franchisor had an equivalent business reason of a similar nature.").

[130] Tractenberg, Calihan & Luciano, *supra* note 11, at 200.

insulate dealers from all economic reality at the expense of grantors."[131] To conclude otherwise would be a nonsensical[132] and manifestly unreasonable interpretation of the statute,[133] and could potentially raise constitutional questions.[134] Perhaps out of the same constitutional concerns raised by the Wisconsin statute, the Supreme Court of Puerto Rico similarly acknowledged, albeit reluctantly, that a franchisor's economic circumstances must be taken into consideration when addressing the "just cause" element of the nonrenewal statute.[135]

Despite the potential constitutional concerns with refusing to consider a franchisor's financial and business concerns in the good-cause inquiry, courts in New Jersey and Indiana have routinely held that whether there is good cause for nonrenewal of a franchise agreement depends only on the franchisee's conduct.[136] The New Jersey Supreme Court has nonetheless acknowledged that there may be potential

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[131] 147 Wis. 2d 308, 318, 433 N.W.2d 8 (1988); *see also* Morley-Murphy Co. v. Zenith Elecs. Corp., 142 F.3d 373 (7th Cir. 1998).

[132] Remus v. Amoco Oil Co., 611 F. Supp. 885, 887 (E.D. Wis. 1985), *aff'd*, 794 F.2d 1238 (7th Cir. 1986) ("Common sense suggests that when a company has determined that an aspect of its business should be changed in order to stay competitive, it has good cause to make the change provided that it does so in a non-discriminatory manner.").

[133] *See id.* at 888 (citing St. Joseph Equip. v. Massey-Ferguson, Inc., 546 F. Supp. 1245, 1247 (W.D. Wis. 1982) ("Yet in spite of the facially apparent applicability of the statutory language to the defendant's conduct, I am of the opinion that the WFDL's prohibitions are not applicable in cases where, as here, the grantor undertakes a non-discriminatory withdrawal from a product market on a large geographic scale.")).

[134] *St. Joseph Equip.*, 546 F. Supp. at 1248 (noting that adopting a reading of the statute that did not take franchisors' business considerations into account "has the potential to precipitate some formidable constitutional questions").

[135] R.W. Int'l Corp. v. Welch Foods, Inc., 88 F.3d 49, 52 (1st Cir. 1996) ("Although Law 75, by its plain terms, makes the 'just cause' inquiry turn solely on the *dealer's* actions or omissions, *see* P.R. Laws Ann. tit. 10, § 278, the Puerto Rico Supreme Court has read a 'third' 'just cause' into the statute to avoid constitutional invalidation, by holding that a principal's own circumstances may permit its unilateral termination of an ongoing dealership, irrespective of the dealer's conduct.") (citing Medina & Medina v. Country Pride Foods, Ltd., 858 F.2d 817, 822-23 (1st Cir. 1988) (responding to question certified in 825 F.2d 1 (1st Cir. 1987)).

[136] Wright-Moore Corp. v. Ricoh Corp., 908 F.2d 128, 137 (7th Cir. 1990) ("We believe, however, that the language and structure of the Indiana law, along with the guidance provided by interpretation of franchise laws in other states, compel a conclusion that the internal economic reasons of the franchisor are not, by themselves, good cause for termination or nonrenewal of a franchise."); Carlos v. Philips Business Sys., 556 F. Supp. 769, 776 (E.D.N.Y.), *aff'd*, 742 F.2d 1432 (2d Cir. 1983) (restructuring designed to "address the market place as it exists today" is not good cause under the NJFPA) (internal quotation marks and citation omitted); Gen. Motors Corp. v. Gallo GMC Truck Sales, Inc., 711 F. Supp. 810, 816 (D.N.J. 1989) ("It is a violation of the [NJFPA] . . . to cancel a franchise for any reason other than the franchisee's substantial breach . . . ."). *Cf.* Beilowitz v. Gen. Motors Corp., 233 F. Supp. 2d 631, 644 (D.N.J. 2002) ("New Jersey takes a restrictive view of what constitutes 'good cause' for termination. It is a violation of the NJFPA to cancel a franchise for any reason other than the franchisee's substantial breach, even if the franchisor acts in good faith and for a bona fide reason.") (internal quotation marks and citations omitted).

constitutional issues with refusing to allow franchisors to make changes to agreements on renewal,[137] and commentators have argued that franchisors "have a constitutional right to insist on a material change upon renewal if it is necessary to receive a just and reasonable rate of return."[138] Otherwise, the New Jersey statute may violate the Takings Clause.[139]

11. Market Withdrawal

In California and Iowa, the franchisor's decision to withdraw from the market is good cause for nonrenewal, if the franchisor does not enforce a post-term noncompetition covenant or does not attempt to acquire the franchisee's business for itself.[140] The case law in Wisconsin also appears to allow for total market withdrawal as good cause for nonrenewal, but only if the franchisor does so with a legitimate financial motive, and not with the intention of capturing the franchisee's business. Thus, for example, in *Kealey Pharmacy & Home Care Services, Inc. v. Walgreen Co.*, the Seventh Circuit held that the Wisconsin statute precluded the franchisor from withdrawing from the state and terminating or not renewing all existing franchisees because the motive for the withdrawal was the franchisor's attempt to capture the franchisees' business and goodwill for itself.[141] Conversely, when the franchisor's decision to withdraw from the market is driven by legitimate economic or financial reasons, courts have routinely found good cause, even though the statute does not on its face provide for good cause for any reason other than the franchisee's material breach of the agreement.[142] The Puerto Rico Supreme Court reached a similar result in a case involving a total market withdrawal, noting that the franchisor had satisfied the

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[137] Westfield Ctr. Serv., Inc. v. Cities Serv. Oil Co., 86 N.J. 453, 467, 432 A.2d 48 (1981) ("Interpretation of section 10 to authorize a permanent injunction against termination, cancellation or nonrenewal and to prevent the franchisor from selling its property for bona fide reasons, contrary to the provisions of the parties' agreements, would raise constitutional questions of due process and taking of property for public use without just compensation.") (citing Consumers Oil Corp. of Trenton, N.J. v. Phillips Petroleum Co., 488 F.2d 816 (3d Cir. 1973)).

[138] Tractenberg, Calihan & Luciano, *supra* note 11, at 202.

[139] *Westfield Ctr.*, 86 N.J. at 467.

[140] CAL. BUS. & PROF. CODE § 20025; IOWA CODE § 523H.8(1)(b)(3). The PMPA also provides that market withdrawal constitutes good cause for nonrenewal of a gasoline dealer agreement. 15 U.S.C. § 2802(b)(2)(E).

[141] 761 F.2d 345 (7th Cir. 1985) (holding that franchisor could not unilaterally terminate all franchises in Wisconsin if the franchisor continued to sell products in Wisconsin).

[142] St. Joseph Equip. v. Massey-Ferguson, Inc., 546 F. Supp. 1245, 1247 (W.D. Wis. 1982) ("I am of the opinion that the WFDL's prohibitions are not applicable in cases where, as here, the grantor undertakes a non-discriminatory withdrawal from a product market on a large geographic scale."); *see also* Remus v. Amoco Oil Co., 794 F.2d 1238, 1241 (7th Cir. 1986) ("*Kealey* does not stand for the proposition that the Fair Dealership Law forbids a franchisor to make system-wide changes without the consent of every franchisee.").

good-cause requirement and that the nonrenewal would therefore be proper if accompanied by proper notice.[143]

Courts applying Indiana law also appear to allow a franchisor's withdrawal of a product to satisfy the good-cause requirement for nonrenewal of a franchise agreement.[144]

Conversely, in a termination case, the Arkansas Supreme Court held that "[t]he market withdrawal of a product or of a trademark and a trade name for the product" did not constitute good cause under the Arkansas statute.[145] In reaching this conclusion, the court acknowledged that it posed potential constitutional problems, but expressly declined to address them.[146]

In *Paradee Oil Co. v. Phillips Petroleum Co.*, Delaware courts held that market withdrawal alone does not establish just cause for nonrenewal of a franchise agreement.[147] As with the case in Wisconsin, however, the decision in the *Paradee* case appears to have been driven by the facts. In that case, the franchisor argued that it had no choice but to end the relationship with a gasoline dealer because the terminal that supplied the dealer with gasoline was closing.[148] But the court noted that the franchisor's relationship with the dealer predated the opening of the terminal, and that the original terminal that delivered products to the dealer remained open.[149] As a result, the franchisor's contentions about being overly burdened by continuing to supply the

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[143] Medina & Medina v. Country Pride Foods, Ltd., 858 F.2d 817, 824 (1st Cir. 1988) ("Act No. 75 of June 24, 1964, does not bar the principal from totally withdrawing from the Puerto Rican market when his action is not aimed at reaping the good will or clientele established by the dealer, and when such withdrawal—which constitutes just cause for terminating the relationship—is due to the fact that the parties have bargained in good faith but have not been able to reach an agreement as to price, credit, or some other essential element of the dealership. In any case, said withdrawal must be preceded by a previous notice term which shall depend on the nature of the franchise, the characteristics of the dealer, and the nature of the pre-termination negotiations.").

[144] Hubbard Auto Ctr., Inc. v. Gen. Motors Corp., Bus. Franchise Guide (CCH) ¶ 13,962 (N.D. Ind. 2008) (holding that GM's withdrawal of brand of automobiles constituted good cause under Michigan statute); Ray Skillman Oldsmobile & GMC Truck, Inc. v. Gen. Motors Corp., No. 1:05-CV-0204-DFH-WTL, 2006 WL 694561, at *2 (S.D. Ind. Mar. 14, 2006) (noting in dicta that legitimate business decision to withdraw from market may constitute good cause for nonrenewal).

[145] Larry Hobbs Farm Equip., Inc. v. CNH Am., LLC, 375 Ark. 379, 386-87, 291 S.W.3d 190 (2009); *cf.* Aurigemma v. Arco Petroleum Prods. Co., 698 F. Supp. 1035, 1042 (D. Conn. 1988) (holding, under Connecticut's petroleum franchising statute, which contains nearly identical wording to the state franchise statute, that market withdrawal does not constitute good cause for nonrenewal).

[146] *Id.*

[147] 320 A.2d 769, 776 (Del. Ch. 1974), *aff'd*, 343 A.2d 610 (Del. 1975).

[148] *Id.*

[149] *Id.*

dealer rang hollow, and the court affirmed the preliminary injunction in favor of the dealer.[150]

Finally, in New Jersey, the decisions have varied. In some cases, the courts have held that market withdrawal is not good cause for termination under any circumstances.[151] Other cases, however, have acknowledged the potential constitutional problem associated with refusing to allow a franchisor to withdraw from a market for economic necessity, which may be sufficient good cause for nonrenewal of a franchise agreement.[152]

12. Miscellaneous

Finally, there are jurisdiction-specific tests that satisfy statutory good-cause requirements. For example, in California, good cause also includes (1) material misrepresentations by the franchisee;[153] (2) governmental seizure or closure of the franchised premises; (3) franchisee violations of federal, state, or local laws that remain uncured after ten days' written notice; and (4) repeated violations of the franchise agreement by the franchisee, or multiple violations of the same provision of the franchise agreement following the franchisee's receipt of notice and subsequent cure.[154]

In Delaware, to show that a nonrenewal is unjust, the franchisee must show that the proposed new franchise agreement is unconscionable.[155] "[T]hat is to say, there must be an absence of meaningful choice and contract terms unreasonably favorable

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[150] *Id.*

[151] Gen. Motors Corp. v. Gallo GMC Truck Sales, Inc., 711 F. Supp. 810, 816 (D.N.J. 1989) ("The Act provides that the only 'good cause' for such termination is the failure of the franchisee substantially to comply with the requirements of the franchise agreement. GMC does not assert anywhere in its pleadings or affidavits that Gallo has failed to abide by the terms of the franchise, but claims that the cancellation of the heavy duty truck addendum was precipitated by GMC's decision to withdraw from the heavy duty truck market. It is a violation of the Act, however, to cancel a franchise for any reason other than the franchisee's substantial breach, even if the franchisor acts in good faith and for a bona fide reason.").

[152] Consumers Oil Corp. of Trenton, N.J. v. Phillips Petroleum Co., 488 F.2d 816, 819 (3d Cir. 1973) ("Our concern is heightened by awareness that an interpretation of the Franchise Practices Act [that would prohibit] Phillips from discontinuing its operations throughout the State would precipitate substantial constitutional questions."); Harter Equip., Inc. v. Volvo Constr. Equip. N. Am., Inc., Bus. Franchise Guide (CCH) ¶ 12,651 (D.N.J. 2003) (holding that market withdrawal might constitute good cause depending on franchisor's motivation).

