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## **INCURABLE DEFAULTS AND “GOOD CAUSE” REQUIREMENTS CAN SOUND DRAFTING RECONCILE THE TWO?**

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## TABLE OF CONTENTS

- I. Introduction
- II. Survey of Statutory Requirements of “Good Cause”
- III. Survey of Cases Which Examine the Impact of “Good Cause” Termination Requirements on Incurable Defaults
  - A. Cases in Which the Court Found Breaches to Be Incurable for Dishonesty
    - 1. Hiding Sales to Cheat Franchisor Justifies Immediate Termination Despite Agreement's Right to Cure
    - 2. Franchisee's Scheme to Defraud Franchisor Results in Termination
    - 3. Hotel Management Company's Self Dealing Lets Owner Terminate Management Agreement Without Notice and Opportunity to Cure
    - 4. Submitting Fraudulent Sales and Credit Documents
    - 5. Franchisee Scheme to Deprive Franchisor of Revenues Justifies Termination Without Opportunity to Cure
    - 6. Cheating Customers is Grounds for Termination; Notice Would be a Futile Act
  - B. Cases in Which Court Found Breaches to Be Incurable for Violation of Law
    - 1. Immediate Termination Allowed for Soliciting Minor Over Internet
    - 2. Franchisor Could Terminate One Franchisee for Co-Franchisee's Tax Fraud
    - 3. Sale of Cigarettes to Minors Was an Incurable Breach
    - 4. Guilty Plea to Tax Evasion is Incurable Breach
  - C. Cases in Which the Court Found Breaches to Be Incurable as Historical Fact
    - 1. Breach Constituting a Historical Fact Cannot Be Cured
    - 2. Failure to Operate Car Dealerships Was an Historical Fact Constituting an Incurable Breach
  - D. Cases in Which the Court Found Breaches to Be Incurable for Other Reasons
    - 1. Termination Allowed Based on Personal Nature of Trademark License
    - 2. Court Upholds Arbitration Award Confirming Termination of Franchise Agreement for Violation of In-Term Non-competition Restriction, Without Opportunity to Cure
    - 3. Failure to Pay Amounts Due is Good Cause to Terminate Under Franchise Practices Act
    - 4. Insolvency Was Good Cause for Termination, and Waived Notice Requirements
    - 5. Good Cause Permits Termination Regardless of Franchisor's Motive
    - 6. Commingling Branded and Unbranded Product Was Probably a Noncurable Breach

- E. Case in Which the Court Rejected Historical Fact Basis of Claimed Incurability
- F. Cases Rejecting Other Arguments that Breach Was Incurable
  - 1. Court Grants Injunction in Favor of Franchisee, Against Termination of Franchise
  - 2. Despite Valid Termination Ground, Franchisor Had to Allow Opportunity to Cure
  - 3. Court Finds that Inadequate Performance Breach Was Curable
  - 4. Dealer's Failure to Pay on Time May Not Have Breached an Essential Obligation and May Not Have Constituted "Just Cause" for Termination
  - 5. Court Rules Franchisee Could and Did Cure the Sale of Misbranded Product
  - 6. Breaches of Franchise Agreement Were Not Impossible to Cure
- G. One Last Ruling on Incurability
- IV. Some Thoughts on Best Practices – Drafting with "Good Cause"
  - A. Typical Termination Clauses in Franchise Agreements
    - 1. Automatic Termination
    - 2. Termination with Notice and No Right to Cure
    - 3. Termination with Notice and Right to Cure
  - B. The Model Clauses in the Context of "Good Cause"
    - 1. An Analysis of Model Clause 1
      - a. Substantive Requirements for Default
      - b. Notice and Opportunity to Cure
    - 2. An Analysis of Model Clause 2
    - 3. An Analysis of Model Clause 3
  - C. Some Paragon Clauses
    - 1. Automatic Termination
    - 2. Termination with Notice
    - 3. Omnibus Amendment Clause
    - 4. Establishing Sound Enforcement Procedures
  - D. Some Thoughts About the Registration Process

Appendix 1 – State Franchise Relationship Laws

Appendix 2 – Survey of State Franchise Relationship Laws' Termination Provisions

## Incurable Defaults and “Good Cause” Requirements – Can Sound Drafting Reconcile the Two?

### I. Introduction

Many franchise agreements contain provisions allowing the franchisor to terminate the agreement without affording the franchisee an opportunity to cure. These sections are typically reserved for egregious breaches, and the commission of one of these breaches by the franchisee constitutes an incurable default. For example, if a franchisee abandons the franchise business, many franchise agreements allow the franchisor to terminate the agreement immediately, and the franchisee has no right to cure. Similarly, if a franchisee is convicted of a felony involving moral turpitude, many franchise agreements allow the franchisor to terminate the franchise agreement immediately.

However, some states prohibit a franchisor from terminating a franchise agreement without “good cause.”<sup>1</sup> For example, the California Franchise Relations Act provides: “no franchisor may terminate a franchise prior to the expiration of its term, except for good cause.”<sup>2</sup> Other states have adopted similar prohibitions. In Minnesota: “No person may terminate or cancel a franchise except for good cause.”<sup>3</sup>

Therefore, a franchisor may face a scenario in which the franchise agreement provides for immediate termination without a right to cure while a state statute does not permit termination without “good cause.”<sup>4</sup> How does a franchisor proceed in these circumstances?

Counsel might begin with a review of the applicable state franchise relationship statutes and then the case law to better understand what constitutes “good cause.”<sup>5</sup> The definition of “good cause” will vary from state to state, with some states providing franchisees more protection than others. A careful reading of the franchise agreement

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<sup>1</sup> “Good cause” is defined by statute. The concept of “good faith” embodied in the covenant of good faith and fair dealing implied in business contracts is a common law theory and beyond the scope of this paper.

<sup>2</sup> Cal. Bus. & Prof. Code §20020.

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

<sup>4</sup> In many circumstances in which the franchisor seeks to terminate a franchise agreement but is restricted from exercising contractual rights under the franchise agreement by an applicable statute prohibiting termination absent “good cause,” the grounds for termination will nonetheless serve as a default under the franchise agreement, and the issue typically, although not always, revolves around whether the franchisee must be given some opportunity to cure, not whether there has or has not been a breach of the franchise agreement.

<sup>5</sup> “Good cause” restrictions on termination of a franchise agreement have been imposed on franchisors in circumstances in which the franchisor did not allege any breach of the franchise agreement by the franchisee. (See, e.g., *Kealey Pharmacy & Home Care Service, Inc. v. Walgreen Co.* 539 F.Supp. 1357 (W.D. Wis. 1982) or *Freedman Truck Center, Inc. v. General Motors Corp.* 784 F.Supp. 167 (D. NJ. 1992). However, this paper focuses on circumstances in which the franchisor alleges an incurable breach of the franchise agreement. In these circumstances, the franchisor may or may not be constrained in the enforcement of its rights by prohibitions of an applicable “good cause” statute.

would likely follow. Finally, a thorough understanding of the alleged facts supporting termination of the franchise agreement would be important to advising the franchisor.

With an understanding of the law, the terms of the franchise agreement, and the facts, counsel would be prepared to advise the franchisor. Proactive counsel might go one step further and advise the franchisor on how to improve the language of the franchise agreement to comply with the various “good cause” requirements and to thereby facilitate enforcement of the franchise agreement in the future. Counsel might also work with the franchisor to establish sound policies and procedures for the enforcement of franchise agreements, taking into account the requirements of “good cause.”

With this framework in mind, Section II of this paper reviews state statutes which impose “good cause” restrictions on termination of franchise agreements. Section III reviews important cases which yield insights regarding incurable defaults and statutory requirements of “good cause.” Finally, in light of the law of “good cause” reviewed in Sections II and III, Section IV reviews some drafting considerations and practical approaches to terminating franchise agreements with the goal of reducing the risk of violating “good cause” restrictions.

## II. Survey of Statutory Requirements of “Good Cause”<sup>6</sup>

Almost all state franchise relationship laws specifically require “good,” “just,” or “reasonable” cause for unilateral termination of a franchise.<sup>7</sup> As applied, these terms are largely synonymous. The key issues in determining if sufficient cause exists for termination are: (i) the amount of guidance and specificity provided in the statute as to what constitutes good cause for termination, and (ii) relevant case law, which is discussed in Section III, below. State statutes vary widely, with some providing detailed standards for what constitutes good cause, while others provide little or no explanation as to what circumstances constitute cause. Close examination of the statute’s language is typically an important first step to understanding the laws governing termination of a franchise.

Despite their differences, many state franchise relationship laws share basic elements in common. For example, thirteen of the statutes provide that “good cause” for termination exists if the franchisee failed to comply with “material,” “lawful,” and/or

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<sup>6</sup> A survey of termination provisions in the state and territory general franchise relationship laws is attached as Appendix 2. In addition to general franchise relationship laws, many states have industry-specific statutes which impose a “good cause” or similar requirement for termination of a franchise or dealership. Industries with specific dealer protection statutes include: (i) gasoline; (ii) motor vehicles; (iii) farm machinery and industrial equipment; and (iv) alcoholic beverages. Analysis of industry-specific statutes is beyond the scope of this paper. However, the practitioner should be aware that industry-specific statutes may govern a proposed termination, whether in lieu of or in conjunction with a general franchise relationship statute.

<sup>7</sup> Mississippi and Missouri are exceptions. Their statutes prohibit termination of a franchise without 90 days prior written notice, except that no notice is required when criminal misconduct, fraud, abandonment, bankruptcy, or insufficient payment is the basis for termination. Miss. Code Ann. § 75-24-53; Mo. Code Ann. § 407.405.

“reasonable” requirements of the franchise agreement.<sup>8</sup> A sub-set of the statutes offers further guidance as to what constitutes “good cause.” Some statutes define “good cause” to *include* specific acts or events identified in the statute, or state that “good cause” includes, *but is not limited to* the examples identified.<sup>9</sup>

Some states expressly identify certain acts or events that are “good cause.” For example, the Arkansas Franchise Practices Act provides that “good cause means” the eight (8) circumstances in that statute.<sup>10</sup> The Wisconsin and Virgin Islands statutes are similarly limited. Each specifies only two bases for “good cause.” In Wisconsin, “good cause” is shown by “failure . . . to comply substantially with essential and reasonable requirements imposed upon the dealer . . . which are not discriminatory . . .,” or, in the alternative, termination is proper if there is “bad faith by the dealer in carrying out the terms of the dealership.”<sup>11</sup> The Virgin Islands statute is virtually identical, limiting good cause to “failure . . . to substantially comply with those requirements imposed upon him by the franchise . . . which . . . are both essential and reasonable,” or “use of bad faith.”<sup>12</sup>

Others states -- Iowa, for example -- impose a high bar for termination, but do not expressly limit “good cause” to specific acts or events. The Iowa Franchise Act defines “good cause” as “cause based upon a legitimate business reason,” which includes a franchisee’s failure to comply with a “material, lawful requirement of the franchise agreement,” provided that the termination cannot be “arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances.”<sup>13</sup> The statutes in Arkansas and Hawaii similarly restrict a franchisor’s ability to treat franchisees differently for purposes of termination.<sup>14</sup>

Other states prohibit termination of a franchise or dealership without “good” or “just” cause, but provide no statutory guidance as to what these terms mean. For example, Delaware prohibits “unjust” termination, defined as termination “without good cause or in bad faith,” but does not elaborate on what acts or events meet that standard.<sup>15</sup> The

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<sup>8</sup> See Cal. Bus. & Prof. Code § 20020 [“lawful requirement”]; Conn. Gen. Stat. § 42-133f(a) [“material and reasonable obligation”]; Haw. Rev. Stat. § 482E-6(2)(H) [“lawful, material provision”]; 815 Ill. Comp. Stat. § 705/19(b) [“lawful provision”]; Ind. Code § 23-2-2.7-1(7) [“material violation”]; Iowa Code §§ 523H.7; Mich. Comp. Laws § 445.1527(c) [“lawful provision”]; Minn. Stat. § 80C.14(3)(b) [“material and reasonable franchise requirement”]; N.J. Stat. Ann. § 56:10-5 [“those requirements imposed . . . by the franchise”]; R.I. Gen. Laws § 6-50-2(4) [“reasonable requirements”]; Wash. Rev. Code § 19.100.180(2)(j) [“lawful material provisions”]; Wis. Stat. Ann. § 135.02(4) [“reasonable requirements”]; V.I. Code Ann. tit. 12A, § 132 [“those requirements . . . which . . . are both essential and reasonable”].

<sup>9</sup> See, e.g., Cal. Bus. & Prof. Code § 20020; Haw. Rev. Stat. § 482E-6(2)(H); 815 Ill. Comp. Stat. § 705/19(b,c); Iowa Code § 537A.10(a); Mich. Comp. Laws § 445.1527; Minn. Stat. § 80C.14(3)(b)(1)-(5).

<sup>10</sup> Ark. Code Ann. § 4-72-202(7): [“Good cause means . . .”]

<sup>11</sup> Wis. Stat. Ann. § 135.02(4).

<sup>12</sup> V.I. Code tit. 12A, § 132.