[153] Similarly, the franchisee's falsification required to be kept by the franchise agreement also probably constitutes good cause under the Nebraska statute. NEB. REV. STAT. § 87-404.

[154] CAL. BUS. & PROF. CODE § 20021.

[155] Tulowitzki v. Atl. Richfield Co., 396 A.2d 956, 960 (Del. 1978) ("In order to hold Atlantic's renewal demand 'unjust', it must be found to be unfair or unconscionable . . . .").

to" the franchisor.[156] "[A] contract is unconscionable if it is such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept, on the other."[157] In determining whether the contract is unconscionable, the court looks to standard industry practices.[158] Thus, when other dealers have agreed to a franchise agreement on the same or substantially similar terms as the proposed renewal agreement, the franchisor has not unjustly refused to renew the franchise agreement.[159] This sets an extremely high bar for franchisees claiming that a franchisor's nonrenewal violated the statutes' just-cause requirements if the franchisor has offered a standard form agreement executed by other franchisees.

Finally, in some states, good cause is not always required for a nonrenewal. For example, in California, good cause is only one of several alternative grounds available to a franchisor for nonrenewal of a franchise relationship.[160] Similarly, the Indiana statute expressly states that a franchise agreement may provide that it is not subject to renewal, which courts have held is sufficient to dispense with any good cause requirement.[161] And no showing of good cause is required in Illinois, Michigan, Mississippi, Missouri, or Washington.[162] But in Michigan, a franchisor that offers a renewal cannot discriminate in the terms of that agreement, because any renewal agreement must be on terms generally available to other franchisees of the same class or type.[163]

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[156] *Id.*

[157] *Id.* (internal quotation marks and citation omitted).

[158] *Id.*

[159] *Id.* ("[T]he proffered addendum is not unconscionable; every dealer except Tulowitzki has accepted it.").

[160] Dale Carnegie & Assocs., Inc. v. King, 31 F. Supp. 2d 359, 365 (S.D.N.Y. 1998) (noting that nonrenewal under Section 20025(a)-(b) of the California Business and Professions Code is permissible without a showing of good cause).

[161] Wright-Moore Corp. v. Ricoh Corp., 980 F.2d 432, 437 (7th Cir. 1992) ("Since this contract contained a non-renewable one-year term, under the above statutory provision good cause was not needed to enable defendant to terminate it.").

[162] Gen. Aviation, Inc. v. Cessna Aircraft Co., 13 F.3d 178, 182 (6th Cir. 1993) (noting that the franchisor "could fail to renew *all* its franchisees without cause" as long as it did not violate Michigan's antidiscrimination prohibition).

[163] MICH. COMP. LAWS § 445.1527(e).

C. Compensation Statutes[164]

In Hawaii, Illinois, Iowa, Michigan, Minnesota, and Washington, franchisors may have an obligation to pay compensation to franchisees upon nonrenewal of a franchise relationship. In Hawaii, Michigan, and Washington, the franchisor must pay the franchisee for the fair market value at the time of the expiration of the franchise of the franchisee's inventory, supplies, equipment, fixtures, and furnishings if purchased from the franchisor or one of its designated suppliers.[165] The franchisor must also pay the franchisee for the loss of goodwill if the franchisor is taking over the business (Hawaii),[166] or if the franchisor did not provide the franchisee with one year's advance written notice of its intention not to renew the franchise agreement (Washington).[167] "Goodwill" is not defined by either statute, however, and the term has a variable meaning.[168] Presumably, the "goodwill" that the franchisor must pay for is the franchisee's goodwill, as distinct from any goodwill that is attributable to the franchisor's trademark or to the franchise system.[169] A franchisee's success may in many instances be the result of the franchisee's unique efforts, including, in some instances, its skill in site selection, franchisee-specific marketing and advertising, and the franchisee's

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[164] The discussion in this section is limited to the statutory requirement for compensation on nonrenewal of a franchise agreement. It does not extend to postdispute remedies that may entitle franchisees to compensation or damages for wrongful nonrenewal, which is beyond the scope of this article.

[165] HAW. REV. STAT. § 482E-6(3); MICH. COMP. LAWS § 445.1527; WASH. REV. CODE § 19.100.180(2)(i). "Fair market value" is not defined, but at least for inventory or supplies, this would generally be measured by the franchisee's cost.

[166] HAW. REV. STAT. § 482E-6(3).

[167] WASH. REV. CODE § 19.100.180(2)(i).

[168] *See, e.g.*, *In re* Marriage of Lukens, 16 Wash. App. 481, 483-85, 558 P.2d 279 (1976) (defining "goodwill" as "'a benefit or advantage" which is acquired by an establishment beyond the mere value of the capital, stock, funds or property employed therein, in consequence of the general public patronage and encouragement, which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices".' J. Crane and A. Bromberg, Law of Partnership § 84 (1968), (quoting from J. Story, Partnership § 99 (3d ed. 1850)."); *In re* Marriage of Hall, 103 Wash. 2d 236, 241, 692 P.2d 175 (1984) ("Goodwill is a property or asset which usually supplements the earning capacity of another asset, a business or a profession."). Goodwill is distinct from earning capacity, which comprises "skill and education," composed instead of "such things as location, referrals, associations, reputation, trade name and office organization." *Id.* *See also* Tele-Commc'ns, Inc. v. Comm'r, 95 T.C. 495, 521 (1990) (holding that goodwill is "the expectancy that old customers will resort to the old place. The essence of goodwill is the expectancy of continued patronage, for whatever reason.") (internal quotation marks and citations omitted); Treas. Reg. § 1.197-2(b)(1) ("Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor.").

[169] Clay A. Tillack & Mark E. Ashton, *Who Takes What: The Parties' Rights to Franchise Materials at the Relationship's End*, 28 FRANCHISE L.J. 88, 124 (2008); Pappan Enters., Inc. v. Hardee's Food Sys., Inc., 143 F.3d 800 (3d Cir. 1998).

unique management skills.[170] In many instances, however, the goodwill, or excess profits generated by the franchised business, is attributable to the franchisor and not the franchisee. As one court has noted with regard to the calculation of the franchisee's goodwill of a McDonald's franchise:

> Customers patronize McDonald's restaurants because they know what they are going to get in terms of product, quality, service, and price from store to store. This is the direct result of the McDonald's system that requires specific standards of quality, service, and cleanliness as part of the franchise agreement. Certainly, the quality, consistency, and service that the system produces result in goodwill, but because of the structure of McDonald's, that goodwill inheres in the McDonald's trade name and trademarks.[171]

Just as unclear is whether the payment for "goodwill" depends on whether the franchisee will continue to operate the same type of business after nonrenewal at the franchised location. The franchisor often controls the real estate from which a franchisee operates its business. In such cases, a nonrenewal is tantamount to the end of the business, or at least means that the former franchisee must start from scratch, securing and furnishing a new location and establishing a new business identity. Often, however, the nonrenewal of a franchise simply means that the franchisee continues to operate the same business at the same location, doing no more than reflagging the location from which it operates. This is common with franchises in hotel, real estate brokerage, and gas station businesses. It is doubtful that the state legislatures intended a franchisor to pay "goodwill" calculated in a similar fashion to both the franchisee that continues to operate the business from the same location and the franchisee that has effectively been placed out of business by the nonrenewal.[172] Unfortunately, no case law provides any guidance on these questions. At a minimum, however, in both Hawaii

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[170] Tillack & Ashton, *supra* note 169, at 124; *see also* Hill v. Mobile Auto Trim, Inc., 725 S.W.2d 168, 171 (Tex. 1987).

[171] Canterbury v. Comm'r, Bus. Franchise Guide (CCH) ¶ 10,089 (T.C. 1992). *See also* Narumanchi v. Shell Oil Co., Bus. Franchise Guide (CCH) ¶ 8720 (D. Conn. 1986). In *Narumanchi*, Shell was not required to compensate the dealer for goodwill under Connecticut's petroleum franchise statute because after adjustments for salaries to the dealer and the dealer's spouse and for interest on loans, the dealership did not turn a profit, and earnings were far below the industry average during the period. *Id.* In short, the dealership had a negative goodwill.

[172] The lion's share of a franchisee's goodwill is related to its continuing operations with the same employees dealing with the same customers at the same location. It would make little sense, therefore, to compensate a nonrenewed franchisee that continues to operate the same business at the same location under a different flag in the same fashion as the franchisee whose nonrenewal forced it out of the business because of the franchisor's control of the real estate. It may be that the lost goodwill of the reflagged franchisee is zero, or close to zero, while the dispossessed franchisee's loss of goodwill may be substantial. Of course, the value of the goodwill lost by the dispossessed franchisee will not always be substantial. Nonrenewed franchisees are often franchisees that have substantially underperformed, and it is hard to see how the value of a nonrenewed franchisee's goodwill could be substantial if it was consistently losing money before nonrenewal.

and Washington, the franchisor is entitled to set off any amount that it is owed by the franchisee.[173]

In addition, the Michigan repurchase obligation does not apply unless the term of the expiring franchise agreement was less than five years, and either the agreement contained a noncompetition covenant or the franchisor failed to give the franchisee at least six months' advance written notice of its intent not to renew the franchise agreement.[174]

In Illinois, the franchisor may not refuse to renew a franchise agreement without compensating the franchisee by repurchasing the franchise, or paying the franchisee the diminution in value of the franchised business caused by the expiration of the franchise.[175] The franchisor's duty to pay compensation does not apply, however, if the expiring franchise agreement did not contain a post-term noncompetition covenant, or if the franchisor gave at least six months advance written notice that it did not intend to enforce a contractual noncompetition covenant.[176]

Iowa has an extremely limited compensation requirement. The statute provides that the franchisor must offer to purchase the assets of the franchised business for its fair market value as a going concern within ten days before the expiration of the franchise agreement, but only if the expiring franchise agreement contains an onerous provision that prohibits the franchisee from engaging in a lawful business at the franchised location that does not compete in the franchisor's line of business, after the termination of the franchise agreement.[177] It is unclear whether a covenant prohibiting a party from operating a business that is not in competition with the other party would even be enforceable, so there are likely few, if any, situations in which the compensation provision would come into effect.

In Minnesota, a franchisor is not entitled to refuse renewal if the franchisee has had insufficient time to operate the franchised business to recover the fair market value of the franchise as a going concern, as determined and measured by the date of the failure to renew.[178] Similar to the doctrine of equitable recoupment, the statute imposes a duty on franchisors not to refuse renewal of a franchise agreement if the franchisee has made substantial investments in its business that it has, at least so far, been unable to recoup.

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[173] HAW. REV. STAT. § 482E-6(3); WASH. REV. CODE § 19.100.180(2)(i).

[174] MICH. COMP. LAWS § 445.1527.

[175] 815 ILL. COMP. STAT. 705/20.

[176] *Id.*

[177] IOWA CODE § 523H.11.

[178] MINN. STAT. § 80C.14(4).

V. Structuring Agreements in the Morass

The existence of renewal statutes creates a host of questions for counsel drafting franchise agreements, starting with the most basic question of whether the terms of a franchise agreement, such as timelines for providing notice of nonrenewal, can override the terms of the statute. A few isolated examples of statutes and cases allow flexibility in drafting an agreement, such as in Indiana, where the statute expressly allows the franchisor to draft around the notice provision for nonrenewals.[179] Similarly, the Delaware renewal statute suggests that the franchisor can define what constitutes just cause for renewal in the franchise agreement.[180]

Otherwise, for the most part, the answer to whether a franchise agreement can supersede the provisions of a renewal statute is a definitive "no." Several renewal statutes expressly override contractual provisions that are contrary to the requirements of the statute.[181] And most courts have consistently held that the statutory requirements control over the requirements for nonrenewal set forth in a franchise agreement.[182]

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[179] IND. CODE § 23-2-2.7-3; Cont'l Basketball Ass'n v. Ellenstein Enters., Inc., 669 N.E.2d 134 (Ind. 1996).

[180] DEL. CODE ANN. tit. 6, § 2552(d) (noting that "[a] provision of a franchise which permits a franchisor to fail to renew that franchise, *which provision does not specify the grounds upon which such failure to renew may be made*, shall be construed to permit the franchisor only justly to fail or refuse to renew") (emphasis added).

[181] P.R. LAWS ANN. tit. 10, § 278a ("*Notwithstanding the existence in a dealer's contract of a clause reserving to the parties the unilateral right to terminate* the existing relationship, no principal or grantor may directly or indirectly perform any act detrimental to the established relationship or refuse to renew said contract on its normal expiration, except for just cause.") (emphasis added); WIS. STAT. § 135.025(3) ("The effect of this chapter may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.").

[182] JRS Prods., Inc. v. Matsushita Elec. Corp. of Am., 115 Cal. App. 4th 168, 175, 8 Cal. Rptr. 3d 840 (2004), *as modified on denial of reh'g* (Feb. 25, 2004) (holding that the franchisor violated the nonrenewal notice provision of the California Franchise Relations Act by including contract provision allowing for termination on only 30 days' notice); Boat & Motor Mart v. Sea Ray Boats, Inc., 825 F.2d 1285, 1290 (9th Cir. 1987) ("Sea Ray violated the Act by not giving the 180 days' notice the Act requires a franchisor to give when it is not renewing a franchise."); Farmers Union Agency, Inc. v. Butenhoff, 808 F. Supp. 677, 682 (D. Minn. 1992) (statute overrides term in franchise agreement allowing termination at will); Lichnovsky v. Ziebart Int'l Corp., 414 Mich. 228, 324 N.W.2d 732 (1982) (holding that contract that contained provision providing franchisee with right to notice and right to cure before termination, but that had not specified term, was not terminable at will, only for cause); Capital Equip., Inc. v. CNH Am., LLC, 471 F. Supp. 2d 951, 957 (E.D. Ark. 2006); *In re* Ryan's Subs, Inc., 165 B.R. 465, 467 (Bankr. W.D. Mo. 1994) (ten-day notice of termination provided by franchise agreement overridden by statutory 90-day notice requirement); Armstrong Bus. Servs., Inc. v. H & R Block, 96 S.W.3d 867, 878 (Mo. Ct. App. 2002); ITW Food Equip. Grp. LLC v. Walker, No. 1:12-CV-119, 2012 WL 4867440, at *3 (W.D. Mich. Oct. 15, 2012); Sheldon v. Munford, Inc., 950 F.2d 403, 407 (7th Cir. 1991).

When there is no renewal statute requiring notice, the common law controls, and most courts will conclude that a franchise agreement without a right of renewal simply expires by its terms, without the need for notice.[183]

Franchisors also need to consider whether they can require the franchisee to sign a renewal agreement that has different terms from those in the expiring agreement. As discussed in detail above, it is imperative that the original franchise agreement spell out that the franchisee's right to renewal, if any, is conditioned on the franchisee's acceptance and agreement to new terms.[184] If the contract does not contain this language it may be difficult to impose new contractual terms in some jurisdictions, which may require that the right be spelled out in the contract.[185] Otherwise, both the FTC[186] and most jurisdictions appear to allow for changes, even substantial changes, to the terms of the franchise agreement, as a condition of renewal,[187] although some states,

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[183] *See* Towne v. Robbins, No. CV02-1688-MO, 2005 WL 139077, at *2 (D. Or. Jan. 20, 2005) (noting that under Oregon law, a franchise agreement properly expired by its own terms, and therefore the franchisee had no right to continue operating the franchised business).

[184] Although many statutes expressly provide that any provision in a franchise agreement requiring a franchisee to waive any rights granted by the statute is void, some courts have held that a franchisor can require the franchisee to sign a retrospective release as a condition of entering into a renewal franchise. Stradling v. Southland Corp., 924 F. Supp. 38 (M.D. Pa. 1996) (requiring franchisee to sign a retrospective release to renew not prohibited by New Jersey act); Giampapa v. Carvel Corp., Bus. Franchise Guide (CCH) ¶ 11,442 (D.N.J. 1998) (same); *but see* Huntington Learning Ctrs., Inc. v. Futuredge, LLC, Bus. Franchise Guide (CCH) ¶ 13,542 (D.N.J. 2005) (Court held that requiring a general release as a condition of renewing the franchise was unfair and that subsequent nonrenewal/termination was not good cause. Holdover franchisee was not competing with franchisor in violation of noncompete, even though franchisor was refusing to accept royalty checks.); Tatan Mgmt. v. Jacfran Corp., 270 F. Supp. 2d 197, 206 (D.P.R. 2003) (applying Puerto Rico law and holding that "[t]he Court has doubts as to the lawfulness of requiring the execution of the then-current standard form of the franchise agreement and the execution of a release"). But no release, whether prospective or retrospective, will apply to release franchisors from violations of applicable franchise statutes. *See generally* HANDBOOK, *supra* note 15, at 53.

[185] IOWA CODE § 523H.8(2) ("As a condition of renewal of the franchise, a franchise agreement may require that the franchisee meet the then current requirements for franchises and that the franchisee execute a new agreement incorporating the then current terms and fees for new franchises.").

[186] 16 C.F.R. § 436.1(t) (suggesting that renewal on different terms is permissible, so long as there is disclosure if the terms are materially different).

[187] Thompson v. Atl. Richfield Co., 649 F. Supp. 969 (W.D. Wash. 1986); Corp v. Atl. Richfield Co., 122 Wash. 2d 574, 585, 860 P.2d 1015 (1993) ("[T]he inclusion of new terms in a subsequent franchise offer comports with FIPA and does not constitute nonrenewal or termination of the original franchise" and "a franchisee's dissatisfaction with new terms does not equal a refusal to renew or a termination by the franchisor."); Payne v. McDonald's Corp., 957 F. Supp. 749 (D. Md. 1997); Svela v. Union Oil Co. of Cal., 807 F.2d 1494, 1500 (9th Cir. 1987) (holding that under the Petroleum Marketing Practices Act, "renewal of the franchise relationship can be based on terms and conditions substantially different from those of the original franchise"); *but see* Unified Dealer Grp. v. Tosco Corp., 16 F. Supp. 2d 1137, 1142 (N.D. Cal. 1998) (franchisor did not act in good faith under PMPA when it offered franchisee take-it-or-leave-it new franchise agreement on renewal; franchisor had a duty to negotiate in good faith); Test Servs., Inc. v. Princeton Review, Inc., Bus. Franchise Guide (CCH) ¶ 13,450 (D. Colo. 2005) (holding that franchise agreement that permitted renewal, but only on terms then available to new franchisees, was enforceable);

notably Wisconsin, may take issue with substantial changes to the business model. The Wisconsin statute not only prohibits franchisors from failing to renew relationships, but also prohibits franchisors from "substantially chang[ing] the competitive circumstances of a dealership agreement without good cause."[188] Although the initial cases addressing this requirement appeared to prohibit the franchisor from making significant changes to the business model, the trend in the more recent case law suggests that a franchisor may make system-wide, nondiscriminatory changes, if the changes are necessitated by changes in market conditions or legitimate business reasons, and not by some other improper motive.[189]

Historically, franchisees faced with the choice of accepting onerous terms in a proposed renewal franchise agreement or losing their franchised business have argued that they actually have no choice in the matter, and that the franchisor's actions amount to a constructive nonrenewal.[190] The franchise renewal statutes in Connecticut,[191] Delaware,[192] Illinois,[193] Missouri,[194] New Jersey,[195] and Wisconsin[196] have been held to

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Cf. Coady Corp. v. Toyota Motor Distribs., Inc., 346 F. Supp. 2d 225, 245 (D. Mass. 2003), *aff'd*, 361 F.3d 50 (1st Cir. 2004) ("Chapter 93B makes it illegal for distributors to 'fail or refuse to extend the franchise or selling agreement of a motor vehicle dealer upon its expiration without good cause' and appropriate notice, but a mere alteration in the term of the Agreement is not a failure or refusal 'to extend.' Toyota was, therefore, entitled to renew the Agreement with Coady for a two-year term rather than a six-year term, for any cause and without notice.") (citation omitted).

[188] WIS. STAT. § 135.03.

[189] Ziegler Co. v. Rexnord, Inc., 147 Wis. 2d 308, 318, 433 N.W.2d 8 (1988); Meyer v. Kero-Sun, Inc., 570 F. Supp. 402 (W.D. Wis. 1983); Bresler's 33 Flavors Franchising Corp. v. Wokosin, 591 F. Supp. 1533 (E.D. Wis. 1984); RE/MAX N. Cent., Inc. v. Cook, 124 F. Supp. 2d 638 (E.D. Wis. 2000); Wis. Music Network, Inc. v. Muzak L.P., 5 F.3d 218 (7th Cir. 1993) (finding good cause for nonrenewal because proposed new national standards were based on franchisor's legitimate business goals).

[190] Instructional Sys., Inc. v. Computer Curriculum Corp., 35 F.3d 813, 827 (3d Cir. 1994) (suggesting in dicta that the franchisee may have a claim for constructive nonrenewal under New Jersey law if the changes in the franchise agreement are significant).

[191] Petereit v. S.B. Thomas, Inc., 63 F.3d 1169, 1182 (2d Cir. 1995) ("We think it reasonable therefore to believe it was the legislature's aim to have the umbrella of the Act's protection cover constructive as well as formal termination."); Carlos v. Philips Bus. Sys., 556 F. Supp. 769, 776 (E.D.N.Y.), *aff'd*, 742 F.2d 1432 (2d Cir. 1983).

[192] Kirkwood Kin Corp. v. Dunkin' Donuts, Inc., No. 94C-03-189-WTQ, 1997 WL 529587, at *9 (Del. Super. Ct. Jan. 29, 1997) ("[T]he Court concludes that the Franchise Security Law does permit a cause of action for constructive or *de facto* termination.").

[193] Bell v. Bimbo Foods Bakeries Distribution, Inc., No. 11 C 03343, 2012 WL 2565849, at *3 (N.D. Ill. July 2, 2012) ("In light of the analogy to the Illinois Human Rights Act, and the supporting case law interpreting other states' franchise laws, a constructive termination should qualify as a 'termination' under the Illinois Franchise Disclosure Act.").

[194] Am. Bus. Interiors, Inc. v. Haworth, Inc., 798 F.2d 1135, 1141 (8th Cir. 1986); Cole v. Homier Distrib. Co., No. 4:07-CV-1493 (JCH), 2007 WL 4233636, at *5 (E.D. Mo. Nov. 28, 2007).

apply to constructive nonrenewal of the franchise.[197] And Pennsylvania appears to allow franchisees to bring claims for constructive nonrenewal or termination as a breach of the duty of good faith and fair dealing.[198]

With the exception of Wisconsin, which arguably codified constructive nonrenewal into its statute by expressly precluding franchisors from changing franchisees' competitive circumstances at the time of renewal,[199] the courts that have held that a franchise statute gives rise to a claim for constructive termination or nonrenewal have done so largely on public-policy grounds. For example, in *Kirkwood Kin Corp. v. Dunkin' Donuts, Inc.*, a Delaware superior court held that the plain language of the Delaware statute applied only to actual termination or nonrenewal of a franchise relationship.[200] Nonetheless, the court allowed the plaintiff franchisee to proceed with a claim for constructive termination of its franchise relationship, concluding that to hold otherwise "exalts form over substance and in many respects does violence to the intent of the General Assembly in enacting the Franchise Security Law."[201]

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[195] *Carlos*, 556 F. Supp. at 776 ("Any argument that the new agreement merely works a 'change' is, in the court's opinion, nothing more than a poorly disguised euphemism for what is essentially a termination or failure to renew this distributorship agreement."); Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc., 408 N.J. Super. 461, 481, 975 A.2d 510 (App. Div. 2009).

[196] Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc., 646 F.3d 983, 989 (7th Cir. 2011); JPM, Inc. v. John Deere Indus. Equip. Co., 934 F. Supp. 1043, 1045 (W.D. Wis. 1995) ("Wisconsin courts acknowledge that the protections of [the Wisconsin Fair Dealership Act] extend to 'constructive' or 'de facto' termination, where a formal dealership contract continues in force although the relationship has effectively ended in practice.") (citing Super Valu Stores, Inc. v. D-Mart Food Stores, Inc., 146 Wis. 2d 568, 576, 431 N.W.2d 721 (Ct. App. 1988)).

[197] Although the issue has never been decided, at least one court has entertained the idea that the Arkansas statute may also give rise to a claim for constructive termination of a franchise relationship. Capital Equip., Inc. v. CNH Am., LLC, 471 F. Supp. 2d 951, 959-60 (E.D. Ark. 2006) (noting that the Arkansas Franchise Practices Act may give rise to a claim by a franchisee for constructive termination, and calling for additional briefing on the issue). At least one court has held that the Arkansas Motor Vehicle Commission Act, which has similar termination and nonrenewal language, does not give rise to claims based on alleged constructive termination or nonrenewal of a franchise relationship. Zeno Buick-GMC, Inc. v. GMC Truck & Coach, 844 F. Supp. 1340, 1351 (E.D. Ark. 1992).