<sup>13</sup> *Id.*

<sup>14</sup> Ark. Code Ann. § 4-72-204(a), Haw. Rev. Stat. § 482E-6(2)(H).

<sup>15</sup> Del. Code Ann. § 2552(a) & (g).

Nebraska and Virginia statutes are equally un-illuminating.<sup>16</sup> Puerto Rico has a unique standard, conditioning termination on “just cause,” which the statute defines as “nonperformance of any of the essential obligations of the dealer’s contract,” or, “any action or omission . . . that adversely and substantially affects the interests of the (franchisor) in promoting the marketing or distribution of the merchandise or service.”<sup>17</sup>

Other variances as to what constitutes a proper termination may derive from the fact that the statute provides an alternative to the “good cause” requirement. For example, Indiana prohibits unilateral termination of a franchise “without good cause” or “in bad faith.”<sup>18</sup> Hawaii prohibits termination “except for good cause” or “in accordance with the . . . terms and standards” the franchisor applies to all its franchisees, unless the difference in treatment can be shown to be “proper and justifiable” and “not arbitrary.”<sup>19</sup> Thus, these statutes, on their face, may permit termination even where “good cause” is not shown.

Finally, many relationship laws permit termination of a franchise -- often without an opportunity to cure – if the franchisee files for bankruptcy protection, abandons the business, is convicted of a crime or similar “bad acts.”<sup>20</sup>

### III. Survey of Cases Which Examine the Impact of “Good Cause” Termination Requirements on Incurable Defaults

Research reveals relatively few reported cases which fall precisely at the intersection of an incurable default, or a default for which the franchisor offered no opportunity to cure, and restrictive statutory “good cause” requirements. Therefore, in an effort to elucidate further the nature of incurable defaults, the cases summarized below span a wider spectrum than simply cases which interpret a “good cause” restriction in light of the termination of a franchise agreement absent an opportunity to cure.

#### A. Cases in Which the Court Found Breaches to Be Incurable for Dishonesty

##### 1. Hiding Sales to Cheat Franchisor Justifies Immediate Termination Despite Agreement's Right to Cure<sup>21</sup>

A franchise agreement provision granted a breaching party a right to cure before the agreement could be terminated. A court ruled that despite this clause, a material breach

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<sup>16</sup> Neb. Rev. Stat. § 87-404 [prohibits termination “without good cause,” but provides no standard for good cause]; VA. Code Ann. § 13.1-564 [no definition of “reasonable cause”].

<sup>17</sup> P.R. Laws Ann., tit. 10, § 278(d).

<sup>18</sup> Ind. Code § 23-2-2.7-1(7); *see also* Wis. Stat. Ann. § 135.02(4); V.I. Code tit. 12A, § 132.

<sup>19</sup> Haw. Rev. Stat. § 482E-6(2)(H).

<sup>20</sup> *See, e.g.*, Ark. Code Ann. § 4-72-202(7)(C-F); Cal. Bus. & Prof. Code § 20021; Conn. Gen. Stat. § 42-133f(a); 815 Ill. Corp. Stat. § 705/19(c)(1-4); Iowa Code § 537A.10(c)(1-9); Minn. Stat. § 80C.14(3)(b)(1-5); Neb. Rev. Stat. § 87-404; N.J. Stat. Ann. § 56:10-5; R.I. Gen. Laws § 6-50.4(a); and Wash. Rev. Code § 19.100.180(2)(j).

<sup>21</sup> *LJL Transportation v. Pilot Air Freight Corporation* 962 A.2d 639 (Penn. 2009)

that was so serious as to go directly to the heart and essence of the agreement could be incurable, making immediate termination proper.

Pilot Air's business was heavy freight forwarding -- moving freight shipments quickly throughout the country. Pilot Air used franchised freight stations at airports. Each franchisee agreed to place all shipments with Pilot Air and not deliver freight from other carriers. The franchisor billed and collected from customers, deducted a royalty and other costs, and forwarded the remainder of the payments to the franchisee.

LJL, a franchisee, diverted freight shipments from Pilot Air to a competing company owned by LJL's owners. LJL did this to make more money by avoiding paying the franchise fee and splitting profits with the franchisor. The franchise agreement provided an opportunity to cure any default within 90 days of notice. The provision stated:

Cure. This Agreement immediately terminates upon receipt by Franchisee of written notice of termination from Pilot. Pilot shall allow Franchisee an opportunity to cure a default within ninety (90) days of receipt of written notice of a particular default.

Despite this, Pilot Air terminated the franchise agreement immediately on learning of LJL's conduct.

A trial court ruled that hiding profit breached a fundamental aspect of the franchise agreement. The Pennsylvania Supreme court ruled that a termination clause providing notice and an opportunity to cure was only a cumulative remedy that did not bar the non-breaching party from exercising other remedies.<sup>22</sup> The court said when a breach goes directly to the essence of the contract, and is so exceedingly grave as to irreparably damage the trust between the parties, a non-breaching party could terminate the contract without notice, in the absence of explicit provisions to the contrary.<sup>23</sup> The Court ruled that Pilot Air was not required to afford LJL an opportunity to cure any breach.

## 2. Franchisee's Scheme to Defraud Franchisor Results in Termination<sup>24</sup>

A convenience store franchisee engaged in a scheme to cheat the franchisor out of its full share of revenue from store sales. The franchisor and franchisee shared revenue. The franchise agreement required the franchisee to report all revenue to the franchisor. The trial court ruled that the franchise agreement's revenue sharing requirement created an implied covenant by the franchisee "not to engage in schemes or gimmicks that deprive the franchisor of its percentage," and found the franchisee breached this covenant by hiding revenue from the franchisor.

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<sup>22</sup> 962 A.2d at 648.

<sup>23</sup> 962 A.2d at 652.

<sup>24</sup> *Southland Corp. v. Froelich*, 41 F.Supp.2d 227 (E.D. N.Y. 1999).



The court noted that "a material breach that goes to the root of the matter or the essence of the contract constitutes grounds for rescission without opportunity to cure."<sup>25</sup> The court also noted that termination of an agreement is allowed even on grounds not stated in the agreement. "Unless a contract provision for termination for breach is in terms exclusive, it is a cumulative remedy and does not bar the ordinary remedy of termination for 'a breach which is material, or which goes to the root of the matter or essence of the contract.'"<sup>26</sup>

Here, the nature of the franchisee's breaches, occurring over several months, are such that the relationship the franchisor and franchisee was altered irrevocably and cannot be revived. The franchisor was deprived of its contractual right to receive "the fruits of [its] contract"

3. Hotel Management Company's Self Dealing Lets Owner Terminate Management Agreement Without Notice and Opportunity to Cure<sup>27</sup>

Litigation was brought in two states over a hotel owner's attempt to terminate a hotel management agreement. A U.S. District Court in Minnesota ruled the owner could not terminate. The court ruled the agreement's core purpose was to make a profit and the hotel was profitable.

The Iowa Supreme Court said profit was a significant purpose, but honesty of the parties was also an integral, though unexpressed, element of the agreement. The court ruled that an agreement may be terminated for breach of an unexpressed duty of honesty and fidelity, despite express contract language that requires notice and right to cure before termination.

Employees of the management company had bought items like a large screen tv, and a dryer, for personal benefit, kept rebates for personal use on goods ordered for the hotel and entered into an unauthorized contract with a company owned by one of the management company's principals.

Discussing other jurisdictions, the court said:

Other jurisdictions have adopted a similar rule. *See, e.g., L.K. Comstock & Co. v. United Eng'rs. & Constructors*, 880 F.2d 219, 232 (9th Cir.1989) (adopting Corbin's position on incurable breaches of contracts with exclusive notice and cure provisions); *Blue Bell, Inc. v. Western Glove Works, Ltd.*, 816 F.Supp. 236, 243 (S.D.N.Y.1993) ("[D]ebate over whether a termination provision with notice and cure requirements in a contract makes termination without notice and cure impossible seems to have ended in favor of the view that fraud may entitle one party to

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<sup>25</sup> *Southland Corp. v. Mir*, 748 F.Supp. 969 (E.D.N.Y.1990).

<sup>26</sup> 41 F.Supp. 2d at 246.

<sup>27</sup> *Larken, Inc. v. Larken Iowa City Limited Partnership* 589 N.W.2d 700, 702 (Iowa 1998).

rescission regardless of notice and cure, but it turns on the quality of the fraud.”); *Lanvin v. Colonia, Inc.*, 739 F.Supp. 182, 195 (S.D.N.Y.1990) (“Unless a notice provision is exclusive, however, it is only a cumulative remedy and does not bar the ordinary remedy of termination without notice for a breach which is material or which goes to the root or essence of the contract.”); *D.C. Films, Inc. v. Best Film & Video Corp. (In re Best Film & Video Corp.)*, 46 B.R. 861, 875 (E.D.N.Y.1985) (when breach was incurable, film company had right to rescind contract even though notice was required and even if the contract had no termination provision at all); see also *Leghorn v. Wieland*, 289 So.2d 745, 748 (Fla.Dist.Ct.App.1974) (“[I]f the breach was so grave as to be irreparable and incurable, the giving of notice would be a useless gesture.”); *Young Travelers Day Camps, Inc. v. Felsen*, 118 N.J.Super. 304, 287 A.2d 231, 237 (N.J.Dist.Ct.1972) (when notice provision in contract benefited both parties, it was not the exclusive method of terminating contract in which breach could not be remedied).

The court "conclude[d] that the acts of self-dealing . . . were so serious that they frustrated one of the principal purposes of the management agreement, which was to manage the hotel in the best interests of the owner and to be honest and forthright in its dealings. Self-dealing is the antithesis of that purpose, and it violates the relationship of trust necessarily underlying such agreements." The court added that "merely requiring [the management company] to retroactively undo its wrongdoings. . . would not be an adequate remedy." "[N]o amount of payment for past thefts by the franchisee could ever restore the business trust and confidence which the franchisor wanted to have in its distributors."

#### 4. Submitting Fraudulent Sales and Credit Documents<sup>28</sup>

An agricultural equipment manufacturer terminated a dealer for submitting fraudulent sales and credit documents. The Mississippi Franchise Cancellation Statute prohibited termination of a franchise without ninety days notice. However, as the court of appeals noted in the dealer's challenge to the termination, the statute also provided an exception, stating that when fraud of the franchise is the basis of cancellation or termination, the ninety day notice shall not be required.<sup>29</sup>

#### 5. Franchisee Scheme to Deprive Franchisor of Revenues Justifies Termination Without Opportunity to Cure<sup>30</sup>

Franchisees made improper use of money orders to misrepresent and conceal store revenues, and deprive the franchisor of its share of store profits. Franchisees also

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<sup>28</sup> *Crosthwait Equipment Co. v. John Deere Co.* 992 F.2d 525 (5th Cir. 1993).

<sup>29</sup> 992 F.2d at 529 (quoting Miss. Code Ann. Sec. 74-24-53).

<sup>30</sup> *Southland v. Mir*, 748 F.Supp. 969 (E.D. N.Y. 1990).

failed to report inventory purchases and rebates, failed to report lottery ticket sales and lottery income, and amusement game income.

The franchise agreement said the franchisor could terminate on specified notice (3 days to 45 days) for specified breaches.

The court noted that “Unless a contract provision for termination for breach is in terms exclusive, it is a cumulative remedy and does not bar the ordinary remedy of termination for ‘a breach which is material, or which goes to the root of the matter or essence of the contract.’ ”

The court found the purpose of the contract implied a covenant not to engage in schemes that deprive Southland of its contract right to its share of gross profits. The court found the violations were to support a knowing and willful scheme to deprive the franchisor of its contract rights. This went to the root of the matter or essence of the agreement.

Also, the franchisor's two month delay in termination while investigating the scam and consulting its counsel to decide what course of action to take was not an unreasonable time to exercise its rights, and therefore did not waive the claim.

6. Cheating Customers is Grounds for Termination;  
Notice Would be a Futile Act<sup>31</sup>

A franchisor of auto repair shops, acting in concert with the state, conducted an investigation that found its franchisee was cheating customers. The franchisor notified the franchisee of immediate termination. This was upheld on appeal even though the state's franchise termination statute required, for a default that materially impairs the goodwill of the franchisor's trademark, a notice and at least 24 hours opportunity to cure. The court affirmed a trial court's ruling that such an opportunity to cure "would have been a futile and fruitless act."<sup>32</sup>

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<sup>31</sup> *Aamco Industries, Inc. v. DeWolf* 250 N.W.2d 835, 840 (Minn. 1977).

<sup>32</sup> *Id.*

B. Cases in Which Court Found Breaches to Be Incurable for Violation of Law

1. Immediate Termination Allowed for Soliciting Minor Over Internet; Termination for Co-Franchisee's Misconduct Allowed<sup>33</sup>

A franchise held by husband and wife was terminated after the husband was arrested for sending harmful material to a minor via computer and using a computer for child exploitation. A Florida trial court upheld the immediate termination.

Two years after the husband and wife purchased an AmeriSpec franchise, the husband was arrested for soliciting a minor over the Internet. In a sting operation the husband communicated via computer with police posing as a 14-year old girl. After learning of the arrest and negative publicity, AmeriSpec terminated the franchise immediately without opportunity to cure under the Franchise Agreement's Damage to Goodwill provisions.