[198] Cottman Transmission Sys. v. McEneany, No. 05-6768, 2007 WL 210094, at *10 (E.D. Pa. Jan. 19, 2007) (holding that duty of good faith and fair dealing that applies under Pennsylvania law may give rise to a claim for constructive termination of a franchise agreement).

[199] Remus v. Amoco Oil Co., 794 F.2d 1238, 1240 (7th Cir. 1986) ("The provision about not 'substantially chang[ing] the competitive circumstances of the dealership' may be intended simply to protect the dealer against 'constructive termination' . . . .").

[200] No. 94C-03-189-WTQ, 1997 WL 529587, at *9 (Del. Super. Ct. Jan. 29, 1997).

[201] *Id.*

Conversely, courts have held that the renewal statutes in California,[202] Puerto Rico,[203] and Washington[204] apply only if the franchisor has actually refused or failed to renew a franchise agreement. The courts that have refused to imply a claim for constructive nonrenewal or termination of a franchise relationship, however, are those that have applied the language of the franchise statute as written. For example, in *Corp v. Atlantic Richfield Co.*, the Washington Supreme Court held that a franchisor was not liable for failing to renew a franchise agreement simply because it proposed a renewal agreement with different terms from those included in the original franchise agreement. To hold otherwise would be contrary to the statute, which does not have any language suggesting that applies to a constructive nonrenewal.[205]

The availability of a claim for constructive nonrenewal of a franchise agreement presents many practical problems for franchisors, not the least of which is determining what exactly constitutes a "constructive" termination or nonrenewal of a franchise. In *In re Kirkwood*, the court held that to show constructive termination of a franchise agreement, the franchisee had to show a complete repudiation of the franchise agreement.[206] If the franchisor's actions resulted in the complete destruction of the franchise relationship (or if the franchisor intended that its actions have such an effect), then the termination would be "unjust" and a violation of the Delaware statute.[207] Conversely, in *Petereit v. S.B. Thomas, Inc.*,[208] the Second Circuit held that a constructive termination or nonrenewal does not require a showing that the franchisor's actions would result in the complete destruction of the franchise relationship. Rather, the court held that the franchisor's action must result only in a "substantial decline" in the franchisee's net income.[209] While a mere showing of an injurious change in the franchise agreement, alone would be insufficient under the Connecticut statute, the

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[202] Carlock v. Pillsbury Co., Nos. Civ. 4-87-517, Civ. 4-87-586, 1988 WL 404839, at *9 (D. Minn. Oct. 13, 1988) ("Accordingly, because plaintiffs do not allege actual termination or nonrenewal, the Court will dismiss Count IX of the *Carlock* complaint.").

[203] Casco, Inc. v. John Deere Constr. Co. & Forestry Co., No. 13-1325 (GAG), 2014 WL 4233241, at *3 n.2 (D.P.R. Aug. 26, 2014) ("Reading constructive termination into Law 75's potential causes of action strays from the statute's terms.").

[204] Corp v. Atl. Richfield Co., 122 Wash. 2d 574, 860 P.2d 1015 (1993).

[205] *Id.* at 585 (noting that the franchisee's constructive-nonrenewal claims were overridden by "the language of FIPA's termination, nonrenewal, and compensation provisions"). *Cf.* Taylor Equip., Inc. v. John Deere Co., 98 F.3d 1028, 1035 (8th Cir. 1996) (declining to find claim of constructive termination or nonrenewal under South Dakota construction equipment dealership statute).

[206] Kirkwood Kin Corp. v. Dunkin' Donuts, Inc., No. 94C-03-189-WTQ, 1997 WL 529587, at *9 (Del. Super. Ct. Jan. 29, 1997).

[207] *Id.*

[208] 63 F.3d 1169, 1182 (2d Cir. 1995).

[209] *Id.* at 1183 (emphasis omitted).

franchisee need not show that the franchisor's proposed changes completely destroy the franchise relationship.[210]

Understanding what constitutes constructive nonrenewal is important, because the consequences are potentially very significant. For example, although the Missouri franchise statute broadly permits nonrenewal of a franchise relationship without cause, as long as the franchisor provides 90 days' advance notice of nonrenewal, at least one court has held that a franchisor that refuses to deal with the franchisee during the 90-day period after notice may be subject to a claim for damages, including the loss of goodwill, attorneys fees, and equitable relief.[211]

The ongoing vitality of future constructive nonrenewal claims has been called into serious doubt, however, following the United States Supreme Court's ruling in *Mac's Shell Service, Inc. v. Shell Oil Products Co.*,[212] a constructive-termination case arising under the PMPA.[213] The *Mac's Shell* case involved claims by franchisees that the franchisor's changes to the terms of their lease-dealer agreements were so onerous as to amount to a constructive termination of their dealer franchises, even though the dealers continued to operate their gas stations.[214] In a unanimous decision, the Supreme Court rejected the claims, noting that "a necessary element of any constructive termination claim under the PMPA is that the complained-of conduct forced an end to the franchisee's use of the franchisor's trademark, purchase of the franchisor's fuel, or occupation of the franchisor's service station."[215] Thus, a franchisee that signs a renewal agreement under protest has no claim for constructive nonrenewal of the franchise.[216] The Court also noted that one of the problems inherent in allowing constructive termination claims is that it requires courts to delineate what actions by the franchisor are sufficiently serious to amount to a "constructive" termination, leaving a vast area of uncertainty that is unworkable and untenable.[217] The Supreme Court did

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[210] *Id.*

[211] Cole v. Homier Distrib. Co., No. 4:07-CV-1493 (JCH), 2007 WL 4233636, at *5 (E.D. Mo. Nov. 28, 2007).

[212] 559 U.S. 175 (2010).

[213] Robert K. Kry, Mac's Shell *and the Future of Constructive Termination*, 30 FRANCHISE L.J. 67, 67 (2010) ("*Mac's Shell* raises significant questions about whether 'constructive termination' remains a viable theory at all.").

[214] *Mac's Shell*, 559 U.S. at 180.

[215] *Id.* at 190.

[216] *Id.* at 192 ("When a franchisee signs a renewal agreement—even 'under protest'—there has been no failure to renew, and thus the franchisee has no cause of action under the Act.") (second internal quotation marks and citation omitted).

[217] *Id.* at 187 ("Adopting the dealers' reading of the PMPA would require us to articulate a standard for identifying those breaches of contract that should be treated as effectively ending a franchise, even though the franchisee in fact continues to use the franchisor's trademark, purchase the franchisor's fuel,

not address whether the PMPA prohibits any claim for constructive termination or nonrenewal, only whether the act prohibits claims in which the franchisee continues to operate.[218]

Since the Court's decision in *Mac's Shell*, a handful of courts have applied its reasoning to state franchise statutes to hold that a claim arises only if the franchisee is no longer in business. For example, in *Pai v. DRX Urgent Care, LLC*, the court applied the Supreme Court's reasoning in *Mac's Shell* to preclude a constructive termination claim under the NJFPA because it was undisputed that the franchisee continued to operate its business.[219] Moreover, it remains to be seen whether courts applying analogous state statutes will reverse course and decline to allow constructive-termination and nonrenewal claims under state law.

VI. Beyond Expiration of the Term: Franchisees in Limbo

It is common for a franchisee to continue operating beyond the stated term of its franchise agreement. This can be the result of the franchisor's failure to adhere to strict contract management processes, a party's failure to provide timely notice of renewal or nonrenewal, the parties' inability to reach agreement on a new franchise agreement, or the franchisee's partial performance of renewal requirements.[220] In any of these circumstances, the status of the parties' relationship is unclear. They may contend that the agreement is expired and the franchisee's continued operation is unauthorized, that the franchisee is permissibly operating but on a terminable-at-will basis, that the franchise agreement remains in effect for a reasonable period, or that the existing franchise agreement has been renewed for a full or partial term.

In general, a franchisee must satisfy the renewal requirements of a franchise agreement to be entitled to a new or renewed term.[221] In the absence of a new

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and occupy the service-station premises. We think any such standard would be indeterminate and unworkable. How is a court to determine whether a breach is serious enough effectively to end a franchise when the franchisee is still willing and able to continue its operations? And how is a franchisor to know in advance which breaches a court will later determine to have been so serious?") (footnote omitted).

[218] *Id.* at 190.

[219] Nos. 13-4333 (JAP)(TJB), 13-3558 (JAP)(LHG), 2014 WL 837158, at *9 (D.N.J. Mar. 4, 2014) ("Based upon the Supreme Court's holding in *Mac's Shell*, a claim for constructive termination requires that a franchisee no longer be operating."); *see also* Bell v. Bimbo Foods Bakeries Distribution, Inc., No. 11 C 03343, 2012 WL 2565849, at *3 (N.D. Ill. July 2, 2012).

[220] Such as mandatory renovations or payment of a renewal fee.

[221] Merry Maids, L.P. v. WWJD Enters., Inc., No. 8:06CV36, 2006 WL 1720487, at *9 (D. Neb. June 20, 2006), *on reconsideration in part*, 2006 WL 2040245 (D. Neb. July 20, 2006) (franchisee's failure to execute renewal documents resulted in expiration of franchise agreement); Tatan Mgmt. v. Jacfran Corp., 270 F. Supp. 2d 197, 206 (D.P.R. 2003) (franchisee's failure to pay renewal fee or renovate franchise unit, as well as other defaults under franchise agreement, gave franchisor good cause not to renew); Bonner v. Lyons, Pipes & Cook, P.C., 26 So. 3d 1115, 1124 (Ala. 2009) (franchisee's payment of only

franchise agreement, if the parties continue to do business uninterrupted, the extended operation will typically be considered a short-term renewal of the franchise agreement,[222] and the terms of the existing franchise agreement will continue to govern until a new agreement is executed. In either case, if the franchise continues to operate post-expiration, then the terms of the existing franchise agreement will continue to govern until a new agreement is executed.[223] But that arrangement is not indefinite if one party ultimately wishes to exit the relationship.[224]

If the franchisor has missed a statutory deadline to provide notice of nonrenewal, the franchisor may extend the term of the franchise agreement to allow itself the necessary time to properly nonrenew an expiring agreement.[225] In the unusual

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one-half of renewal fee, even if timely, would not be sufficient performance of renewal requirements). *See also* Bradley v. Harris Research, Inc., 275 F.3d 884, 887-88 (9th Cir. 2001) (even though franchisee executed renewal agreement "under protest," the parties were bound by the new franchise agreement).

[222] Praefke Auto Elec. & Battery Co. v. Tecumseh Prods. Co., 110 F. Supp. 2d 899, 908 (E.D. Wis. 2000), *rev'd*, 255 F.3d 460 (7th Cir. 2001) (construing Wisconsin statute, one-year agreement was automatically renewed for subsequent one-year periods so long as parties took no action to require renewal or change their business deals); Wis. Music Network, Inc. v. Muzak L.P., 822 F. Supp. 1332 (E.D. Wis. 1992) (at time of expiration, franchise was extended month to month pending execution of new agreement); Agar Truck Sales, Inc. v. Daimler Trucks N. Am., LLC, Bus. Franchise Guide (CCH) ¶ 15,253 (S.D.N.Y. 2014) (court agreed that franchise agreement went to day-to-day status following expiration because only one party had executed contract renewal, and franchisor ceased business relationship six months later); *In re* Roswog, 48 B.R. 689, 692 (Bankr. M.D. Pa. 1985) (rejecting franchisee's argument that franchise agreement automatically renewed for ten-year term when franchisor offered to renew and franchisee failed to comply with renewal conditions in a timely manner). *But see* Prudence Corp. v. Shred-It Am., Inc., Bus. Franchise Guide (CCH) ¶ 14,334 (9th Cir. 2010) (franchise agreement renewed on original terms because franchisor delayed for over a year all attempts to renew agreement, to detriment of franchisee).