The wife claimed wrongful termination and unjust enrichment. There was no issue that the husband's acts reflected materially and unfavorably on the operation and reputation of AmeriSpec. The court found the acts were a sufficient basis to terminate the husband under the Agreement's terms.

Regarding the wife's claims, the court noted the term "Franchisee" was defined as "...one or more persons, a corporation or a partnership, as the case may be..." and nothing indicated the rights of the husband and wife as "Franchisee" were divisible or separate. The court noted that under Florida law, individual partners are jointly and severally liable for all obligations of a partnership. The court found as a matter of law based on plain reading of the franchise agreement that the husband and wife were each bound by the actions of the other. Therefore the court granted AmeriSpec's motion to dismiss the wife's claims.

2. Franchisor Could Terminate One Franchisee for Co-Franchisee's Tax Fraud<sup>34</sup>

Two partners co-owned a donut franchise. One discovered that the other cheated the business. The innocent partner sued and won damages and an order that the dishonest partner not interfere with the business. Several years later, the dishonest partner pled guilty to tax fraud. His plea and connection to the donut franchise were publicized in the media. The franchisor claimed it had no knowledge of the misconduct

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<sup>33</sup> *Cleveland v. AmeriSpec, Inc.*, Case No. 2007 CA 8747 (Fla. 12th Jud. Dist., Nov. 16, 2009) The summary of this decision is adapted from a description in the December 3, 2009 GPMemorandum, a newsletter of the Gray Plant Mooty law firm, which represented AmeriSpec. The authors thank Gray Plant Mooty for permission to use this description.

<sup>34</sup> *Dunkin' Donuts Inc. v. Gav-Stra Donuts, Inc.* 139 F.Supp.2d 147 (D.Mass. 2001).

until learning of the co-owner being criminally charged and it then issued a notice terminating the franchise.

A court agreed that the tax fraud relating to operations of the business breached the franchise agreement clauses prohibiting any act injurious or prejudicial to the goodwill of the franchisor's marks, and requiring compliance with all applicable laws. The court also ruled that because the franchise agreement said the parties were to be regarded collectively as the "franchisee" the unlawful act of one was the unlawful act of all.

The innocent franchisee claimed that the defaults had been cured by uncovering the dishonest partner's illegal acts, recovering money in a state court action, enjoining the dishonest partner from involvement in the business, and reporting the illegal conduct to the government and the franchisor. The innocent franchisee noted that all these steps took place before the franchisor sent a default notice.

The court noted that the case was complicated because one co-franchisee made his best efforts to cure the other's dishonesty. But there had been media coverage and the franchise agreement said no cure was possible for falsifying financial data. The court ruled that because the dishonest partner falsified data, the franchise agreement did not allow the innocent co-franchisee an opportunity to cure. The court ruled that despite several years delay in terminating the franchisee, the franchisor had not waived its right to terminate, and under applicable Massachusetts law which set a high standard to establish a waiver, there was no waiver. Likewise there was no laches because the franchisee had not relied or suffered prejudice from the franchisor's delay in acting.

### 3. Sale of Cigarettes to Minors Was an Incurable Breach<sup>35</sup>

A donut shop franchisee was arrested for selling cigarettes to minors, but was not charged with a crime or convicted. The franchisor terminated the franchise immediately without allowing an opportunity to cure. When the franchisee continued to operate, the franchisor sought an injunction based on trademark infringement. The franchisee defended, claiming failure to allow a cure period made the termination wrongful.

A U.S. District Court in Florida ruled the termination was valid. An evidentiary hearing in the civil action established that the franchisee committed the crime of selling cigarettes to minors. The court ruled the termination was valid because the franchisee violated the franchise agreement obligation to comply with all laws. Also, any act by the franchisee that was the commission of a crime could be deemed injurious to the franchisor's goodwill. Therefore the termination was also valid under the franchise agreement promise not to do any act injurious or prejudicial to the goodwill of the franchisor's trademarks.

The court ruled that because the conduct was willful criminal conduct it could not be cured. Also, because the franchisee continued to sell cigarettes to minors even after being arrested, even if there was a right to cure, he had failed to cure.

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<sup>35</sup> *Dunkin' Donuts Inc. v. Chetminal, Inc.*, Bus. Franchise Guide (CCH) ¶ 11,290 (S.D.Fla. Nov. 26, 1997).

#### 4. Guilty Plea to Tax Evasion is Incurable Breach<sup>36</sup>

A donut shop franchisee was charged with evasion of state taxes. After being charged, the franchise entered into an additional franchise agreement with the franchisor. He then pled guilty to tax evasion and was sentenced to jail. After the guilty plea, the franchisor entered into another franchise agreement with him. After serving time in jail the franchisee was paroled. Meanwhile the business at his five donut stores grew. After being paroled, the franchisor gave notice of termination. A U.S. District Court in Massachusetts found that the convictions were "act[s] injurious or prejudicial to the goodwill associated with Dunkin' Donuts' Proprietary Marks and the Dunkin' Donuts System," justifying termination of the franchises.

#### C. Cases in Which the Court Found Breaches to Be Incurable as Historical

##### 1. Breach Constituting a Historical Fact Cannot Be Cured<sup>37</sup>

A car dealer failed to operate its dealerships for two weeks and then filed for bankruptcy. The dealer agreement said the franchisor could terminate the franchise for failure to operate the business for seven consecutive business days. The court found the failure to operate to be a "historical fact" which, by definition, could not be cured. The dealer had filed for bankruptcy protection and sought, under bankruptcy law, to assign the dealership agreements to another dealer. The court ruled that because the dealer was unable to cure the default, the dealer agreements could not be assigned.

Another aspect of the case was whether under federal bankruptcy law, cure was required for the agreements to be assigned. The ninth circuit interpreted a provision of the Bankruptcy Code, 11 U.S.C. Sec. 365(b)(2), as providing that the trustee could not assign the agreement unless the nonmonetary default had been cured. In another case,<sup>38</sup> the First Circuit rejected the Ninth Circuit analysis, and held that the same Bankruptcy Code provision 11 U.S.C., Sec. 365(b)(2) allowed an agreement to be assigned without first curing the nonmonetary default.<sup>39</sup> The *Bankvest* court noted that "many non-monetary defaults are "historical facts" that are impossible to cure after the fact -- for example, a debtor's failure to maintain leased property in a certain condition, to use leased equipment only for approved purposes, or to meet certain standards of equality or performance.

Though the *Claremont* (9th Circuit) and *Bankvest Capital* (1st Circuit) courts reached different results under a Bankruptcy Code provision, both courts agreed that some kinds of defaults are "historical facts" which are incurable.

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<sup>36</sup> *Dunkin' Donuts v. Panagakos*, Bus. Franchise Guide (CCH) ¶ 11,174 (D. Mass. 1997). See also, *Dunkin' Donuts v. Panagakos* 5 F.Supp.2d 57 (D. Mass 1998) (rejecting franchisee's waiver and estoppel arguments).

<sup>37</sup> *In re Claremont Acquisition Corp.*, 113 F.3d 1029, 1032 - 1033 (9th Cir. 1997).

<sup>38</sup> *In Re Bankvest Capital Corp.* 360 F.3d 291 (1st Cir. 2004).

<sup>39</sup> 360 F.3d at 301-302.

2. Failure to Operate Car Dealerships Was an Historical Fact Constituting an Incurable Breach<sup>40</sup>

A car dealer operated dealerships of various brands (Jaguar, Ferrari, Aston Martin, Land Rover and Lotus) pursuant to franchise agreements. The dealer filed for Chapter 11 bankruptcy and continued to operate as debtor-in-possession. Later the bankruptcy was converted to Chapter 7 and a trustee was appointed. The trustee sought to transfer the franchise agreements, which the franchisors opposed. The trustee proposed to cure the franchisee dealer's defaults under the franchise agreements, which the franchisor also opposed.

California Vehicle Code Section 3060(a)(2) allows termination of a franchise if the franchisee fails to conduct operations for seven consecutive business days so that the franchisor has a good faith belief the franchisee is going out of business. Likewise the franchise agreements had provisions for termination on similar grounds. For example, one franchise agreement stated:

The Company and Dealer agree that the following acts are so contrary to the spirit and purpose of this Agreement as to warrant its termination:

- .....
- (i) Failure by Dealer to conduct its sales, service and parts operations during customary business hours of the trade in Dealer's area for six (6) or more consecutive business days, unless such failure is caused by contingencies beyond the reasonable control of Dealer....

The court agreed with the franchisor's argument that closure of the dealers' operations was a historical fact that was incapable of being cured by the trustee. The court quoted from a Petroleum Marketing Practices Act decision, stating:

The lapse in operations took place. The estate simply cannot overcome that historical fact. Neither can it deny the significance given to such a lapse under the agreements, and under the PMPA; as two courts have noted, the steady maintenance of gasoline station operations during the days and hours fixed by franchise agreements is a key goodwill value to the refiner/distributor, which is given special deference in franchise litigation involving such businesses. [Citations omitted.] The estate cannot "undo" the historical event at this point.<sup>41</sup>

The bankruptcy trustee challenged whether a default was incurable just for being a historic fact, and argued that a closure default (failure to operate for the requisite period of time) could be cured by reopening and compensating the franchisors for any economic harm suffered due to the closure.<sup>42</sup>

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<sup>40</sup> *In Re Lee West Enterprises, Inc.* 179 B.R. 204 (Bankr. C.D. Cal. 1995)

<sup>41</sup> 179 B.R. 204, 207 (Bankr. C.D. Cal. 1995) (quoting *In Re Deppe*, 110 B.R. 898, 904 (Bankr. D. Minn. 1990)).

<sup>42</sup> 179 B.R. at 208.

The court rejected this argument in view of the closure provisions in the law and the franchise agreements. The court found they reflected the materiality of the dealership's failure to maintain operations. Moreover, the statute provided that closure for seven consecutive business days would be grounds for termination, and one of the agreements provided for termination based on closure for only six consecutive business days. The dealerships had been closed over five months, including approximately three months prior to the trustee's motion to assign the franchise agreements.<sup>43</sup>

The court found the dealer's failure to maintain operations was an incurable default and therefore denied the trustee's request to assign the agreements.

D. Cases in Which the Court Found Breaches to Be Incurable for Other Reasons

1. Termination Allowed Based on Personal Nature of Trademark License<sup>44</sup>

A bankruptcy court upheld termination of a franchise agreement in bankruptcy on the ground the franchise was a trademark license, personal to the licensee, and not freely assignable. The franchisor was not required to consent to a transfer in bankruptcy even though the transfer would be to the same entity, in its new capacity as bankruptcy debtor-in-possession.

A Pearle Vision eyeglasses franchisee filed for Chapter 11 protection. After filing, the franchisee continued to run the business as debtor-in-possession. The franchisor obtained an order granting relief from stay, so it could terminate the franchise agreement. The franchise agreement prohibited assignment without the franchisor's consent, and said any unauthorized use of the franchisor's trademarks was an incurable breach. While there was no issue of incurable breach, the decision quoted the franchise agreement provision, which stated:

the Marks are the exclusive property of [Franchisor], and . . . nothing herein shall give Franchisee any right, title, or interest in or to any of the Marks except as a mere privilege and license during the term hereof to display and use the same according to the limitation set forth herein. All uses of the Marks by Franchisee inure to the benefit of [Franchisor]. Franchisee understands and agrees that the limited license to utilize the Marks granted hereby applies only to such marks as are designated by [Franchisor], and which have not been designated by [Franchisor] as being withdrawn from use, together with those which may hereafter be

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<sup>43</sup> 179 B.R. at 208.

<sup>44</sup> *In re Wellington Vision, Inc.* 364 B.R. 129 (S.D.Fla. 2007).



designated by [Franchisor] in writing ... Franchisee's right to use the Marks is limited to such uses as are authorized hereunder, and any unauthorized uses thereof shall constitute an infringement of [Franchisor]'s rights and a material and incurable breach of this Agreement which, unless waived by [Franchisor], shall entitle [Franchisor] to terminate this Agreement unilaterally and immediately upon notice to Franchisee, with no opportunity to cure. . . ."

Regarding transferability, the franchise agreement stated:

[T]his Agreement is personal being entered into in reliance upon and in consideration of the singular personal skill and qualifications of Franchisee, and the trust and confidentiality reposed in Franchisee by PVI. Therefore ...neither Franchisee's interest in this Agreement, nor any of Franchisee's rights or privileges hereunder, nor the Franchise Business or any interest therein, may be transferred, assigned, sold, shared, redeemed, sublicensed or divided voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, in any manner, without the prior consent of PVI procured in accordance with the terms and conditions set forth in this Paragraph 17.... PVI's consent to such transfer and sale shall not be unreasonably withheld<sup>45</sup>

The court decided the franchise agreement invoked federal trademark law which prohibited the debtor-in-possession from assuming or assigning the agreement without the franchisor's consent, which the franchisor would not give.<sup>46</sup> The court considered that the grant of a non-exclusive trademark license is personal to the assignee and thus not freely assignable.<sup>47</sup> The Bankruptcy Code provides that a trustee (which the court determined includes a debtor-in-possession) may not assign or assume an agreement if applicable law permits the other party to refuse an assignee's performance and the other party does not consent to the assignment.<sup>48</sup>

2. Court Upholds Arbitration Award Confirming Termination of Franchise Agreement for Violation of In-Term Non-competition Restriction, Without Opportunity to Cure<sup>49</sup>

A restaurant franchisor terminated a franchisee for violating in-term noncompetition covenants, and improperly selling trademarked products. The franchisor treated the breaches as non-curable and grounds for immediate termination. A district court refused to vacate the award.