[223] Emerging Vision, Inc. v. Main Place Optical, Inc., 10 Misc. 3d 1071(A), 814 N.Y.S.2d 560, 2006 WL 118364, at *4, *on reconsideration*, 11 Misc. 3d 1057(A), 815 N.Y.S.2d 494 (Sup. Ct. 2006) ("However, where after the expiration of a contract the parties continue to conduct their business under the terms of the expired agreement, an implication arises that the parties have agreed to a new contract containing the terms as were contained in the old contract."); ServiceMaster Residential/Commercial Servs., L.P. v. Westchester Cleaning Servs., Inc., No. 01 2229(JSM), 2001 WL 396520, at *3 (S.D.N.Y. Apr. 19, 2001) ("Although Plaintiff's letter to Defendant of November 30, 1999, anticipates that Defendant will sign a new set of contracts if it meets its financial obligations, the fact remains that the parties' relationship continued to be governed by the 1993 Franchise Agreement until that event occurred."); Gaston Andrey of Framingham, Inc. v. Ferrari N. Am., Inc., 983 F. Supp. 18, 20-21 (D. Mass. 1997) ("Whether the obligation to arbitrate endured as the parties continued their business relationship without a renewed written franchise agreement is a dispute 'arising out of or in connection with' the last written agreement they had" and is therefore resolved by arbitrator under existing agreement.).

[224] RE/MAX N. Cent., Inc. v. Cook, 124 F. Supp. 2d 638, 640-41 (E.D. Wis. 2000) ("Although the [Wisconsin franchise statute] is intended to protect franchisees, it does not give a franchisee the right to continue to use the franchisor's trademarks until the franchisor finally agrees to whatever contract terms the franchisee wants. Franchisees cannot hold a franchisor's trademarks hostage in order to force renegotiation of a contract."). By the same token, the franchisee would presumably be entitled to close its operation and exit the relationship at any time (or at least on reasonable notice) if the parties did not reach agreement.

circumstances in which the franchise agreement lacks a definite term, the franchise is generally terminable at will upon reasonable notice.[226] In that case, the court may treat the termination as a nonrenewal, because, in a technical sense, an agreement with no term does not have an expiration date.[227]

VII. Disclosure on Renewal

Fifteen states have enacted franchise-disclosure laws: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.[228] Minnesota has no provision exempting renewals from the franchise disclosure and registration process, and as a result, franchisors renewing franchise agreements in that state probably have an obligation to satisfy all the statutory disclosure requirements applicable to new franchisees. Conversely, Virginia has a statutory exemption for disclosure of renewal

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[225] Lift Truck Lease & Serv., Inc. v. Nissan Forklift Corp., No. 4:12-CV-153 CAS, 2013 WL 2642951, at *4 (E.D. Mo. June 12, 2013) (franchise agreement expired February 1, but franchisor's January 10 notice letter, setting a revised expiration date of April 15, complied with the statutory 90-day nonrenewal notice requirement under Missouri law); Dunkin' Donuts Inc. v. Benita Corp., No. 97 C 2934, 1998 WL 67613 (N.D. Ill. Feb. 10, 1998) (Illinois law); Upper Midwest Sales Co. v. Ecolab, Inc., 577 N.W.2d 236 (Minn. Ct. App. 1998) (Minnesota law); CAL. BUS. & PROF. CODE § 20026 ("Nothing in Section 20025 shall prohibit a franchisor from offering or agreeing before expiration of the current franchise term to extend the term of the franchise for a limited period in order to satisfy the time of notice of nonrenewal requirement of that section."). Of course, the franchisee would not be obligated to operate beyond the original expiration date if it wished to exit the relationship then.

[226] *Cf.* Randall v. Tradewell Stores, Inc., 21 Wash. 2d 742, 746, 153 P.2d 286 (1944); Kendall-Jackson Winery, Ltd. v. Branson, 82 F. Supp. 2d 844, 869 (N.D. Ill. 2000); Puretest Ice Cream, Inc. v. Kraft, Inc., 806 F.2d 323, 324 (1st Cir. 1986); Scanlan v. Anheuser-Busch, Inc., 388 F.2d 918 (9th Cir. 1968); Robert Porter & Sons, Inc. v. Nat'l Distillers Prods. Co., 324 F.2d 202, 205 (10th Cir. 1963); Birkenwald Distrib. Co. v. Heublein, Inc., 55 Wash. App. 1, 6-7, 776 P.2d 721 (1989); *see also* Lund v. Arbonne Int'l, Inc., 132 Or. App. 87, 90, 887 P.2d 817 (1994); Alpha Distrib. Co. of Cal., Inc. v. Jack Daniel Distillery, 454 F.2d 442, 448-49 (9th Cir. 1972); Clausen & Sons, Inc. v. Theo. Hamm Brewing Co., 395 F.2d 388, 390-91 (8th Cir. 1968).

[227] *See* Dr. Pepper/Seven Up, Inc. v. A&W Bottling, Inc., No. C03-3659Z (W.D. Wash. Nov. 23, 2004) (because alleged franchise agreement contained no term and was terminable at will, putative franchisor complied with Washington franchise statute by providing one year's notice of nonrenewal); *see also* Fleetwood v. Stanley Steemer Int'l, Inc., 725 F. Supp. 2d 1258 (E.D. Wash. 2010), *aff'd*, 446 F. App'x 868 (9th Cir. 2011) (holding that a "termination agreement" entered into between a franchisee and a franchisor that granted the franchisee the right to renew an expiring franchise agreement if it cured certain defaults could be terminated by the franchisor at will if the franchisee failed to comply, because it did not create a separate franchise with a right to renew).

[228] California (CAL. CORP. CODE § 31000 et seq.); Hawaii (HAW. REV. STAT. § 482E-1 et seq.); Illinois (815 ILL. COMP. STAT. 705/1 et seq.); Indiana (IND. CODE § 23-2-2.5 et seq.); Maryland (MD. CODE ANN., BUS. REG. § 14-201 et seq.); Michigan (MICH. COMP. LAWS § 445.1501 et seq.); Minnesota (MINN. STAT. § 80C.01 et seq.); New York (N.Y. GEN. BUS. LAW § 680.1 et seq.); North Dakota (N.D. CENT. CODE § 51-19-01 et seq.); Oregon (OR. REV. STAT. § 650.005 et seq.); Rhode Island (R.I. GEN. LAWS § 19-28.1-1 et seq.); South Dakota (S.D. CODIFIED LAWS § 37-5A-1 et seq.); Virginia (VA. CODE ANN. § 13.1-557 et seq.); Washington (WASH. REV. CODE § 19.100.010 et seq.); Wisconsin (WIS. STAT. § 553.01 et seq.).

franchise agreements, and courts in that jurisdiction have held that disclosure is not required.[229]

In Illinois, Indiana, Maryland, New York, North Dakota and Wisconsin, franchisors are exempt from complying with the state disclosure statute in cases of renewal of existing franchise agreements when there is no interruption in the operation of the franchised business.[230] California, Hawaii, Michigan, Oregon, and Rhode Island have similar provisions, but for the exemption to apply in those states, they also require that the renewed franchise agreement have no material differences with the expiring agreement.[231]

In all the remaining U.S. jurisdictions, disclosure is governed by the FTC Rule, which applies a virtually identical rule to the statutory exemptions in California, Hawaii, Michigan, Oregon, and Rhode Island. Specifically, the FTC Rule does not apply to require disclosure to a renewing franchisee[232] when there has been no interruption of the franchisee's business, unless the new agreement contains terms and conditions that are materially different from those of the original agreement.[233] The interpretive

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[229] Brenco Enters., Inc. v. Take Taxi Franchising Sys. Inc., Bus. Franchise Guide (CCH) ¶ 12,595 (Va. Cir. 2003) (duty to disclose does not apply to franchise renewals, only to new franchises).

[230] 815 ILL. COMP. STAT. 705/7; IND. CODE § 23-2-2.5-1; MD. CODE ANN., BUS. REG. § 14-203; N.Y. GEN. BUS. LAW § 681(11); N.D. CENT. CODE § 51-19-02(14)(a)(2); WIS. STAT. § 553.03.

[231] CAL. CORP. CODE § 31018; *In re* Vylene Enters., Inc., 63 B.R. 900, 910 (Bankr. C.D. Cal. 1986), *rev'd on other grounds* (June 25, 1987) ("Disclosure of the terms and conditions of renewal is not required by the California Franchise Investment Law."); HAW. REV. STAT. § 482E-4; MICH. COMP. LAWS § 445.1503(3); Martino v. Cottman Transmission Sys., Inc., 218 Mich. App. 54, 63, 554 N.W.2d 17 (1996) ("The identity of the franchisor changed. We find that no reasonable person could conclude that a material change did not occur in the relationship."); OR. REV. STAT. § 650.005(8); R.I. GEN. LAWS § 19-28.1-6(6); S.D. CODIFIED LAWS § 37-5B-1(16).

[232] 16 C.F.R. § 436.2 ("In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act . . . [f]or any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as described in subparts C and D of this part, at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.").

[233] 16 C.F.R. § 436.1(t). The guidelines on this issue are contradictory and deeply confusing. On the one hand, the FTC notes that it believes that:

> disclosure is unwarranted where an existing franchisee and the franchisor merely seek to amend their ongoing contractual relationship. In such circumstances, the material information the franchisee needs is the actual revised franchise agreement itself that spells out the terms and conditions that will govern the parties' ongoing relationship. Requiring franchisors to furnish a new disclosure document whenever there may exist agreed upon material changes in a contract is likely to be an unwarranted formality, the cost of which is probably not outweighed by any tangible benefit to the existing franchisee.

guidelines provide that in determining whether disclosure is required, the FTC "will employ a flexible standard based upon the extent to which the disclosure will materially assist the franchisees in making an informed decision."[234] The FTC Rule will not require disclosure, however, if the terms of the renewal do not require the franchisee to pay a fee to enter into the renewal franchise agreement.[235]

If the franchisor is intent on requiring a change in terms on renewal, the franchise agreement should identify that as a possible requirement for renewal.[236] At least one court has noted in dicta that the failure to note in an original franchise agreement that a renewal agreement may contain materially different terms may violate the FTC Rule.[237]

VIII. Conclusion

Navigating the shoals of the various statutory limitations on nonrenewal of a franchise relationship can be a burdensome task for the national franchisor. As a result, practitioners should carefully examine the relevant statutory schemes before advising clients on how to proceed with the nonrenewal of a franchise relationship.

Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15,444, 15,467 (Mar. 30, 2007). In seemingly the same breath, however, the FTC goes on to note that when the franchise agreement contains terms and conditions materially different from those of the original agreement, the renewing franchisee needs advance disclosures in order to make an informed renewal decision. *Id.* In order to avoid potential claims, the careful franchisor would be wise to consistently treat renewing franchisees the same as new prospective franchisees when providing the relevant disclosures.

[234] Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 44 Fed. Reg. 49,966, 49,969 (Aug. 24, 1979).

[235] Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,467 n.237 ("Entering into a new franchise agreement without any required payment or extending an existing franchise agreement for a fee would not be deemed a 'sale of a franchise' for Rule purposes.").

[236] Becker & Boxerman, *supra* note 20, at 69 ("Franchisors and franchisees should be aware, however, that if a franchise agreement grants an automatic right to renewal, the terms and conditions of renewal should be fully disclosed.").

[237] H&R Block Tax Servs. LLC v. Wild, Bus. Franchise Guide (CCH) ¶ 14,718 (D. Colo. 2011) (holding that because the franchisor never disclosed to the franchisee in a Uniform Franchise Offering Circular that she could be required under her 1981 franchise agreement (or in any renewal from 1986 through 2006) to use new software on renewal, any attempt by the franchisor to require the franchisee to do so would be an inherent violation of the FTC Rule).

Appendix 1

State Statutes—General Franchise Laws

State	Statute	Notice	Good Cause	Cure	Compensation
Arkansas	Ark. Code Ann. § 4-72-204	**Required.** Notice Period: 90 days	**Required**, unless failure to renew is in accordance with the current policies, practices, and standards established by the franchisor, that in their establishment, operation, or application are not arbitrary or capricious Good cause is: (a) failure by franchisee to comply substantially comply with nondiscriminatory requirements of franchise agreement; (b) failure by franchisee to act in good faith in the operation of the franchise; (c) voluntary abandonment; (d) conviction of a felony substantially related to the franchise business; (e) any act by franchisee that substantially impairs franchisor's trademarks; (f) franchisee's insolvency, bankruptcy, or assignment for the benefit of creditors; (g) loss of right to occupy franchised premises; or (h) default in payment to franchisor for more than 10 days. Ark. Code Ann. § 4-72-202(7).	**Required**, if failure to renew is for repeated violations of the franchise agreement within preceding 12-month period. Cure Period: 10 days if reason for nonrenewal is repeated failure by franchisee within preceding 12 month period to (a) comply with substantially nondiscriminatory requirements of franchise agreement; or (b) act in good faith in the operation of the franchise.	

State	Statute	Notice	Good Cause	Cure	Compensation
California	Cal. Bus. & Prof. Code § 20025	**Required.** Notice Period: 180 days Additional Requirements: (a) franchisor must consent to franchisee's sale of franchised business to third party within the 180-day notice period, on terms applicable to new franchisees; or (b) franchisor's refusal to renew is not based on franchisor's attempts to acquire franchisee's business, and franchisor does not enforce noncompetition covenant post-term; or (c) the parties mutually agree not to renew; or (d) franchisor withdraws from the market, franchisor's refusal to renew is not based on franchisor's attempts to acquire franchisee's business, and franchisor does not enforce noncompetition covenant post term; or (e) franchisor and franchisor fail to agree to new terms to the franchise agreement if changes would result in renewal of franchise on substantially the same terms as those being granted to new franchisees; or (f) there is good cause for termination.	**Optional.** Good cause includes: (a) franchisee's failure to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity to cure (no more than 30 days); (b) franchisee's insolvency, bankruptcy, or assignment for the benefit of creditors; (c) voluntary abandonment (<5 consecutive days); (d) mutual agreement; (e) material misrepresentations by franchisee relating to the acquisition of the franchised business, or conduct that reflects materially and unfavorably on the operation and reputation of the franchised business or system; (f) failure to cure noncompliance with federal, state, or local law applicable to franchise within 10 days of notice; (g) repeated failure to comply with lawful requirements of franchise agreement resulting in multiple notice and cure opportunities; (h) repeated failure of the same lawful requirement of the franchise agreement following earlier notice and opportunity to cure; (i) government seizure or foreclosure of franchised business or business premises; (j) conviction of a felony or crime relevant to the operation of the franchise; (k) failure to pay amounts owed to franchisor within five days of notice; or (l) imminent danger to public health or safety.	**Required**, only if nonrenewal based on franchisee's failure to comply with a lawful requirement of franchise agreement following notice of breach. Cure Period: A "reasonable time," which in no event is more than 30 days.	

State	Statute	Notice	Good Cause	Cure	Compensation
Connecticut	Conn. Gen. Stat. § 42-133f	**Required.** Notice Period: (a) 6 months if franchisor leases property to franchisee; (b) 30 days for voluntary abandonment; (c) Immediately if based on conviction of a felony directly related to the franchised business; or (d) 60 days for all other nonrenewals.	**Required.** Good cause includes: (a) failure to comply substantially with any reasonable and material obligation of the franchise agreement; (b) franchisor elects to lease franchised premises to a third party; (c) franchisor elects to convert leased premises to business different from franchised business; (d) franchisor elects to lease property to subsidiary or affiliate for use in a different business; (e) franchisor loses right to possession of leased premises.		
Delaware	Del. Code Ann. tit. 6, § 2552(b)	**Required.** Notice Period: 90 days Del. Code Ann. tit. 6, § 2555	**Required.**		
Hawaii	Haw. Rev. Stat. § 482E-6		**Required**, unless failure to renew is in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless the discrimination is based on proper and justifiable distinctions and not arbitrary.		**Required.**

State	Statute	Notice	Good Cause	Cure	Compensation
Illinois	815 Ill. Comp. Stat. 705/20	**Optional.** Notice Period: 6 months			**Required**, unless franchisor (a) provides six month's written notice of intent not to renew; and (b) the franchise agreement does not contain a post-term noncompetition covenant. Compensation required: (a) Repurchase; or (b) diminution in value.
Indiana	Ind. Code. § 23-2-2.7-1(8)	**Required.** Notice Period: 90 days	**Required**, unless agreement provides that it is not renewable, or renewable only on certain terms.		
Iowa	Iowa Code § 523H.8	**Required.** Notice Period: 6 months	**Required.** Good cause is: (a) a legitimate business reason; (b) mutual agreement not to renew; or (c) franchisor market withdrawal, along with franchisor refusal to enforce noncompetition covenant.		**Required**, if franchisor enforces a post-term noncompetition covenant. Compensation required: Must give 10 days's notice before expiration of offer to purchase assets of the franchised business for fair market value as a going concern.
Michigan	Mich. Comp. Laws § 445.1527				**Optional.** Franchisor need pay compensation only if: (a) franchise agreement is < 5 years; and (b)(i) franchise agreement contains a post-term noncompetition covenant; or (b)(ii) franchisee did not get six months advance notice of nonrenewal. If compensation required, franchisor must pay fair market value of inventory, supplies, equipment, and furnishings not reasonably required in conduct of franchised business.

State	Statute	Notice	Good Cause	Cure	Compensation
Minnesota	Minn. Stat. § 80C.14(4)	**Optional.** Notice Period: 180 days	**Required**, unless notice is given. Good cause is: (a) franchisee's bankruptcy or insolvency; (b) franchisee's assignment for the benefit of creditors; (c) voluntary abandonment; (d) conviction of crime related to franchised business; or (e) any act or conduct that materially impairs the franchisor's goodwill or trademarks.	**Required**, unless notice is given. Cure Period: 60 days	**Required**. Nonrenewal without good cause allowed only if franchisee has been in operation long enough to recover the fair market value of franchise as going concern.
Mississippi	Miss. Code Ann. § 75-24-53	**Required.** Notice Period: 90 days Notice not required if nonrenewal is based on: (a) criminal misconduct; (b) fraud; (c) abandonment; (d) bankruptcy or insolvency of the franchisee; (e) the giving of a no-account or insufficient-funds check.			

State	Statute	Notice	Good Cause	Cure	Compensation
Missouri	Mo. Rev. Stat. § 407.405	**Required.** <u>Notice Period</u>: 90 days <u>Notice not required if nonrenewal is based on</u>: (a) criminal misconduct; (b) fraud; (c) abandonment; (d) bankruptcy or insolvency of the franchisee; (e) the giving of a no-account or insufficient-funds check.			
Nebraska	Neb. Rev. Stat. § 87-404	**Required.** <u>Notice Period</u>: (a) 15 days for voluntary abandonment; (b) Immediately if based on: (1) conviction of a crime directly related to the franchised business; (2) franchisee insolvency or bankruptcy; (3) default in payment to franchisor, or failure to account for sales; (4) falsification of records required by franchisor; (5) imminent danger to public health or safety; or (6) loss of right to occupy franchised premises; (c) 60 days for all other nonrenewals.	**Required.** Good cause is limited to: failure by franchisee to substantially comply with the requirements imposed on him or her by the franchise. Neb. Rev. Stat. § 87-402(8)		

State	Statute	Notice	Good Cause	Cure	Compensation
New Jersey	N.J. Stat. Ann. § 56:10-5	**Required.** Notice Period: (a) 15 days for voluntary abandonment; (b) Immediately if based on conviction of a crime directly related to the franchised business; (c) 60 days for all other nonrenewals.	**Required.** Good cause is limited to franchisee's failure to substantially comply with those requirements imposed upon him or her by the franchise.		
Puerto Rico	P.R. Laws Ann. tit. 10, § 278a		**Required.** Just cause is the "[n]onperformance of any of the essential obligations of the dealer's contract, on the part of the dealer, or any action or omission on his part that adversely and substantially affects the interests of the principal or grantor in promoting the marketing or distribution of the merchandise or service." P.R. Laws Ann. tit. 10, § 278(d)		
Virgin Islands	V.I. Code Ann. tit. 12A, § 131	**Required.** Notice Period: 120 days	**Required.** Good cause is: (a) failure by franchisee to substantially comply with any essential and reasonable requirement of the franchise agreement; or (b) bad faith by franchisee in carrying out the franchise. V.I. Code Ann. tit. 12A, § 132		

State	Statute	Notice	Good Cause	Cure	Compensation
Washington	Wash. Rev. Code § 19.100.180(2)(i)	**Optional.** Notice Period: 1 Year			**Required.** Compensation required: Fair market value of inventory, supplies, equipment, and furnishings purchased from franchisor, and goodwill, exclusive of items not reasonably required in conduct of franchised business. Franchisor need not pay compensation for goodwill if it has given one year's advance written notice of intent not to renew, and it agrees in writing not to enforce any noncompetition covenants.
Wisconsin	Wis. Stat. § 135.03	**Required.** Notice Period: 90 days. Notice not required if nonrenewal is based on: franchisee's bankruptcy or insolvency, or the occurrence of an assignment for the benefit of creditors	**Required.** Good cause is: (a) franchisee's failure to comply substantially with any essential, reasonable, and nondiscriminatory requirement imposed by the franchise agreement; or (b) franchisee's bad faith in carrying out the terms of the franchise agreement. Wis. Stat. § 135.02(4) **Additional Requirement:** Franchisor cannot substantially change the competitive circumstances of the franchise without good cause.	**Required.** Cure Period: (a) 10 days if based on nonpayment of sums due to franchisor; or (b) 60 days for any other cause.	

Appendix 2

State Statues—Industry-Specific Laws

Jurisdiction	Special Industry Law	Citation	Industry
Alabama	Alabama Alcoholic Beverage Wholesaler Law	ALA. CODE § 28-8-4	Beer/Liquor
Alabama	Alabama Beer Law	ALA. CODE § 28-9-6	Beer/Liquor
Alabama	Alabama Wine Law	ALA. CODE § 45-2-22.06	Beer/Liquor
Alabama	Alabama Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act	ALA. CODE § 8-21A-4	Equipment Dealer
Alabama	Alabama Heavy Equipment Dealer Act	ALA. CODE § 8-21B-4	Equipment Dealer
Alabama	Alabama Recreational Vehicle Dealers	ALA. CODE § 8-21C-4	Motor Vehicle Dealer
Alabama	Alabama Motor Vehicle Dealers	ALA. CODE § 8-20-5	Motor Vehicle Dealer
Alaska	Alaska Gasoline Products Leasing Act	ALASKA STAT. § 45.50.820	Gasoline Dealer
Arizona	Arizona Petroleum Products Franchises	ARIZ. REV. STAT. ANN. § 44-1556	Gasoline Dealer
Arizona	Arizona Alcoholic Beverage Wholesaler Law	ARIZ. REV. STAT. ANN. § 44-1565	Beer/Liquor
Arizona	Arizona Equipment Dealer Law	ARIZ. REV. STAT. ANN. § 44-6705	Equipment Dealer
Arizona	Arizona Motor Vehicle Dealers	ARIZ. REV. STAT. ANN. § 28-4452	Motor Vehicle Dealer
Arkansas	Arkansas Motor Vehicle Dealers	ARK. CODE ANN. § 23-112-403	Motor Vehicle Dealer
Arkansas	Arkansas Recreational Vehicle Dealers	ARK. CODE ANN. § 23-112-1012	Motor Vehicle Dealer
Arkansas	Arkansas Beer Law	ARK. CODE ANN. § 3-5-1107	Beer/Liquor
Arkansas	Arkansas Liquor, Wine, and Beer Distribution Law	ARK. CODE ANN. § 3-2-404	Beer/Liquor
Arkansas	Arkansas Gasoline Distributor Law	ARK. CODE ANN. § 4-72-402	Gasoline Dealer
Arkansas	Arkansas Gasoline Dealer Law	ARK. CODE ANN. § 4-72-502	Gasoline Dealer
California	California Motor Vehicle Dealers	CAL. VEH. CODE § 3060	Motor Vehicle Dealer
California	California Beer Law	CAL. BUS. & PROF. CODE § 25000.2	Beer/Liquor
California	California Fair Practices of Equipment Manufacturers, Distributors, and Wholesalers Act	CAL. BUS. & PROF. CODE § 22903	Equipment Dealer
California	California Gasoline Dealer Law	CAL. BUS. & PROF. CODE § 20999.1	Gasoline Dealer
Colorado	Colorado Motor Vehicle Dealers	COLO. REV. STAT. § 12-6-120	Motor Vehicle Dealer
Colorado	Colorado Alcohol Beverages Law	COLO. REV. STAT. § 12-47-406.3	Beer/Liquor
Colorado	Colorado Farm Equipment Fair Dealership Act	COLO. REV. STAT. § 35-38-104	Equipment Dealer
Connecticut	Connecticut Recreational Vehicle Dealer	CONN. GEN. STAT. § 42-133v	Motor Vehicle Dealer
Connecticut	Connecticut Farm, Forestry, and Garden Equipment Dealer Law	CONN. GEN. STAT. § 42-346	Equipment Dealer
Connecticut	Connecticut Gasoline Dealer Law	CONN. GEN. STAT. § 42-133l	Gasoline Dealer
Delaware	Delaware Farm, Construction, and Industrial Equipment Dealer Law	DEL. CODE ANN. tit. 6, § 2721	Equipment Dealer
Delaware	Delaware Recreational Vehicle Dealer	DEL. CODE ANN. tit. 21, § 8404	Motor Vehicle Dealer
Delaware	Delaware Motor Vehicle Dealer	DEL. CODE ANN. tit. 6, § 4906	Motor Vehicle Dealer
DC	District of Columbia Gasoline Dealer Law	D.C. CODE § 36-303.03	Gasoline Dealer
Florida	Florida Beer Law	FLA. STAT. § 563.022	Beer/Liquor