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<sup>45</sup> In re Wellington Vision, Inc. 364 B.R. 129, 132 (S.D.Fla. 2007).

<sup>46</sup> 364 B.R. at 133.

<sup>47</sup> 364 B.R. at 134.

<sup>48</sup> 11 U.S.C. Sec. 365(c).

<sup>49</sup> *Int'l. House of Pancakes, Inc. v. Hajloo* 2005 WL 4652510 (D.Colo. 2005) (not reported in F.Supp).

The franchise agreement applied California law. The franchisee argued that California's Franchise Relations Act establishes a public policy against termination without advance notice and opportunity to cure. But the franchise was in Colorado. The court noted that the Act applies only if the franchisee is domiciled, or the business is operated, in California.<sup>50</sup> The court ruled the California Franchise Relations Act did not apply. The court also ruled that the arbitrator's decision that no opportunity to cure was required for an incurable breach, did not contradict any express, unambiguous provision of the franchise agreement.

3. Failure to Pay Amounts Due is "Good Cause" to Terminate Under Franchise Practices Act<sup>51</sup>

An Arkansas franchisor-franchisee relationship in a heating and air conditioning business deteriorated over a two year period. After the franchisor's district sales manager changed, the franchisor elected to terminate the franchisee on the ground the franchisee established an unauthorized location. An initial termination notice did not assert the franchisee's delinquency in payments to the franchisor. A later notice stated that if the franchisee did not rectify delinquent payments within ten days, the franchise would be terminated in ninety days. After the franchisee failed to pay, the franchisor terminated the franchise. On appeal, the Eight Circuit noted that under the Arkansas Franchise Practices Act, failure of a franchise to pay, within ten days after receipt of notice, any sums that are past due to the franchisor and related to the franchise, constitutes good cause for termination. With the franchisee's admission that it had not paid, the court found there was good cause for termination. The franchisee sought to argue that its failure to pay was due to breach by the franchisor. But the court found that the amount past due from the franchisee far exceeded any amount the franchisee could attribute to the franchisor's claimed breach.

4. Insolvency Was "Good Cause" for Termination, and Waived Notice Requirements<sup>52</sup>

A grocery store franchisor terminated a franchisee on the ground the franchisee had a substantial negative net worth and did not comply with an agreement to "rectify" its net worth. The franchisee's net worth was zero when the franchise agreement was entered into, and was negative \$45,000 three years later, when terminated. The franchisee's request for an injunction against the termination was denied. A Wisconsin trial court ruled that under the Wisconsin Fair Dealership Law, insolvency or the imminent threat of insolvency was good cause for termination, and that maintenance of solvency and avoidance of insolvency were essential and reasonable requirements placed on a dealer. Moreover, the statute provided and the court ruled that notice requirements do not apply in the event of insolvency.

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<sup>50</sup> Cal. Bus. & Profs. Code Sec. 20015.

<sup>51</sup> *Heating & Air Specialists, Inc. v. Jones* 180 F.3d 923 (8<sup>th</sup> Cir. 1999).

<sup>52</sup> *Open Pantry Food Marts of Wisconsin v. Five, Inc.* Bus. Franchise Guide (CCH) Par. 8113 (Wisc. Circuit Court 1984).

5. “Good Cause” Permits Termination Regardless of Franchisor's Motive<sup>53</sup>

An appellate court in Illinois upheld McDonald's termination of a franchisee in Paris, France. The principal grounds were the franchisee's failure to comply with McDonald's quality, service and cleanliness standards. The court noted that the Illinois Franchise Disclosure Act, (which was not applicable, having been enacted after the franchise was established) prohibited termination of a franchise agreement by a franchisor, except for “good cause” and defined “good cause” to include failure of the franchisee to comply with a lawful provision of the franchise or other agreement and to cure the default after notice. The franchisee argued that if the franchisor acted out of an improper motive, then despite having “good cause” for termination, the franchisor should be found to have breached the implied covenant of good faith and fair dealing. The appellate court rejected this argument, holding that where the franchisee is in substantial breach, which affects the interests of the franchisor, no legitimate expectation of the franchise is violated by a termination, regardless of the franchisor's motive.

6. Commingling Branded and Unbranded Product Was Probably a Noncurable Breach<sup>54</sup>

Shell Oil Co. sent a 90 day termination notice to a service station franchisee for late payment. Later, Shell sent another notice repeating the past due amount, reaffirming the termination date, and adding as an additional ground that the franchisee mixed Shell products with non-Shell products.

The day before the effective date of termination, the franchisee filed a bankruptcy petition. Shell complained to accomplish the termination. The Bankruptcy Court noted that the franchise relationship had terminated due to the default, which was not cured. The court cited precedents establishing that commingling of franchisor gasoline with non-franchisor gasoline is so serious a violation as to be valid grounds for termination and stated that the commingling was an incurable breach.<sup>55</sup>

E. Case in Which the Court Rejected Historical Fact Basis of Claimed Incurability

An unreported Bankruptcy Court decision refused to apply the historical fact analysis in a non-franchise case. A debtor sought to assume a commercial lease, over the landlord's objection. The landlord claimed the lease had been terminated pre-petition for non-monetary defaults. The non-monetary defaults included re-wiring the electrical power, and making unauthorized alterations to the premises, and using the sidewalk in front of the premises. The landlord claimed some of the defaults could not be cured because they were historical facts. The court could "find no relevant similarity between the cessation of business operations under a franchise agreement, and [the Debtor in

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<sup>53</sup> *Dayan v. McDonald's Corp.* 466 N.E.2d 958 (Ill. App. 1984).

<sup>54</sup> *In re Anne Cara Oil Co., Inc.* (Bankr. Mass. 1983) 32 B.R. 643

<sup>55</sup> 32 B.R. at 648.

this case making] intermittent use of the sidewalk for a purpose not allowed under the Lease." Also, in the franchise cases "there are statutory provisions which specifically permit franchisors to terminate a franchise which ceases to operate; no comparable statutory provision is at issue here." The court added:

Most non-monetary defaults (e.g., failure to maintain the premises in a certain condition, failure to seek approval; failure to provide reasonable consent) are "historical facts." Consequently, if [Landlord's] "historical fact" theory were applied to all non-monetary defaults, it would, in effect, eliminate the right to assume a lease for which non-monetary defaults exist.

In other words, according to the court, most non-monetary defaults are "historical facts;" and if they were incurable, then all non-monetary defaults would be incurable. The court indicated that a Bankruptcy Court has latitude to waive strict enforcement of lease provisions, but also indicated that such defaults could be cured.

#### F. Cases Rejecting Other Arguments that Breach Was Incurable

##### 1. Court Grants Injunction in Favor of Franchisee, Against Termination of Franchise<sup>56</sup>

A court rejected a franchisor's argument that a contract could be terminated even in the face of a provision requiring an opportunity to cure, where the default allegedly made cure impossible.

Manpower and its franchisees provide temporary personnel services to employers. The franchise agreements promised that for breach, the franchisor would give ninety days notice of termination specifying the grounds, and sixty days to cure. The agreements also listed grounds for immediate termination.

An audit indicated the franchisee had not complied with verification and recordkeeping requirements regarding employee eligibility under federal immigration law. The franchisor considered this noncompliance with the agreement's requirement to abide and follow all local, state and federal laws applicable to the franchise. The franchisor treated the breach as incurable, going to the "very essence" of the agreements, and sent notices of termination.<sup>57</sup> The franchisee sought an injunction against being terminated.

The franchisor noted that at common law a contract may be terminated even in the face of a provision requiring an opportunity to cure, where the nature of the default renders cure impossible.<sup>58</sup> The court differed with the franchisor on the definition of an incurable breach. The court said incurable does not refer to a material breach going to the essence of the contract. Rather incurable means a breach which the contract provides

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<sup>56</sup> *Manpower Inc. v. Mason* 377 F.Supp.2d 672 (E.D.Wis. 2005).

<sup>57</sup> 377 F.Supp.2d at 675.

<sup>58</sup> 377 F.Supp.2d at 677.

no opportunity to cure, or that cannot logically be cured, such as failure to meet a sales quota in a specified time.<sup>59</sup> The court noted that the remedy for a breach that goes to the essence of a contract is not termination, but rescission.<sup>60</sup>

The court discussed reasons why franchise, dealership and distributor agreements provide for and restrict terminations:

The purpose and goals of limiting the right to terminate in the context of an exclusive dealing, distributorship, or franchise agreement are not only to provide a means for the manufacturer or seller to protect its trademark or service mark, and its corresponding good will but also to protect the buyer, distributor, or franchisee from a forfeiture of its investment of money, time, and skill by arbitrary termination by the manufacturer. These goals and purposes are clearly distinguishable from the right to cancel [i.e., rescind] for a total breach of the agreement. These two rights coexist. A reservation of a right to terminate in the absence of breach or upon an express condition that may constitute a partial or total breach does not displace the right to cancel [i.e., rescind] for a total breach. [citation omitted] Thus, when a contract includes a power of termination and a party commits a breach, depending on the nature of the breach, the non-breaching party may be able to elect between rescinding and terminating the contract.<sup>61</sup>

Because the franchisor sought to terminate, rather than rescind, the court ruled the franchisor had to show that conditions precedent to the power of termination were satisfied. Under the agreements, except for specified causes (sales quotas, bankruptcy, insolvency, criminal conviction) the franchisor could not exercise a power to terminate unless the franchisee was given sixty days to cure. None of the non-curable breaches were present. Therefore there was no ground for immediate termination. The court ruled that the franchisee would be reasonably certain to win a claim for unlawful termination and preliminarily enjoined the termination.

The court commented that the franchisor might have grounds for rescission, but did not rule on that subject. Rescission would place the parties in their original position, removing any post-term covenant not to compete.

## 2. Despite Valid Termination Ground, Franchisor Had to Allow Opportunity to Cure<sup>62</sup>

A convenience store franchisor terminated a Washington State franchisee for misappropriating money from money orders. The franchisee acknowledged that this conduct, if true, would be good cause for termination. The franchisee claimed,

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<sup>59</sup> 377 F.Supp.2d at 677.

<sup>60</sup> Id.

<sup>61</sup> 377 F.Supp.2d at 678-679.

<sup>62</sup> *Malek v. The Southland Corp.* Bus. Franchise Guide (CCH) Par. 11,386 (W.D. Wash. 1998).

however, that under Washington State's Franchise Investment Practices Act, the termination was improper because the franchisor failed to allow the franchisee an opportunity to cure. A U.S. District Court noted that Washington State's law offers franchisees more protection than franchisees in other states, noting that a Washington State franchisee is entitled to an opportunity to cure even when a breach is material and willful. The court noted that a franchisee "who may have cheated their franchisor" is protected. The court ruled that the franchisor could not terminate the franchise, even for a willful breach, without providing an opportunity to cure.

### 3. Court Finds that Inadequate Performance Breach Was Curable<sup>63</sup>

An agreement between a soft drink manufacturer and a distributor provided for thirty days notice of breach and a right to cure, unless the breach was by its nature not curable. The manufacturer delivered a notice of immediate termination to the distributor. The manufacturer claimed the distributor's performance was inadequate causing the loss of a large supermarket account. The terminated distributor sought a restraining order against the termination, and claimed that the supermarket was willing to resume purchases. The manufacturer claimed to have appointed other distributors to service the supermarket and other customers.

The court decided that the distributor would probably succeed in proving the termination violated the parties' agreement. Without identifying the grounds for termination, the court said they appeared to be curable. The court distinguished cases cited by the manufacturer involving incurable breaches. The court noted they involved (1) a franchise that was closed for several months, when state law allowed termination if the franchisee's business was closed for seven days; and (2) an insurance placement contract that was terminated due to an agent's unauthorized transfer of stock to its officers.

Here, by contrast, the distributor's alleged violations were not in the nature of closing the business or dishonest conduct and improper insider dealings, which could not be cured. The court said the distributor's alleged contract violations were curable. The court therefore fashioned relief that provided for reinstatement of the distributor.

### 4. Dealer's Failure to Pay on Time May Not Have Breached an Essential Obligation and May Not Have Constituted "Just Cause" for Termination<sup>64</sup>

A medical device manufacturer terminated its Puerto Rico dealer for failure pay bills on time. A U.S. District Court granted summary judgment to the manufacturer, upholding the termination. On appeal, the First Circuit reversed. The Puerto Rico Dealers Contracts Act forbids a manufacturer from ending its business relation with a distributor unless there is "just cause." This includes "nonperformance of any of the essential obligations of the dealer's contract." The manufacturer claimed that failure to pay on

<sup>63</sup> *In re Beverage Enterprises, Inc.* (Bankr. E.D.Pa. 1997) 1997 WL 177352 (not reported in B.R.).

<sup>64</sup> *Biomedical Instrument and Equipment Corp. v. Cordis Corp.* 797 F.2d 16 (1<sup>st</sup> Cir. 1986).

time was an essential obligation. But the dealer had presented evidence indicating that the termination was not for late payment but was because the manufacturer felt the dealer had not done enough to promote the manufacturer's products. The dealer also showed that the manufacturer had promised that cash limitations would not be used to hurt the relationship; that in the past when there were outstanding invoices, the manufacturer had extended the dealer's line of credit, there had been a consistent history of being past due more than 90 days, and recently the dealer had reduced the overdue balance. The court of appeals found there was a genuine issue of material fact whether the manufacturer really considered the failure to make timely payments to be an "essential" obligation.

5. Franchisor's Termination of Franchisee May Have Been Pretextual, Violating Covenant of Good Faith<sup>65</sup>

A home health care franchisor offered to buy back a franchise, but the franchisee declined. Later, the franchisee missed the deadline to renew the franchise. Later still, the franchisor terminated the franchise due to franchisee tardiness in paying royalties.

The terminated franchisee sued, claiming the franchisor violated the implied covenant of good faith in not turning over potential client leads in the territory, and by terminating the franchise. The franchisee also claimed encroachment. Reversing a summary judgment favorable to the franchisor, the Seventh Circuit ruled that a fact question existed whether the franchisor breached the implied covenant of good faith. The court found the franchisor had discretion whether to provide leads to the franchisee, and the franchisor's silence about reasons for withholding the leads (alleged poor performance of the franchisee) indicated the franchisor may not have exercised its discretion in accordance with good faith.

As to termination for failure to pay royalties, the franchisee claimed it could not pay because profits dwindled due to territory encroachment by the franchisor. This, together with the franchisor luring away clients, seemed to the court to possibly be "the paradigmatic case of a party invoking a reasonable contract term (the discretionary obligation to furnish account leads) dishonestly to achieve a purpose "contrary to that for which the contract had been made." The court said "such manipulation . . . is the essence of bad faith" and remanded the case for further proceedings.

6. Court Rules Franchisee Could and Did Cure the Sale of Misbranded Product<sup>66</sup>

Lippo operated a Mobile service station. He purchased 7,500 gallons of non-Mobil gasoline, which he sold to the public under the Mobil trademark for a full day. At the franchisor's direction he then covered the Mobil signs while selling off the remaining non-Mobil gasoline. Shortly after, Mobil sent Lippo a termination notice due to selling non-Mobil gasoline.

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<sup>65</sup> *Interim Health Care of Northern Illinois v. Interim Health Care* 225 F.3d 876 (7<sup>th</sup> Cir. 2000).

<sup>66</sup> *Lippo v. Mobil Oil Corp.* 776 F.2d 706 (7<sup>th</sup> Cir. 1985).

In litigation Mobil claimed the misbranding was so serious a violation of the franchise agreement that it could not be cured. Lippo argued the default could be and was cured, so that the termination violated the franchise agreement and Petroleum Marketing Practices Act.

The Retail Dealer Contract imposed a duty not to sell non-Mobil products through Mobil equipment or under Mobil signs, and gave Mobil a right to immediate termination if the paragraph were violated. A Supplemental Agreement applied to any duty, responsibility or obligation imposed by the Retail Dealer Contract and gave a defaulting party the right to cure within ten days before the Retail Dealer Contract could be terminated. Mobil claimed the ten day cure provision did not apply.

The Seventh Circuit ruled that under the terms of the agreement, Lippo had a right to cure the default and because he did, Mobil did not have a right to terminate the Dealer Agreement. The court based its ruling on close reading of the agreement's terms, and the principle that contract language which would lead to a forfeiture is strictly and narrowly construed. Thus, if two possible constructions are possible, only one of which works a forfeiture, the construction may be adopted that avoids forfeiture and preserves the parties' rights. The court noted that an ambiguous forfeiture provision will be construed against the party seeking to enforce it.<sup>67</sup>

Mobile argued that selling non-Mobil gasoline was not curable. The court agreed that selling misbranded gasoline was far different from failing to clean washrooms. But the court said if Mobile believed such breach was incurable so as to warrant automatic termination, the parties' agreement could have said so.<sup>68</sup>

The court noted Lippo did take steps to cure. He de-identified the station and covered the pumps. He complied with Mobil's requests in this regard. So what Lippo did was sufficient to constitute correction.<sup>69</sup>

#### 7. Breaches of Franchise Agreement Were Not Impossible to Cure<sup>70</sup>

A franchisor sent a franchisee ninety days notice of termination due to breach, with an opportunity to cure. Almost ninety days later, one day before the franchisor's notice that the agreements would be terminated if the defaults were not cured, the franchisee filed a petition under Chapter 11 of the Bankruptcy Code. The court ruled the agreements could not terminate until after the cure period expired. The agreements had not terminated when the franchisee filed for bankruptcy and were therefore property of the bankruptcy estate.

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<sup>67</sup> 776 F.2d at 715.

<sup>68</sup> 776 F.2d at 715, 716.

<sup>69</sup> 776 F.2d at 716.

<sup>70</sup> *In Re ERA Cent. Regional. Services, Inc.*, 39 B.R. 738, 741 (Bankr. C.D. Ill. 1984).



The franchisor argued that the defaults were impossible to cure because some involved past events that were incurable. The court was "mindful that history cannot be relived and that [the franchisee's] past failure to meet standards or to promote cannot now be met." The court said "this truism, however, does not preclude per se, [the franchisee] from curing defaults."<sup>71</sup> The court gave the franchisee the opportunity to provide a plan to cure the past defaults and provide adequate assurances of future performances.

#### G. One Further Ruling on Incurability

In an audit, a petroleum franchisor determined that the franchisee underreported and underpaid state sales tax by \$15,000.<sup>72</sup> The franchisor terminated the franchisee on this basis for violating the franchise agreement's provision requiring compliance with law. A U.S. District Court upheld this termination under the Petroleum Marketing Practices Act, which allows termination for a franchisee's knowing failure to comply with federal, state or local laws relevant to the operation of the marketing premises. The franchisee had filed amended tax returns. However the district court ruled that the PMPA does not provide a franchisee an opportunity to cure.

The court of appeals reversed, holding that the PMPA's use of the word "failure" requires inquiry into significance of the violation; and in this case the materiality of the violation was a fact question. The court of appeals left open the question whether the franchisee had a right to cure, saying it was a question the court did not have to decide.

#### IV. Some Thoughts on Best Practices – Drafting with “Good Cause”

After reviewing statutory and case law on incurable defaults and “good cause” restrictions, counsel might turn to the practical aspects of compliance: how does a franchisor enforce its franchise agreement without violating “good cause” requirements? The answer involves drafting durable franchise agreements and adopting a rigorous compliance procedure.

#### A. Typical Termination Clauses in Franchise Agreements

A business model employed by diverse industries, franchising provides little in the way of universal standards, and nowhere is the heterogeneous nature of franchising more apparent than in the terms and conditions on which a franchisor may grant a franchise and, by corollary, terminate franchise rights.<sup>73</sup> This diversity presents some challenges

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<sup>71</sup> *Id.*

<sup>72</sup> *Chevron USA, Inc. v. El-Khoury* 285 F.3d 1159 (9th Cir. 2002) (reversing district court decision, reported at Bus. Franchise Guide, (CCH) Par. 11,970 (C.D. Cal. 2000)

<sup>73</sup> While some franchise agreements grant the franchisee a right to terminate the franchise agreement for breach by the franchisor, these provisions are less common than those allowing the franchisor to terminate the franchise agreement for breach by the franchisee. In addition, most statutes which require “good cause” for the termination of a franchise agreement were drafted for the protection of franchisees, not franchisors; and therefore, these statutes typically curtail a franchisor’s ability to terminate a franchise agreement by imposing a “good cause” requirement but impose no similar requirement upon a franchisee’s decision to terminate a franchise agreement. Therefore, this section speaks exclusively to those provisions in franchise agreements which provide to the

to analyzing the impact of “good cause” termination requirements on the enforcement of franchise agreements and the methods best employed to draft durable franchise agreements. Counsel will face the same predicament when considering various “good cause” statutes. These statutes are not uniform in their approach. Therefore, the myriad forms of franchise agreements and the myriad forms of “good cause” statutes presents some challenge to analysis of the impact of “good cause” statutes on drafting durable and enforceable franchise agreements.

Fortunately, after reviewing many franchise agreements and “good cause” statutes, patterns emerge. An overview of the various requirements of “good cause” statutes has been presented in Section II, above, and for the purposes of drafting durable franchise agreements, a simple analysis under the California Franchise Relations Act<sup>74</sup> (the “CFR”) should suffice, as noted in Section IV.B, below.

Among countless forms of franchise agreements in use are three common approaches to the termination of franchise rights. Many franchise agreements contain one or more of the following termination clauses: (1) immediate and automatic termination without notice or right to cure; (2) termination with notice, but no right to cure; or (3) termination only after notice and a right to cure. Of course, there are variations and numerous franchise agreements which do not fit neatly into this tripartite classification. Nonetheless, this classification makes meaningful analysis possible.

#### 1. Automatic Termination

Franchise agreements often provide for automatic termination, without any action by either party, on the commission of certain defaults. These defaults tend to be egregious and readily or objectively substantiated such as abandonment of the franchised business, conviction of a crime, or violation of a standard of public health. A clause which provides for immediate and automatic termination of the franchise agreement might read as follows:

##### **Model Clause 1 – Immediate and Automatic Termination**

Franchisee shall be deemed to be in default under this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee or any opportunity to cure the default, in the event . . . any public-health official or public-health agency or organization condemns or closes the Restaurant or revokes the Restaurant’s license to operate . . .

Model Clause 1 is simplistic but illustrates the franchisor’s inability to control the outcome. Rather, facts drive the outcome. And since facts can be slippery, this may not be in the best interest of the parties, either the franchisor or the franchisee.

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franchisor a right to terminate a franchise agreement and does not address provisions which might give an analogous right to the franchisee.

<sup>74</sup> California Franchise Relations Act, Cal. Bus. & Prof. Code § 20020.

## 2. Termination with Notice and No Right to Cure

Franchise agreements often provide for termination on notice without providing the franchisee a right to cure. Like Model Clause 1, these defaults tend to be egregious and often objectively substantiated. A clause which provides for termination of the franchise agreement with notice but no right to cure might read as follows:

### **Model Clause 2 – Termination with Notice and No Right to Cure**

Franchisee will be in default of this Agreement, and Franchisor may terminate the Agreement and all rights hereunder, without affording Franchisee any right to cure the default, effective immediately on delivery of written notice by Franchisor to Franchisee pursuant to the notice provisions set forth herein, in the event . . . Franchisee attempts to transfer to a third party control or a majority interest in the Franchised Business or this Agreement without Franchisor's prior written consent . . .

Unlike Model Clause 1, Model Clause 2 allows the franchisor some latitude in determining when to issue a notice of default. This provides the franchisor with greater control and gives the franchisor an ability to make informed decisions about how and when to issue a notice of default, taking into account specific statutory "good cause" requirements

## 3. Termination with Notice and Right to Cure

Finally, franchise agreements often contain provisions which provide the franchisee with notice and an opportunity to cure. Typically, these provisions are reserved for less egregious breaches, such as failure to comply with standards of service set forth in an operations manual. A clause which provides for termination of the franchise agreement with notice and an opportunity to cure might read as follows:

### **Model Clause 3 – Termination with Notice and Right to Cure**

Franchisee shall have thirty (30) days after receipt of a written notice of default from Franchisor within which to remedy any default under this Agreement, including, without limitation, any failure by franchisee to comply fully with the standards and requirements set forth in the confidential operations manual, as that document may be modified from time to time.

The model clauses set forth above need not be mutually exclusive. Franchise agreements often contain clauses analogous to all of the foregoing model clauses, with egregious defaults subject to immediate and automatic termination, other defaults subject to termination on notice without any right to cure, and the least troublesome defaults subject to termination only with notice and an opportunity to cure. Each clause must, nevertheless, comply with the requirements of "good cause."

## B. The Model Clauses in the Context of “Good Cause”

As noted above, the requirements of “good cause” are not uniform from state to state. However, two elements of good cause appear frequently: (1) a substantive element, and (2) a procedural element. The substantive element sets forth permitted grounds for termination, for example, the “good cause” statute in Iowa provides: “ ‘good cause’ is cause based upon a legitimate business reason.”<sup>75</sup> The procedural element typically sets forth a requirement for notice and opportunity to cure. The CFR provides a good example:

Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior to the expiration of its term, except for good cause. Good cause shall include, but not be limited to, the failure of the franchisee to comply with any lawful requirement of the franchise agreement after being given notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure the failure.<sup>76</sup>

Under the CFR, “good cause” for termination includes a substantive element: “the failure of the franchisee to comply with any lawful requirement of the franchise agreement.”<sup>77</sup> The CFR also includes a procedural element: the franchisee must be given “notice thereof and a reasonable opportunity to cure.”<sup>78</sup> With these two basic elements of “good cause” in mind (substantive and procedural), counsel can test whether the model clauses presented above may run afoul of “good cause” requirements in general.