Jurisdiction	Special Industry Law	Citation	Industry
Florida	Florida Recreational Vehicle Dealer	FLA. STAT. § 320.3205	Motor Vehicle Dealer
Florida	Florida Motor Vehicle Dealer	FLA. STAT. § 320.641	Motor Vehicle Dealer
Florida	Florida Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act	FLA. STAT. § 686.611	Equipment Dealer
Florida	Florida Agricultural Equipment Manufacturers and Dealers Act	FLA. STAT. § 686.407	Equipment Dealer
Georgia	Georgia Marine Vehicle Dealers	GA. CODE ANN. § 10-1-677	Motor Vehicle Dealer
Georgia	Georgia Motor Vehicle Dealers	GA. CODE ANN. § 10-1-651	Motor Vehicle Dealer
Georgia	Georgia Gasoline Marketing Practices Act	GA. CODE ANN. § 10-1-233	Gasoline Dealer
Georgia	Georgia Farm and Agricultural Equipment Dealer Law	GA. CODE ANN. § 13-8-19	Equipment Dealer
Georgia	Georgia Multiline Heavy Equipment Dealer Law	GA. CODE ANN. § 10-1-733	Equipment Dealer
Hawaii	Hawaii Office Machine Products Dealerships	HAW. REV. STAT. § 481G-5	Equipment Dealer
Hawaii	Hawaii Motor Vehicle Dealer	HAW. REV. STAT. § 437-58	Motor Vehicle Dealer
Hawaii	Hawaii Gasoline Dealer Law	HAW. REV. STAT. § 486H-2	Gasoline Dealer
Idaho	Idaho Motor Vehicle Dealer	IDAHO CODE ANN. § 49-1614	Motor Vehicle Dealer
Idaho	Idaho Beer Law	IDAHO CODE ANN. § 23-1105	Beer/Liquor
Idaho	Idaho Wine Law	IDAHO CODE ANN. § 23-1328A	Beer/Liquor
Idaho	Idaho Farm Equipment Dealer Law	IDAHO CODE ANN. § 28-24-104	Equipment Dealer
Illinois	Illinois Beer Industry Fair Dealing Act	815 ILL. COMP. STAT. 720/3	Beer/Liquor
Illinois	Illinois Motor Vehicle Franchise Act	815 ILL. COMP. STAT. 710/9	Motor Vehicle Dealer
Indiana	Indiana Motor Vehicle Dealers	IND. CODE § 9-32-13-29	Motor Vehicle Dealer
Indiana	Indiana Gasoline Dealer Law	IND. CODE § 23-2-2.5-51	Gasoline Dealer
Iowa	Iowa Travel Trailer Dealer Law	IOWA CODE § 322C.3	Motor Vehicle Dealer
Iowa	Iowa agricultural Equipment Dealer Law	IOWA CODE § 322F.2	Equipment Dealer
Iowa	Iowa Motor fuel Dealer Law	IOWA CODE § 323.3	Gasoline Dealer
Iowa	Iowa Beer Law	IOWA CODE § 123A.3	Beer/Liquor
Iowa	Iowa Motor Vehicle Dealers	IOWA CODE § 322A.2	Motor Vehicle Dealer
Kansas	Kansas Farm implement Dealer Law	KAN. STAT. ANN. § 16-1002	Equipment Dealer
Kansas	Kansas Outdoor Power Equipment Dealer Law	KAN. STAT. ANN. § 16-1303	Equipment Dealer
Kansas	Kansas Beer and Liquor Law	KAN. STAT. ANN. § 41-410	Beer/Liquor
Kansas	Kansas Lawn and Garden Equipment Dealer Law	KAN. STAT. ANN. § 16-1403	Equipment Dealer
Kansas	Kansas Farm Equipment Dealer Law	KAN. STAT. ANN. § 16-1204	Equipment Dealer
Kentucky	Kentucky Malt Beverages Law	KY. REV. STAT. ANN. § 244.606	Beer/Liquor
Kentucky	Kentucky Retail Sales of Farm Equipment	KY. REV. STAT. ANN. § 365.805	Equipment Dealer
Kentucky	Kentucky Motor Vehicle Dealer	KY. REV. STAT. ANN. § 190.045	Motor Vehicle Dealer

Jurisdiction	Special Industry Law	Citation	Industry
Louisiana	Louisiana Farm, Industrial and Lawn and Garden Equipment Dealer Law	LA. REV. STAT. ANN. § 51:482	Equipment Dealer
Louisiana	Louisiana Marine Dealership Law	LA. REV. STAT. ANN. § 32:1270.5	Motor Vehicle Dealer
Louisiana	Louisiana Service Dealers' Day in Court Law	LA. REV. STAT. ANN. § 51:1453	Gasoline Dealer
Louisiana	Louisiana Beer and Light Wine Law	LA. REV. STAT. ANN. § 26:805	Beer/Liquor
Maine	Maine Beer and Wine Law	ME. REV. STAT. tit. 28-A, § 1454	Beer/Liquor
Maine	Maine Farm Machinery, Forest Equipment, Construction Equipment and Industrial Equipment Dealerships	ME. REV. STAT. tit.10, § 1287	Equipment Dealer
Maine	Maine Power Equipment, Machinery and Appliances Law	ME. REV. STAT. tit.10, § 1365	Equipment Dealer
Maine	Maine Personal Sports Mobile Dealers	ME. REV. STAT. tit.10, § 1250-A	Equipment Dealer
Maine	Maine Motor Vehicle Dealers	ME. REV. STAT. tit.10, § 1179	Motor Vehicle Dealer
Maine	Maine Recreational Vehicle Dealers	ME. REV. STAT. tit.10, § 1434-A	Motor Vehicle Dealer
Maine	Maine Motor Fuel Dealers Law	ME. REV. STAT. tit.10, § 1454	Gasoline Dealer
Maryland	Maryland Beer Franchise Fair Dealing Act	MD. CODE ANN. ART. 2B, § 17-104	Beer/Liquor
Maryland	Maryland Gasohol and Gasoline Products Marketing Act	MD. CODE ANN., COM. LAW § 11-304	Gasoline Dealer
Maryland	Maryland Equipment Dealer Contract Act	MD. CODE ANN., COM. LAW § 19-103	Equipment Dealer
Maryland	Maryland Motor Vehicle Dealerships	MD. CODE ANN., COM. LAW § 15-209	Motor Vehicle Dealer
Maryland	Maryland Fair Distributorship Act	MD. CODE ANN., COM. LAW § 11-1304	Commercial Goods
Massachusetts	Massachusetts Equipment Dealer Law	MASS. GEN. LAWS ch. 93G, § 2	Equipment Dealer
Massachusetts	Massachusetts Gasoline Dealer Law	MASS. GEN. LAWS ch. 93E, § 4	Gasoline Dealer
Massachusetts	Massachusetts Liquor suppliers Law	MASS. GEN. LAWS ch. 138, § 25E	Beer/Liquor
Massachusetts	Massachusetts Motor Vehicle Dealers	MASS. GEN. LAWS ch. 93B, § 5	Motor Vehicle Dealer
Michigan	Michigan Farm and Utility Equipment Act	MICH. COMP. LAWS § 445.1457a	Equipment Dealer
Michigan	Michigan Motor Vehicle Dealers	MICH. COMP. LAWS § 445.1567	Motor Vehicle Dealer
Michigan	Michigan Marine Dealerships	MICH. COMP. LAWS § 445.545	Motor Vehicle Dealer
Michigan	Michigan Beer Law	MICH. COMP. LAWS § 436.1403	Beer/Liquor
Michigan	Michigan Wine Law	MICH. COMP. LAWS § 436.1305	Beer/Liquor
Minnesota	Minnesota Equipment Dealerships	MINN. STAT. § 325E.062	Equipment Dealer
Minnesota	Minnesota Heavy and Utility Equipment Manufacturers and Dealers Law	MINN. STAT. § 325E.0681	Equipment Dealer
Minnesota	Minnesota Motor Vehicle Dealerships	MINN. STAT. § 80E.06	Motor Vehicle Dealer
Minnesota	Minnesota Beer Brewers and Wholesalers	MINN. STAT. § 325B.05	Beer/Liquor
Mississippi	Mississippi Vehicles, Machinery, Consumer Products, and Parts Dealer Law	MISS. CODE ANN. § 75-77-2	Equipment Dealer
Mississippi	Mississippi Beer Industry Fair Dealing Act	MISS. CODE ANN. § 67-7-11	Beer/Liquor
Mississippi	Mississippi Recreational Vehicle Dealer	MISS. CODE ANN. § 63-17-205	Motor Vehicle Dealer
Missouri	Missouri Intoxicating Liquor Franchise Law	MO. REV. STAT. § 407.405	Beer/Liquor

Jurisdiction	Special Industry Law	Citation	Industry
Missouri	Missouri Marine Franchise Dealerships	MO. REV. STAT. § 407.1362	Motor Vehicle
Missouri	Missouri Farm Implements Dealership Agreements	MO. REV. STAT. § 407.840	Equipment Dealer
Missouri	Missouri Motor Vehicle Dealer	MO. REV. STAT. § 407.825	Motor Vehicle Dealer
Missouri	Missouri Outdoor Power Equipment Dealer Law	MO. REV. STAT. § 407.895	Equipment Dealer
Missouri	Missouri Industrial, Maintenance, and Construction Equipment Dealer Law	MO. REV. STAT. § 407.753	Equipment Dealer
Montana	Montana Beer Law	MONT. CODE ANN. § 16-3-221	Beer/Liquor
Montana	Montana Farm Implement Dealer Law	MONT. CODE ANN. § 30-11-802	Equipment Dealer
Montana	Montana Inventory Repurchase Law Construction Equipment Dealers	MONT. CODE ANN. § 30-11-902	Equipment Dealer
Nebraska	Nebraska Beer Distributorships	NEB. REV. STAT. § 53-218	Beer/Liquor
Nebraska	Nebraska Equipment Business Regulation Act	NEB. REV. STAT. § 87-705	Equipment Dealer
Nebraska	Nebraska Motor Vehicle distributorships	NEB. REV. STAT. § 60-1420	Motor Vehicle Dealer
Nevada	Nevada Farm Equipment Dealer Law	NEV. REV. STAT. § 597.1143	Equipment Dealer
Nevada	Nevada Service Station Operator Law	NEV. REV. STAT. § 597.400	Gasoline Dealer
Nevada	Nevada Motor Vehicle Dealer	NEV. REV. STAT. § 482.3638	Motor Vehicle Dealer
Nevada	Nevada Liquor Suppliers and Wholesalers Law	NEV. REV. STAT. § 597.155	Beer/Liquor
New Hampshire	New Hampshire Gasoline Franchises Law	N.H. REV. STAT. ANN. § 339-C:4	Gasoline Dealer
New Hampshire	New Hampshire Motor Vehicle Dealers	N.H. REV. STAT. ANN. § 357-C:7	Motor Vehicle Dealer
New Hampshire	New Hampshire Beverage Distributor Law	N.H. REV. STAT. ANN. § 180:2	Beer/Liquor
New Jersey	New Jersey Unfair Motor Fuels Practices Act	N.J. STAT. ANN. § 56:10-6.1	Gasoline Dealer
New Jersey	New Jersey Malt Alcoholic Beverages Protection Act	N.J. STAT. ANN. § 33:1-93.15	Beer/Liquor
New Mexico	New Mexico Motor Vehicle Dealers	N.M. STAT. ANN. § 57-16-9	Motor Vehicle Dealer
New Mexico	New Mexico Beer Law; New Mexico Alcoholic Beverages Franchises Law	N.M. STAT. ANN. § 60-8A-8	Beer/Liquor
New York	New York Farm Equipment Dealer Law	N.Y. GEN. BUS. LAW § 696-c	Equipment Dealer
New York	New York Motor Fuel Dealers Law	N.Y. GEN. BUS. LAW § 199-c	Gasoline Dealer
New York	New York Motor Vehicle Dealers Law	N.Y. VEH. & TRAF. LAW § 463	Motor Vehicle Dealer
New York	New York Beer Law	N.Y. ALCO. BEV. CONT. LAW § 55-c	Beer/Liquor
North Carolina	North Carolina Farm Machinery Agreements	N.C. GEN. STAT. § 66-187.1	Equipment Dealer
North Carolina	North Carolina Wine Distributorships	N.C. GEN. STAT. § 18B-1205	Beer/Liquor
North Carolina	North Carolina Beer Distributorships	N.C. GEN. STAT. § 18B-1305	Beer/Liquor
North Carolina	North Carolina Motor Vehicle Dealerships	N.C. GEN. STAT. § 20-305	Motor Vehicle Dealer
North Dakota	North Dakota Beer Distributorships	N.D. CENT. CODE § 5-04-04	Beer/Liquor
North Dakota	North Dakota Farm Implement Dealer Law	N.D. CENT. CODE § 51-07-01.1	Equipment Dealer
North Dakota	North Dakota Motor Vehicle Dealerships	N.D. CENT. CODE § 51-07-02.3	Motor Vehicle Dealer
North Dakota	North Dakota Heavy Equipment Dealer Law	N.D. CENT. CODE § 51-20.1-03	Equipment Dealer