### 1. An Analysis of Model Clause 1

Of the three model clauses presented above, perhaps Model Clause 1 is the most likely to conflict with the requirements of “good cause.” Depending on the requirements of a particular statute, Model Clause 1 may violate a substantive element. In addition, since Model Clause 1 does not afford the franchisee any notice or opportunity to cure an alleged default, it potentially runs afoul of the procedural element as well.

#### a. Substantive Requirements for Default

Any number of circumstances could trigger the termination provisions of Model Clause 1 for a default which does not run afoul of the substantive element of “good cause.” For example, the Restaurant in Model Clause 1 could be closed by the health department for failure to meet basic requirements of public health. The franchisee’s failure to meet

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<sup>75</sup> Iowa Code §537A.10.7(a). The Iowa statute further defines “good cause” to include: “failure of the franchisee to comply with any material lawful requirement of the franchise agreement.” In addition to meeting these substantive requirements, the Iowa statute also requires notice and an opportunity to cure unless the breach is for one of nine defaults specified by statute.

<sup>76</sup> California Franchise Relations Act, Cal. Bus. & Prof. Code § 20020.

<sup>77</sup> Id.

<sup>78</sup> Id.

these “lawful requirements” would likely be sufficient grounds for termination of the franchise agreement under the CFR<sup>79</sup> and likely under other “good cause” statutes. Often, the egregious defaults contemplated by clauses like Model Clause 1 are consistent with requirements of “good cause.” But such may not always be the case.

There may also be a number of circumstances in which the language of Model Clause 1 effects an automatic termination of the franchise agreement without a substantive basis that comports with the requirements of “good cause.” For example, what if the Restaurant in Model Clause 1 was closed by the health department due an outbreak of cryptosporidiosis in the public water supply? Or what if the fire department closed the restaurant due to a forest fire in the area surrounding the restaurant. Would termination of the franchise agreement in these circumstances comport with the requirements of “good cause”? Or, taking a less dramatic example, what if equipment specified by the franchisor failed to meet an arcane requirement of an applicable health code, and the health department closed the Restaurant for these violations? Would automatic termination of the franchise agreement in these circumstances comport with the requirements of “good cause”?

No matter how artfully drafted, clauses like Model Clause 1, which do not give the franchisor the ability to control the outcome, run the risk of violating the substantive element of “good cause.”

b. Notice and Opportunity to Cure

Model Clause 1 does not provide the franchisee with any notice of the default or any opportunity to cure. Therefore, under many “good cause” statutes, including the CFR, even if the substantive grounds for default fall squarely within the requirements of “good cause,” a cogent argument can be made that Model Clause 1 fails to comply with the procedural element.

2. An Analysis of Model Clause 2

Model Clause 2 is an improvement over Model Clause 1. However, there may still be a conflict between the substantive grounds for default and statutory requirements. Also, under Model Clause 2, while the franchisor must give notice, there is no opportunity to cure. Therefore, enforcement under this provision may also run afoul of the procedural element of “good cause,” which typically requires both notice and a reasonable opportunity to cure.

Perhaps the greatest benefit of Model Clause 2, though, is that it does not operate automatically. Under Model Clause 2, the franchisor must deliver notice. This allows the franchisor an opportunity to review the facts of the alleged default and the requirements of “good cause” before transmitting notice to the franchisee. Model Clause 2, however, does not give the franchisor latitude in modifying its rights under the franchise agreement to comply with requirements of “good cause.” Rather, the

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<sup>79</sup> See Appendix 2.

franchisor must make a decision whether to enforce rights under the franchise agreement or forego them, in order to avoid violating a statutory “good cause” requirement.

### 3. An Analysis of Model Clause 3

Model Clause 3 is perhaps least likely to run afoul of the requirements of “good cause.” But there is still the potential. Like Model Clause 2, the franchisor is in control and can make informed decisions about how and when to exercise its right to terminate the franchise agreement. Still, the grounds for default may not comport with substantive requirements of “good cause” and the opportunity to cure may not be sufficiently long to satisfy the procedural requirements of “good cause” in all states.<sup>80</sup>

#### C. Some Paragon Clauses

In an attempt to avoid the conflicts between the above model clauses and the requirements of “good cause,” counsel might undertake the laborious task of reviewing all the various incarnations of “good cause” and then attempt to draft a termination clause which falls squarely within the requirements of every state statute. While this might yield a clause which complies with the various requirements of “good cause,” the effort would be substantial and the result might be fleeting. Moreover, a clause which satisfies every “good cause” restriction would likely result in the franchisor conceding grounds for termination which would be available for use in some jurisdictions. Alternatively, counsel might seek to draft unique termination clauses for each of the various states imposing “good cause” restrictions. Again, the effort would be substantial and the result may be fleeting. This approach could also create uncertainty in those circumstances in which the franchise relationship may be governed by multiple states.<sup>81</sup> Also, states have a habit of amending their statutes or adopting new ones. Fortunately, all this effort is not necessary.

#### 1. Automatic Termination

Many franchise agreements currently in use contain a termination clause which operates automatically, as Model Clause 1. While these clauses create the greatest risk of running afoul of “good cause” requirements, and while one might argue about the necessity to effect an automatic termination of the franchise agreement, their prevalence is undeniable. Therefore, franchisors who do not wish to abandon the automatic termination clause, can consider the following “paragon” clause<sup>82</sup>, as a modified approach, aimed to limit conflicts with the “good cause” statutes. Nevertheless, elimination of these automatic provisions remains a logical approach to

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<sup>80</sup> See, e.g., the Missouri Franchise Law, Mo. Rev. Stat. §407.405, which requires at least ninety days notification prior to termination of a franchise, except in the six circumstances contemplated by the statute.

<sup>81</sup> For example, a franchisor located in one state, offers and sells a franchise to a franchisee who is a resident of a second state, with the franchise location to be established in a third state.

<sup>82</sup> The “paragon” clauses in this paper are not intended to be used as presented. Rather they designed to begin a dialogue with counsel for the franchisor to consider possible approaches to compliance.

avoid running afoul of “good cause” requirements. Opting for provisions which require, at a minimum, notice of default, provide the franchisor greater flexibility to enforce the franchise agreement and thereby reduce the risk of violating “good cause.”

Rather than try to contemplate the requirements of “good cause” under the various state statutes, the following clause articulates the most extreme penalties a franchisor may impose for a given default but allows the franchisor latitude to reduce these penalties where necessary or desirable.

### **Paragon Clause 1 – Automatic Termination**

Franchisee will be deemed to be in default of this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee or any opportunity to cure the default, in the event . . . [enumerated defaults]; provided, however, that Franchisor has the right, in its sole discretion, to elect to terminate this Agreement by providing to Franchisee prior written notice of any default set forth in this Section, without affording Franchisee any opportunity to cure; or in the alternative, Franchisor may elect to terminate this Agreement by providing Franchisee prior notice and an opportunity to cure any of the defaults set forth in this Section. If Franchisor elects to offer Franchisee an opportunity to cure a default set forth in this Section, Franchisor will have the right, in its sole discretion, to determine the period in which Franchisee must effect such cure.

With the right to unilaterally expand options for cure, the franchisor has the ability to comply with the various requirements of “good cause.” Of course, the franchisor may also do nothing, and the franchise agreement will terminate automatically.

There are some caveats to consider in drafting a clause like Paragon Clause 1. A court might find the concept of an automatic clause subject to modification inconsistent and therefore unenforceable. For example, if the franchise agreement terminates automatically by its own terms, can the franchisor, after the fact, offer the franchisee notice and an opportunity to cure? Counsel should also consider circumstances in which the franchisee acted in reliance on the automatic terms only to find later the franchisor decided to afford the franchisee notice and opportunity to cure. These concerns can be addressed in a clause which does not contain any automatic termination language.

### 2. Termination with Notice

If the franchisor is willing to forego automatic termination of the franchise agreement and provide in all circumstances a notice of termination, then Paragon Clause 2 offers an appealing alternative to Paragon Clause 1.

## **Paragon Clause 2 – Termination with Notice**

Franchisee will be deemed to be in default of this Agreement, and Franchisor may, at its sole option and right, terminate the Agreement and all rights hereunder, without affording Franchisee an opportunity to cure the default, effective immediately upon delivery of notice by Franchisor, in the event . . . [enumerated defaults]; provided, however, that Franchisor may, in its sole discretion, elect to afford Franchisee an opportunity to cure any of the defaults set forth in this Section. If Franchisor elects to offer Franchisee an opportunity to cure a default set forth in this Section, Franchisor will have the right, in its sole discretion, to determine the period in which Franchisee must effect such cure.

Since the franchisor using Paragon Clause 2 must send a notice in all circumstances, this notice can advise the franchisee whether or not the franchisor elected to offer the franchisee an opportunity to cure. And there should be no uncertainty regarding whether the franchisee has any right to cure since termination of the franchise agreement may not be effected absent notice.

### **3. Omnibus Amendment Clause**

Finally, rather than offer the franchisor any latitude, counsel might simply draft a clause which contemplates the existence of the “good cause” statutes and clarify that in the event any such statute applies, the franchise agreement will be enforced accordingly.

## **Paragon Clause 3 – Omnibus Clause**

If applicable law or regulation limits Franchisor’s rights to terminate this Agreement or requires longer notice or cure periods than those set forth herein, this Agreement will be deemed amended to conform to the minimum notice or cure periods or restrictions on termination required by such laws and regulations.

As discussed below in connection with the registration of franchise offerings in various states, many states require an amendment to the franchise agreement analogous to Paragon Clause 3 as part of the franchise registration process. However, because there are states which have adopted “good cause” statutes but which do not require registration of franchise sales, there is the possibility the franchise agreement will not have been amended to comply with applicable “good cause” requirements in all circumstances.<sup>83</sup> So, while Paragon Clause 3 may be duplicative of the clauses imposed by the franchise registration process in some states, in other states, the use of this clause will be beneficial to the franchisor.

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<sup>83</sup> The state of Missouri is a good example. Missouri has no franchise sales registration requirement but does have a franchise relationship law. (See, Mo. Rev. Stat. §407.405).



#### 4. Establishing Sound Enforcement Procedures

Enforcement procedures in general are outside the scope of this article, but every enforcement procedure should contemplate the restrictions imposed by the various “good cause” statutes. In particular, if a franchisor adopts a termination clause like one of the paragon clauses set forth above, counsel must review the circumstances which give rise to a default under the franchise agreement and then square these circumstances not only with the terms of the franchise agreement but also with each applicable “good cause” statute. In the final analysis, by educating the franchisor on the requirements of “good cause,” assisting the franchisor develop appropriate termination provisions, and assisting the franchisor develop a sound termination policy, counsel can reduce the risk of the franchisor running afoul of a “good cause” restriction.

#### D. Some Thoughts about the Registration Process

Many states have presale registration requirements. In these states, a franchisor must register its franchise disclosure document (FDD) with a state agency before engaging in offers or sales of franchises. In connection with registration of the FDD, many states require the franchisor to amend its franchise agreement to comply with the state’s laws, including relationship laws. Therefore, the registration process often results in modification of the franchise agreement to conform to state laws, including “good cause” restrictions on the termination of franchise agreements. Unfortunately, state mandated amendments are often little more than general prohibitions on enforcement of the franchise agreement and do not provide detailed information regarding enforcement of a franchise agreement in a particular set of circumstances. Nevertheless, these general restrictions become part of the franchise agreement and should be an integral part of the calculus when a franchisor seeks to terminate a franchise agreement in a state with “good cause” restrictions.

**APPENDIX 1**  
**STATE FRANCHISE RELATIONSHIP LAWS**

Arkansas Franchise Practices Act	Ark. Code Ann. §§ 4-72-201 <i>et seq.</i>
California Franchise Relations Act	Cal. Bus. & Prof. Code §§ 20000 <i>et seq.</i>
Connecticut Franchise Act	Conn. Gen. Stat. §§ 42-133e to 42-133h
Delaware Franchise Security Law	Del. Code Ann. tit. 6, §§ 2551 to 2556
Hawaii Franchise Rights and Prohibitions Act	Haw. Rev. Stat. §§ 482E-1 to 482E-12
Illinois Franchise Disclosure Act	815 Ill. Comp. Stat. §§ 705/1 <i>et seq.</i>
Indiana Deceptive Franchise Practices Act	Ind. Code §§ 23-2-2.7-1 <i>et seq.</i>
Iowa Franchise Act	Iowa Code § 537A.10 <i>et seq.</i>
Michigan Franchise Investment Law	Mich. Comp. Laws §§ 445.1501 <i>et seq.</i>
Minnesota Franchise Act	Minn. Stat. §§ 80C.01 <i>et seq.</i>
Mississippi Franchise Cancellation Statute	Miss. Code Ann. §§ 75-24-51 to 75-24-63
Missouri Franchise Law	Mo. Rev. Stat. §§ 407.400 to 407.420
Nebraska Franchise Practices Act	Neb. Rev. Stat. §§ 87-401 to 87-410
New Jersey Franchise Practices Act	N.J. Stat. Ann. §§ 56:10-1 to 56:10-12
Rhode Island Fair Dealership Act	R.I. Gen. Laws §§ 6-50-1 to 6-50-9
Virginia Retail Franchising Act	Va. Code Ann. §§ 13.1-557 to 13.1-574
Washington Franchise Investment Protection Act	Wash. Rev. Code §§ 19.100.010 <i>et seq.</i>
Wisconsin Fair Dealership Law	Wis. Stat. Ann. §§ 135.01 to 135.14
Puerto Rico Dealers' Contracts Law	P.R. Laws Ann. tit. 10, §§ 278 to 278e
Virgin Islands Consumer Protection Law	V.I. Code Ann. tit. 12A, §§ 131 to 139

**APPENDIX 2  
SURVEY OF STATE FRANCHISE RELATIONSHIP LAWS  
TERMINATION PROVISIONS**

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
ARKANSAS	<p>Arkansas Franchise Practices Act</p> <ul style="list-style-type: none"> <li>• Ark. Code Ann. § 4-72-204(a)(1)<sup>84</sup> [<i>good cause required for termination</i>]</li> <li>• Ark. Code Ann. § 4-72-202(7)<sup>85</sup> [<i>standard for good cause</i>]</li> </ul>	<p>Good cause specifically defined as the eight acts/events identified in the statute</p>

<sup>84</sup> Ark. Code Ann. § 4-72-204(a): "It shall be a violation of this subchapter for a franchisor to: (1) Terminate or cancel a franchise without good cause; or (2) Fail to renew a franchise except for good cause or except in accordance with the current policies, practices, and standards established by the franchisor which in their establishment, operation, or application are not arbitrary or capricious."

<sup>85</sup> Ark. Code Ann. § 4-72-202(7): "Good cause" means: "(A) Failure by a franchisee to comply substantially with the requirements imposed upon him or her by the franchisor, or sought to be imposed by the franchisor, which requirements are not discriminatory as compared with the requirements imposed on other similarly situated franchisees, either by their terms or in the manner of their enforcement; or (B) The failure by the franchisee to act in good faith and in a commercially reasonable manner in carrying out the terms of the franchise; or (C) Voluntary abandonment of the franchise; or (D) Conviction of the franchisee in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one (1) year, substantially related to the business conducted pursuant to the franchise; or (E) Any act by a franchisee which substantially impairs the franchisor's trademark or trade name; or (F) The institution of insolvency or bankruptcy proceedings by or against a franchisee, or any assignment or attempted assignment by a franchisee of the franchise or the assets of the franchise for the benefit of the creditors; or (G) Loss of the franchisor's or franchisee's right to occupy the premises from which the franchise business is operated; or (H) Failure of the franchisee to pay to the franchisor within ten (10) days after receipt of notice of any sums past due the franchisor and relating to the franchise. . . ."

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
CALIFORNIA	<p>California Franchise Relations Act</p> <ul style="list-style-type: none"> <li>• Cal. Bus. &amp; Prof. Code § 20020<sup>86</sup> [<i>good cause required for termination; standard for good cause</i>]</li> <li>• Cal. Bus. &amp; Prof. Code § 20021(a)-(k)<sup>87</sup> [<i>termination without opportunity to cure deemed reasonable in the 11 circumstances provided in the statute</i>]</li> </ul>	<p>Good cause “<i>shall include, but not be limited to, the failure of the franchisee to comply with any lawful requirement of the franchise agreement after notice and a reasonable opportunity to cure, defined as no more than 30 days</i>”</p>

<sup>86</sup> Cal. Bus. & Prof. Code § 20020: “Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior to the expiration of its term, except for good cause. Good cause shall include, but not be limited to, the failure of the franchisee to comply with any lawful requirement of the franchise agreement after being given notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure the failure.”

<sup>87</sup> Cal. Bus. & Prof. Code § 20021: “If during the period in which the franchise is in effect, there occurs any of the following events which is relevant to the franchise, immediate notice of termination without an opportunity to cure, shall be deemed reasonable: (a) The franchisee or the business to which the franchise relates has been the subject of an order for relief in bankruptcy, judicially determined to be insolvent, or all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor, or the franchisee admits his or her inability to pay his or her debts as they come due; (b) The franchisee abandons the franchise by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless such failure to operate is due to fire, flood, earthquake or other similar causes beyond the franchisee's control; (c) The franchisor and franchisee agree in writing to terminate the franchise; (d) The franchisee makes any material misrepresentations relating to the acquisition of the franchise business or the franchisee engages in conduct which reflects materially and unfavorably upon the operation and reputation of the franchise business or system; (e) The franchisee fails, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise; (f) The franchisee, after curing any failure in accordance with Section 20020 engages in the same noncompliance whether or not such noncompliance is corrected after notice; (g) The franchisee repeatedly fails to comply with one or more requirements of the franchise, whether or not corrected after notice; (h) The franchised business or business premises of the franchise are seized, taken over, or foreclosed by a government official in the exercise of his or her duties, or seized, taken over, or foreclosed by a creditor, lienholder or lessor, provided that a final judgment against the franchisee remains unsatisfied for 30 days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made upon the license granted by the franchise agreement or upon any property used in the franchised business, and it is not discharged within five days of such levy; (i) The franchisee is convicted of a felony or any other criminal misconduct which is relevant to the operation of the franchise; (j) The franchisee fails to pay any franchise fees or other amounts due to the franchisor or its affiliate within five days after receiving written notice that such fees are overdue; or (k) The franchisor makes a reasonable determination that continued operation of the franchise by the franchisee will result in an imminent danger to public health or safety.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
CONNECTICUT	Connecticut Franchise Act <ul style="list-style-type: none"> <li>• Conn. Gen. Stat. § 42-133f(a)<sup>88</sup> [good cause required for termination; standard for good cause]</li> <li>• Conn. Gen. Stat. § 42-133f(e)<sup>89</sup> [additional grounds for termination]</li> </ul>	Good cause “shall include, but not be limited to the franchisee’s refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement or for the reasons stated in subsection (e) of this section”

<sup>88</sup> Conn. Gen. Stat. § 42-133f(a): “No franchisor shall, directly, or through any officer, agent or employee, terminate, cancel or fail to renew a franchise, except for good cause which shall include, but not be limited to the franchisee's refusal or failure to comply substantially with any material and reasonable obligation of the franchise agreement or for the reasons stated in subsection (e) of this section. The franchisor shall give the franchisee written notice of such termination, cancellation or intent not to renew, at least sixty days in advance to such termination, cancellation or failure to renew with the cause stated thereon; provided, in the event the franchisor elects not to renew a franchise pursuant to subsection (e) of this section, the franchisor shall give the franchisee written notice of such intent not to renew at least six months prior to the expiration of the current franchise agreement. The provisions of this section shall not apply (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship, in which event, such notice may be given thirty days in advance of such termination, cancellation or failure to renew, or (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an offense punishable by a term of imprisonment in excess of one year and directly related to the business conducted pursuant to the franchise, in which event, such notice may be given at any time following such conviction and shall be effective upon delivery and written receipt of such notice.”

<sup>89</sup> Conn. Gen. Stat. § 42-133f(e): “A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of real property and improvement, in the event the franchisor (1) sells or leases such real property and improvements to other than a subsidiary or affiliate of the franchisor for any use; or (2) sells or leases such real property to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such real property for the operation of the same business of the franchisee; or (3) converts such real property and improvements to a use not covered by the franchise agreement; or (4) has leased such real property from a person not the franchisee and such lease from such person is terminated or not renewed.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
DELAWARE	<p>Delaware Franchise Security Law</p> <ul style="list-style-type: none"> <li>Del. Code Ann. tit. 6, § 2552(a) &amp; (g)<sup>90</sup> [termination is “unjust” if without “good cause”; “unjust” termination prohibited]</li> </ul>	<p>Termination is <i>unjust</i> if without “good cause or in bad faith”</p> <p>What constitutes good cause or bad faith not defined</p>
HAWAII	<p>Hawaii Franchise Rights and Prohibitions Act</p> <ul style="list-style-type: none"> <li>Haw. Rev. Stat. § 482E-6(2)(H)<sup>91</sup> [Good cause for termination according to terms/standards applicable to all franchisees, unless termination is shown to be non-arbitrary, reasonable and justifiable]</li> </ul>	<p>Termination requires good cause, or in accordance with standards the franchisor applies to all of its franchisees, <i>unless</i> difference in treatment is shown to be non-arbitrary, reasonable, justifiable</p> <p>Good cause “shall include, but not be limited to, the failure of the franchisee to comply with any lawful, material provision of the franchise agreement after” written notice and a reasonable cure opportunity</p>

<sup>90</sup> Del. Code Ann. tit. 6, § 2552: “(a) Termination of a franchise by a franchisor shall be deemed to be “unjust,” or to have been made “unjustly,” if such termination is without good cause or in bad faith. Any termination of a franchise which is not unjust shall be deemed to be “just,” or to have been made “justly;” . . . (g) No franchisor may unjustly terminate a franchise.”

<sup>91</sup> Haw. Rev. Stat. § 482E-6: “Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and its franchisees: . . . (2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition for a franchisor or subfranchisor to: . . . (H) Terminate or refuse to renew a franchise except for good cause, or in accordance with the current terms and standards established by the franchisor then equally applicable to all franchisees, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is reasonable, is based on proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary. For purposes of this paragraph, good cause in a termination case shall include, but not be limited to, the failure of the franchisee to comply with any lawful, material provision of the franchise agreement after having been given written notice thereof and an opportunity to cure the failure within a reasonable period of time.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
ILLINOIS	Illinois Franchise Disclosure Act <ul style="list-style-type: none"> <li>• 815 Ill. Comp. Stat. § 705/19(a)<sup>92</sup> [<i>good cause required for termination</i>]</li> <li>• 815 Ill. Comp. Stat. § 705/19(b) - (c)<sup>93</sup> [<i>standard for good cause</i>]</li> </ul>	Good cause “ <i>shall include, but not be limited to</i> , the failure of the franchisee to comply with any lawful provision of the franchise agreement after” <i>notice</i> and a <i>reasonable</i> opportunity to cure, defined as no more than 30 days
INDIANA	Indiana Deceptive Franchise Practices Act <ul style="list-style-type: none"> <li>• Ind. Code § 23-2-2.7-1(7)<sup>94</sup> [<i>good cause required for termination; standards for good cause</i>]</li> </ul>	Prohibits unilateral termination of a franchise “ <i>without good cause or in bad faith</i> ” “Good cause <i>includes any material violation of the franchise agreement</i> ”

<sup>92</sup> 815 Ill. Comp. Stat. § 705/19(a): “It shall be a violation of this Act for a franchisor to terminate a franchise of a franchised business located in this State prior to the expiration of its term except for “good cause” as provided in subsection (b) or (c) of this Section.”

<sup>93</sup> 815 Ill. Comp. Stat. § 705/19(b) & (c): “Good cause” shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days. (c) “Good cause” shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee: (1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business; (2) voluntarily abandons the franchise business; (3) is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor's trademark, service mark, trade name or commercial symbol; or (4) repeatedly fails to comply with the lawful provisions of the franchise or other agreement.”

<sup>94</sup> Ind. Code § 23-2-2.7-1: “It is unlawful for any franchise agreement entered into between any franchisor and a franchisee who is either a resident of Indiana or a nonresident who will be operating a franchise in Indiana to contain any of the following provisions: . . . (7) Permitting unilateral termination of the franchise if such termination is without good cause or in bad faith. Good cause within the meaning of this subdivision includes any material violation of the franchise agreement.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
IOWA	<p>Iowa Franchise Act</p> <ul style="list-style-type: none"> <li>• Iowa Code § 537A.10(a)<sup>95</sup> [franchise agreements entered into after July 1, 2000; <i>good cause required for termination; standard for good cause</i>]</li> <li>• Iowa Code § 537A.10(c)<sup>96</sup> [termination without opportunity to cure permitted in 9 specific circumstances]</li> </ul>	<p>Good cause is “cause based upon a <i>legitimate business reason</i>,” and “<i>includes</i>__the failure of the franchisee to comply with any <i>material, lawful</i> requirement of the franchise agreement, <i>provided that the termination . . . is not arbitrary or capricious . . .</i>”</p>

<sup>95</sup> Iowa Code § 537A.10(a): “Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term except for good cause. For purposes of this section, “good cause” is cause based upon a legitimate business reason. “Good cause” includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement, provided that the termination by the franchisor is not arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances. The burden of proof of showing that action of the franchisor is arbitrary or capricious shall rest with the franchisee.”