Jurisdiction	Special Industry Law	Citation	Industry
Ohio	Ohio Farm Equipment Dealer Law	OHIO REV. CODE ANN. § 1353.06	Equipment Dealer
Ohio	Ohio Motor Vehicle Dealer Law	OHIO REV. CODE ANN. § 4517.59	Motor Vehicle Dealer
Ohio	Ohio Alcoholic Beverages Law	OHIO REV. CODE ANN. § 1333.85	Beer/Liquor
Oklahoma	Oklahoma Farm and Industrial Tractors Dealer Law	OKLA. STAT. tit. 15, § 245A.1	Equipment Dealer
Oklahoma	Oklahoma Aircraft Vehicle Dealer	OKLA. STAT. tit. 3, § 254.2	Motor Vehicle Dealer
Oklahoma	Oklahoma Motor Vehicle Dealer	OKLA. STAT. tit. 47, § 565.2	Motor Vehicle Dealer
Oklahoma	Oklahoma Low-Point Beer Distribution Act	OKLA. STAT. tit. 37, § 163.18E	Beer/Liquor
Oregon	Oregon Motor Fuel Dealer Law	OR. REV. STAT. § 650.210	Gasoline Dealer
Oregon	Oregon Farm Equipment Dealer Law	OR. REV. STAT. § 646A.312	Equipment Dealer
Oregon	Oregon Recreational Vehicle distributorships	OR. REV. STAT. § 650.340	Motor Vehicle Dealer
Oregon	Oregon Motor Vehicle distributorships	OR. REV. STAT. § 650.130	Motor Vehicle Dealer
Oregon	Oregon Malt Beverages Law	OR. REV. STAT. § 474.015	Beer/Liquor
Pennsylvania	Pennsylvania Gasoline, Petroleum Products, Motor Vehicle Accessories Dealer Law	73 PA. STAT. ANN. § 202-3	Gasoline Dealer
Pennsylvania	Pennsylvania Fair Dealership Law	73 PA. STAT. ANN. § 205-3	Equipment Dealer
Pennsylvania	Pennsylvania Malt and Brewed Beverages Law	47 PA. STAT. ANN. § 4-492	Beer/Liquor
Pennsylvania	Pennsylvania Motor Vehicle Dealerships	63 PA. STAT. ANN. § 818.13	Gasoline Dealer
Rhode Island	Rhode Island Motor Fuel Distribution and Sale Act	R.I. GEN. LAWS § 5-55-4	Gasoline Dealer
Rhode Island	Rhode Island Motor Vehicle Dealerships	R.I. GEN. LAWS § 31-5.1-4	Motor Vehicle Dealer
Rhode Island	Rhode Island Equipment Dealership Act	R.I. GEN. LAWS § 6-46-3	Equipment Dealer
Rhode Island	Rhode Island Beer and Malt Beverages Law	R.I. GEN. LAWS § 3-13-5	Beer/Liquor
Rhode Island	Rhode Island Dealership Law	R.I. GEN. LAWS § 6-54-4	Commercial Goods
South Carolina	South Carolina Fair Practices of Farm, Construction, Industrial, and Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act	S.C. CODE ANN. § 39-6-130	Equipment Dealer
South Carolina	South Carolina Motor Vehicle Dealer	S.C. CODE ANN. § 56-15-90	Beer/Liquor
South Dakota	South Dakota Beer Law	S.D. CODIFIED LAWS § 35-8A-6	Beer/Liquor
South Dakota	South Dakota Motor Vehicle Dealership	S.D. CODIFIED LAWS § 32-6B-45	Motor Vehicle Dealer
Tennessee	Tennessee Alcoholic Beverages relationship Law	TENN. CODE ANN. § 47-25-1505	Beer/Liquor
Tennessee	Tennessee Alcoholic Beverages Law	TENN. CODE ANN. § 57-3-301	Beer/Liquor
Tennessee	Tennessee Beer Law	TENN. CODE ANN. § 57-5-507	Beer/Liquor
Tennessee	Tennessee Petroleum Trade Practices Law	TENN. CODE ANN. § 47-25-605	Gasoline Dealer
Tennessee	Tennessee Motorcycle and Off-road Vehicle Fairness Act	TENN. CODE ANN. § 47-25-1905	Motor Vehicle Dealer
Tennessee	Tennessee Farm Implements, Industrial Equipment, Machinery Dealer Law	TENN. CODE ANN. § 47-25-1302	Equipment Dealer
Texas	Texas Motor Vehicle Distributorships	TEX. OCC. CODE ANN. § 2301.453	Motor Vehicle Dealer
Texas	Texas Beer Industry Fair Dealing Law	TEX. ALCO. BEV. CODE ANN. § 102.73	Beer/Liquor

Jurisdiction	Special Industry Law	Citation	Industry
Texas	Texas Farm and industrial Equipment Dealer Law	TEX. BUS. & COM. CODE § 57.153	Equipment Dealer
Utah	Utah Beer Industry Distribution Act	UTAH CODE ANN. § 32B-14-201	Beer/Liquor
Utah	Utah Gasoline Products Marketing Act	UTAH CODE ANN. § 13-12-3	Gasoline Dealer
Vermont	Vermont Beer and Wine Law	VT. STAT. ANN. tit. 7, § 701	Beer/Liquor
Vermont	Vermont Farm, Utility, and Industrial Equipment Dealer Law;	VT. STAT. ANN. tit. 9, § 4072	Equipment Dealer
Vermont	Vermont Motor Vehicle Dealerships	VT. STAT. ANN. tit. 9, § 4089	Motor Vehicle Dealer
Vermont	Vermont Service Station Operators, Oil Companies, and Franchisees Law	VT. STAT. ANN. tit. 9, § 4104	Gasoline Dealer
Virginia	Virginia Equipment Dealers Protection Act	VA. CODE ANN. § 59.1-352.9	Equipment Dealer
Virginia	Virginia T&M Vehicle Dealers	VA. CODE ANN. § 46.2-1976	Motor Vehicle Dealer
Virginia	Virginia Trailer Dealers	VA. CODE ANN. § 46.2-1992.69	Motor Vehicle Dealer
Virginia	Virginia Motorcycle Dealers	VA. CODE ANN. § 46.2-1993.67	Motor Vehicle Dealer
Virginia	Virginia Motor Vehicle Dealers	VA. CODE ANN. § 46.2-1569	Motor Vehicle Dealer
Virginia	Virginia Heavy Equipment Dealers Act	VA. CODE ANN. § 59.1-354	Equipment Dealer
Virginia	Virginia Petroleum Products Franchise Act	VA. CODE ANN. § 59.1-21.14	Gasoline Dealer
Virginia	Virginia Wine Franchise Act	VA. CODE ANN. § 4.1-406	Beer/Liquor
Virginia	Virginia Beer Franchise Act	VA. CODE ANN. § 4.1-505	Beer/Liquor
Washington	Washington Malt Beverages Law	WASH. REV. CODE § 19.126.040	Beer/Liquor
Washington	Washington Motorsports Vehicle Dealers	WASH. REV. CODE § 46.93.030	Motor Vehicle Dealer
Washington	Washington Motor Vehicle Dealers	WASH. REV. CODE § 46.96.030	Motor Vehicle Dealer
Washington	Washington Farm Implements, Machinery, and Parts Dealer Law	WASH. REV. CODE § 19.98.120	Equipment Dealer
West Virginia	West Virginia Motor Vehicle Dealers	W. VA. CODE § 17A-6A-4	Motor Vehicle Dealer
West Virginia	West Virginia Farm, Construction, and Industrial Equipment Dealer Law	W. VA. CODE § 47-11F-3	Equipment Dealer
West Virginia	West Virginia Petroleum Products Franchise Act	W. VA. CODE § 47-11C-5	Gasoline Dealer
Wisconsin	Wisconsin Fermented Malt Beverages Law	WIS. STAT. § 125.33	Beer/Liquor
Wisconsin	Wisconsin Motor Vehicle Dealer	WIS. STAT. § 218.0132	Motor Vehicle Dealer
Wyoming	Wyoming Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act	WYO. STAT. ANN. § 40-20-114	Equipment Dealer
Wyoming	Wyoming Beer Law	WYO. STAT. ANN. § 12-9-109	Beer/Liquor
Wyoming	Wyoming Motor Vehicle Dealership	WYO. STAT. ANN. § 31-16-109	Motor Vehicle Dealer

Appendix 3

Sample Contract Language

Placeholder for future potential renewal

1.0 Renewal. There are no renewal rights under this Agreement, and to the maximum extent permissible, Franchisee waives any renewal right provided for under applicable law. If Franchisor agrees to allow renewal of this Agreement, or if an offer of renewal is required by applicable law and cannot be waived by agreement of the parties, then Franchisor shall have the right to condition renewal upon the following non-exclusive requirements:

1.1 Notice. Franchisee provides Franchisor with notice of Franchisee's desire and intent to renew no later than one hundred eighty (180) days prior to the expiration of this Agreement.

1.2 Revised Form of Agreement. Franchisee executes Franchisor's then-current form of franchise agreement. Franchisee acknowledges that such then-current form of franchise agreement may contain material revisions from this form of agreement, and may include new or revised fees, royalties, and other terms.

1.3 No Default. Franchisee is not in default under this Agreement or any other agreement then in effect between the parties beyond any applicable cure period.

1.4 Refurbishment. Franchisee undertakes, at Franchisor's direction and at Franchisee's sole expense, to refurbish the Store within the timeframe established by Franchisor in writing following receipt of Franchisee's notice of intent to renew. Any refurbishment required under this Section ____ shall be without limitation to Franchisor's right to require refurbishment during the Store Term pursuant to Section ___ below.

1.5 Renewal Fee. Franchisee pays a renewal fee in an amount equal to then-current standard license fee for a new Franchisor Store, which renewal fee shall be due in full no later than Franchisee's execution of a franchise agreement, or if no new agreement, upon the effective date of renewal of this Agreement.

1.6 Standard Qualifications. Franchisee meets all of Franchisor's then-current standard qualifications for new franchisees.

1.7 Release of Claims. At Franchisor's option, the parties execute a written release of then-existing and accrued claims relating to or arising out of the Store.

Grounds for termination are also ground for nonrenewal

Additional Grounds for Nonrenewal. Without limitation to Franchisor's or Franchisee's right not to renew this Agreement beyond its stated term, any grounds for termination by either party shall also be grounds not to renew this Agreement.

Operation beyond expiration of term

Permitted Operation After Expiration of Store Term. If Franchisor allows Franchisee to continue operating the Store after the expiration of this Agreement without entering into a successor franchise agreement or extension to this Agreement, then that continued operation shall be considered a temporary extension of the term of this Agreement. Franchisor may discontinue any such extension at any time and for any reason upon thirty (30) days written notice to Franchisee, and in that event, the discontinuation will be considered a nonrenewal of this Agreement and not a termination.

Mutual termination therefore good cause

The parties acknowledge and agree that the termination of the Agreement is based on mutual agreement of the parties and is not the result of the unilateral exercise of either party's termination rights, and is therefore for good cause and/or just cause, and otherwise satisfies any applicable statutory condition precedent allowing for termination of the Agreement.