<sup>96</sup> Iowa Code § 537A.10(c): “Notwithstanding paragraph ‘b’, a franchisor may terminate a franchise upon written notice and without an opportunity to cure if any of the following apply: (1) The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent; (2) All or a substantial part of the assets of the franchise or the business to which the franchisee relates are assigned to or for the benefit of any creditor which is subject to chapter 681. An assignment for the benefit of any creditor pursuant to this subparagraph does not include the granting of a security interest in the normal course of business; (3) The franchisee voluntarily abandons the franchise by failing to operate the business for five consecutive business days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless the failure to operate is due to circumstances beyond the control of the franchisee; (4) The franchisor and franchisee agree in writing to terminate the franchise; (5) The franchisee knowingly makes any material misrepresentations or knowingly omits to state any material facts relating to the acquisition or ownership or operation of the franchise business; (6) The franchisee repeatedly fails to comply with one or more material provisions of the franchise agreement, when the enforcement of such material provisions is not arbitrary or capricious, whether or not the franchisee complies after receiving notice of the failure to comply; (7) The franchised business or business premises of the franchisee are lawfully seized, taken over, or foreclosed by a government authority or official; (8) The franchisee is convicted of a felony or any other criminal misconduct which materially and adversely affects the operation, maintenance, or goodwill of the franchise in the relevant market; [or] (9) The franchisee operates the franchised business in a manner that imminently endangers the public health and safety.”



STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
MICHIGAN	Michigan Franchise Investment Law <ul style="list-style-type: none"> <li>• Mich. Comp. Laws § 445.1527(c)<sup>97</sup> [<i>good cause required for termination; standards for good cause</i>]</li> </ul>	Good cause “ <i>shall include</i> the failure of the franchisee to comply with any <i>lawful</i> provision of the franchise agreement,” and failing to cure after <i>written notice</i> and a <i>reasonable</i> opportunity to cure, defined as no more than 30 days
MINNESOTA	Minnesota Franchise Act <ul style="list-style-type: none"> <li>• Minn. Stat. § 80C.14(3)(b)(1)-(5)<sup>98</sup> [<i>good cause required for termination; standards for good cause</i>]</li> <li>• Minn. Stat. § 80C.14(3)(a)<sup>99</sup> [termination effective immediately upon receipt in certain circumstances]</li> </ul>	“Good cause means failure by the franchisee to substantially comply with the <i>material and reasonable</i> franchise requirements . . . including, but not limited to” the five examples provided by statute

<sup>97</sup> Mich. Comp. Laws § 445.1527: “Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise: . . . (c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.”

<sup>98</sup> Minn. Stat. § 80C.14(3)(b): “No person may terminate or cancel a franchise except for good cause. “Good cause” means failure by the franchisee to substantially comply with the material and reasonable franchise requirements imposed by the franchisor including, but not limited to: (1) the bankruptcy or insolvency of the franchisee; (2) assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (3) voluntary abandonment of the franchise business; (4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the franchise business; or (5) any act by or conduct of the franchisee which materially impairs the goodwill associated with the franchisor’s trademark, trade name, service mark, logotype or other commercial symbol.”

<sup>99</sup> Minn. Stat. § 80C.14(3)(a): “No person may terminate or cancel a franchise unless: (i) that person has given written notice setting forth all the reasons for the termination or cancellation at least 90 days in advance of termination or cancellation, and (ii) the recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within 60 days of receipt of the notice; except that the notice is effective immediately upon receipt where the alleged grounds for termination or cancellation are: (1) voluntary abandonment of the franchise relationship by the franchisee; (2) the conviction of the franchisee of an offense directly related to the business conducted pursuant to the franchise; or (3) failure to cure a default under the franchise agreement which materially impairs the good will associated with the franchisor’s trade name, trademark, service mark, logotype or other commercial symbol after the franchise has received written notice to cure of at least 24 hours in advance thereof.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
MISSISSIPPI	Mississippi Franchise Cancellation Statute <ul style="list-style-type: none"> <li>Miss. Code Ann. § 75-24-53<sup>100</sup> [<i>no good cause requirement</i>]</li> </ul>	No “good cause” requirement Requires at least 90 days notification prior to termination of a franchise, except in the six circumstances provided by statute
MISSOURI	Missouri Franchise Law <ul style="list-style-type: none"> <li>Mo. Rev. Stat. § 407.405<sup>101</sup> [<i>no good cause requirement</i>]</li> </ul>	No “good cause” requirement Requires at least 90 days notification prior to termination of a franchise, except in the six circumstances provided by statute
NEBRASKA	Nebraska Franchise Practices Act <ul style="list-style-type: none"> <li>Neb. Rev. Stat. § 87-404<sup>102</sup> [<i>good cause required for termination</i>]</li> </ul>	Prohibits franchisor from terminating a franchise without good cause No definition/standard provided for what constitutes good cause

<sup>100</sup> Miss. Code Ann. § 75-24-53: “. . . No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety (90) days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety-day notice shall not be required.”

<sup>101</sup> Mo. Rev. Stat. § 407.405: “. . . No person who has granted a franchise to another person shall cancel or otherwise terminate any such franchise agreement without notifying such person of the cancellation, termination or failure to renew in writing at least ninety days in advance of the cancellation, termination or failure to renew, except that when criminal misconduct, fraud, abandonment, bankruptcy or insolvency of the franchisee, or the giving of a no account or insufficient funds check is the basis or grounds for cancellation or termination, the ninety days’ notice shall not be required.”

<sup>102</sup> Neb. Rev. Stat. § 87-404: “It shall be a violation of [sections 87-401](#) to [87-410](#) for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (1) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (2) when the alleged grounds are (a) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (b) insolvency, the institution of bankruptcy or receivership proceedings, (c) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (d) falsification of records or reports required by the franchisor, (e) the existence of an imminent danger to public

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
NEW JERSEY	New Jersey Franchise Practices Act <ul style="list-style-type: none"> <li>• N.J. Stat. Ann. § 56:10-5<sup>103</sup> [good cause required for termination; standard for good cause]</li> </ul>	Good cause “ <i>shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise</i> ”

health or safety, or (f) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of [sections 87-401 to 87-410](#) for a franchisor to terminate, cancel or fail to renew a franchise without good cause. 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.”

<sup>103</sup> N.J. Stat. Ann. § 56:10-5: “It shall be a violation of this act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least 60 days in advance of such termination, cancellation, or failure to renew, except (1) where the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the aforementioned written notice may be given 15 days in advance of such termination, cancellation, or failure to renew; and (2) where the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise in which event the aforementioned termination, cancellation or failure to renew may be effective immediately upon the delivery and receipt of written notice of same at any time following the aforementioned conviction. It shall be a violation of this act for a franchisor to terminate, cancel or fail to renew a franchise without 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 substantially comply with those requirements imposed upon him by the franchise.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
RHODE ISLAND	Rhode Island Fair Dealership Act <ul style="list-style-type: none"> <li>• R.I. Gen. Laws § 6-50-2(4)<sup>104</sup> [<i>definition of good cause</i>]</li> <li>• R.I. Gen. Laws § 6-50-4(a)(1)-(6)<sup>105</sup> [<i>other grounds for termination which qualify as good cause</i>]</li> </ul>	Good cause “ <i>shall include, but not be limited to</i> , failure by the dealer to comply with the reasonable requirements imposed by the grantor” or any of the acts/events listed in § 6-50-4(a)(1)-(6)
VIRGINIA	Virginia Retail Franchising Act <ul style="list-style-type: none"> <li>• Va. Code Ann. § 13.1-564<sup>106</sup> [<i>reasonable cause required for termination</i>]</li> </ul>	Prohibits termination “without <i>reasonable cause</i> ” or use of “undue influence” to induce franchisee to surrender his rights

<sup>104</sup> R.I. Gen. Laws § 6-50-2(4): “‘Good cause’ means for the purposes of this act, good cause for terminating, canceling or nonrenewal shall include, but not be limited to, failure by the dealer to comply with the reasonable requirements imposed by the grantor or any of the reasons listed in subdivisions 6-50-4(a)(1) through (a)(6).”

<sup>105</sup> R.I. Gen. Laws § 6-50-4(a): “Notwithstanding the terms, provisions, or conditions of any agreement to the contrary, a grantor shall provide a dealer sixty (60) days prior written notice of termination, cancellation, or nonrenewal. The notice shall state all the reasons for termination, cancellation, or nonrenewal and shall provide that the dealer has thirty (30) days in which to cure any claimed deficiency; provided that a dealer has a right to cure three (3) times in any twelve (12) month period during the period of the dealership agreement. The sixty (60) day notice provisions of this section shall not apply and the termination, cancellation or nonrenewal may be made effective immediately upon written notice, if the reason for termination, cancellation or nonrenewal is in the event the dealer: (1) voluntarily abandons the dealership relationship; (2) is convicted of a felony offense related to the business conducted pursuant to the dealership; (3) engages in any substantial act which tends to materially impair the goodwill of the grantor’s trade name, trademark, service mark, logotype or other commercial symbol; (4) makes a material misrepresentation of fact to the grantor relating to the dealership; (5) attempts to transfer the dealership (or a portion thereof) without authorization of the grantor; or (6) is insolvent, files or suffers to be filed against it any voluntary or involuntary bankruptcy petition, or makes an assignment for the benefit of creditors or similar disposition of assets of the dealer business.”

<sup>106</sup> Va. Code Ann. § 13.1-564: “It shall be unlawful for a franchisor to cancel a franchise without reasonable cause or to use undue influence to induce a franchisee to surrender any right given to him by any provision contained in the franchise.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
WASHINGTON	<p>Washington Franchise Investment Protection Act</p> <ul style="list-style-type: none"> <li>Wash. Rev. Code § 19.100.180(2)(j)<sup>107</sup> [<i>good cause required for termination; standards for good cause</i>]</li> </ul>	<p>“[I]t shall be an unfair or deceptive act or practice . . . for any person to . . . [t]erminate a franchise . . . except for good cause”</p> <p>“Good cause shall include, without limitation, the failure of the franchisee to comply with <i>lawful material</i> provisions of the franchise . . . and to cure such default after being given <i>written notice</i> thereof and a <i>reasonable</i> opportunity” to cure, defined as no more than 30 days</p>

<sup>107</sup> Wash. Rev. Code § 19.100.180(2): “For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to: . . . (j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: *Provided*, That after three willful and material breaches of the same term of the franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the agreement upon any subsequent willful and material breach of the same term within the twelve-month period without providing notice or opportunity to cure: *Provided further*, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee: (i) Is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee’s inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: *Provided*, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
WISCONSIN	<p>Wisconsin Fair Dealership Law</p> <ul style="list-style-type: none"> <li>• Wis. Stat. Ann. § 135.03<sup>108</sup> [<i>good cause required for termination</i>]</li> <li>• Wis. Stat. Ann. § 135.02(4)<sup>109</sup> [<i>standard for good cause</i>]</li> </ul>	<p>“Good cause means . . . (a) failure by a dealer to comply substantially with <i>essential and reasonable requirements</i> imposed upon the dealer . . .; or (b) <i>bad faith</i> by the dealer”</p>
PUERTO RICO	<p>Puerto Rico Dealers’ Act</p> <ul style="list-style-type: none"> <li>• P.R. Laws Ann. tit. 10, § 278a<sup>110</sup> [<i>just cause required for termination</i>]</li> <li>• P.R. Laws Ann. tit. 10, § 278(d)<sup>111</sup> [<i>standard for just cause</i>]</li> </ul>	<p>“Just cause” means “nonperformance of any of the <i>essential obligations</i> of the dealer’s contract, or any <i>action or omission</i> on his part that <i>adversely and substantially</i> affects the interests” of the principal/grantor “in the marketing or distribution of the merchandise or service”</p>

<sup>108</sup> Wis. Stat. Ann. § 135.03: “No grantor, directly or through any officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. The burden of proving good cause is on the grantor.”

<sup>109</sup> Wis. Stat. Ann. § 135.02(4): “‘Good cause’ means: (a) Failure by a dealer to comply substantially with essential and reasonable requirements imposed upon the dealer by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement; or (b) Bad faith by the dealer in carrying out the terms of the dealership.”

<sup>110</sup> 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.”

<sup>111</sup> P.R. Laws Ann. tit. 10, § 278(d): “*Just cause.*— Nonperformance 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.”

STATE	STATUTES OF GENERAL APPLICABILITY TO FRANCHISES	NOTES
VIRGIN ISLANDS	Virgin Islands Consumer Protection Law <ul style="list-style-type: none"> <li data-bbox="480 474 906 617">• V.I. Code Ann. tit. 12A, §132<sup>112</sup> [<i>good cause is a complete defense; standard for good cause</i>]</li> </ul>	Good cause “shall be – (1) ) failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise which requirements are both essential and reasonable; or (2) use of <i>bad faith</i> by the franchisee. . .”

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<sup>112</sup> V.I. Code Ann. tit. 12A, §132: “Notwithstanding the terms, provisions, or conditions of any franchise, except as provided in section 133, it shall be a violation of this subchapter for any franchisor directly or through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise except that it shall be a complete defense under this subchapter for the franchisor to prove that the cancellation was for good cause. For purposes of this subchapter, good cause for terminating, canceling, or failing to renew a franchise shall be - (1) failure by the franchisee to substantially comply with those requirements imposed upon him by the franchise which requirements are both essential and reasonable; or (2) use of bad faith by the franchisee in carrying out the terms of the franchise.”