

# FIXING THE FRANCHISE RULE: A CASE FOR A PRIVATE RIGHT OF ACTION

*Andrew Moyer\**

INTRODUCTION .....	1114
I. FTC FRANCHISE RULE .....	1116
A. <i>Overview &amp; Purpose</i> .....	1116
B. <i>Key Provisions (FDD Requirements)</i> .....	1117
C. <i>Enforcement Mechanisms &amp; Limitations</i> .....	1119
II. STATE “LITTLE-FTC ACTS” .....	1120
A. <i>History &amp; Purpose</i> .....	1120
B. <i>Spectrum of Coverage (High, Moderate, Low)</i> .....	1121
C. <i>Exploitation by Choice-of-Law Provisions</i> .....	1122
III. FRANCHISE AGREEMENTS.....	1123
IV. PROBLEM: THE ENFORCEMENT GAP .....	1126
V. PROPOSED SOLUTION .....	1128
A. <i>The Case for a Federal Private Right of Action</i> .....	1128
B. <i>Legislative History &amp; Past Efforts</i> .....	1134
C. <i>Structuring the Legislation</i> .....	1136
VI. CRITICISMS & POLICY IMPLICATIONS.....	1140
A. <i>Criticisms of a Federal Private Right of Action</i> .....	1140
B. <i>Counterarguments</i> .....	1141
C. <i>Policy Implications</i> .....	1142
VII. CASE STUDIES & SCENARIOS .....	1143
CONCLUSION.....	1147

---

\* J.D. Candidate, University of Mississippi School of Law, Class of 2026.

## INTRODUCTION

When aspiring business owners bought into the rapidly expanding Burgerim franchise, they likely imagined running thriving restaurants, not facing financial ruin.<sup>1</sup> In January 2024, the Federal Trade Commission (“FTC”) secured a nearly \$56 million dollar default judgment against Burgerim, a franchisor of burger restaurants accused of deceiving over 1,500 prospective franchisees.<sup>2</sup> The company, founded in Israel and later expanded aggressively in the United States, pitched itself as a low-cost opportunity for first-time business owners.<sup>3</sup> Franchisees were told they needed no experience, no significant assets, and only \$50,000 to start their dream business.<sup>4</sup> The reality, however, was far different. Franchisees faced build-out costs potentially exceeding \$500,000, little to no operational support, and a failure rate so high that Burgerim soon became synonymous with fraud.<sup>5</sup> As complaints mounted, the company’s founder, Oren Loni, abruptly shut down the headquarters and fled the country.<sup>6</sup> Burgerim’s rapid rise and collapse left countless franchisees financially ruined.<sup>7</sup>

The FTC’s default judgment marked a rare intervention under the FTC Franchise Rule, which requires franchisors to disclose critical information about costs, risks, and support.<sup>8</sup> Burgerim flagrantly violated the Rule by misrepresenting startup costs, promising unrealistic profits, and failing to honor refund commitments.<sup>9</sup> While the judgment imposed financial penalties and

---

<sup>1</sup> See Jonathan Maze, *Burgerim, and its founder, are banned from selling franchises in the U.S.*, REST. BUS. (Feb. 22, 2024), <https://www.restaurantbusinessonline.com/financing/burgerim-its-founder-are-banned-selling-franchises-us> [https://perma.cc/HW99-MSVR].

<sup>2</sup> *Id.*; see generally United States v. Burgerim Grp. USA, Inc., No. CV 22-825-DMG, 2024 WL 661189 (C.D. Cal. 2024).

<sup>3</sup> Richard Myrick, *Is Burgerim a “Scam” that Went Out of Business?*, MOBILE-CUISINE (March 1, 2024), <https://mobile-cuisine.com/franchise/burgerim/> [https://perma.cc/WS69-2Q4Q].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Maze, *supra* note 1.

<sup>8</sup> Eleanor Vaida Gerhards, *Court Grants nearly \$49 Million Default Judgment Against Burger Franchisor in First FTC Franchise Lawsuit in over a Decade*, FOX ROTHSCHILD: FRANCHISE LAW UPDATE (March 18, 2024), <https://tinyurl.com/4ncwhcdp>.

<sup>9</sup> *Burgerim Grp. USA, Inc.*, 2024 WL 661189, at \*1.

permanently banned the company from selling franchises, it came too late for many victims.<sup>10</sup> This was the first major action by the FTC in years, underscoring the agency's infrequent enforcement of the Rule.<sup>11</sup> For franchisees, the government's delayed response highlighted the insufficiency of relying solely on public enforcement to regulate franchisors.

Burgerim's story is emblematic of broader failures in the U.S. franchise system. The FTC Franchise Rule, enacted in 1979, provides franchisees with critical protections, but enforcement is rare and the Rule does not allow private actions by aggrieved franchisees.<sup>12</sup> Franchisees as a result often turn to state consumer protection laws in instances of material fraud or misrepresentation, but state frameworks vary widely – with many lacking the ability for franchisees to bring actions directly against their franchisor as well.<sup>13</sup> Moreover, franchise agreements frequently require disputes to be resolved in arbitration or in forums unfavorable to the franchisee.<sup>14</sup> As a result, the legal system leaves franchisees in a unique vulnerable position as consumers.

This comment argues for the addition of a private right of action provision to the FTC Franchise Rule to address these shortcomings. Such a remedy would empower franchisees to hold franchisors accountable for deceptive practices directly under the federal framework designed to protect them instead of relying on the FTC to bring an action. In addition to the added pathway for redress, private actions could offer remedies that the current framework does not – real economic (and possibly punitive) damages that directly compensate the franchisee for their loss. This, of course, is contrary to the existing framework of fines paid to the FTC and injunctive relief. Part I of this comment will examine the background of the Rule as well as outline the existing problems in the legal framework around it. Part II will exhibit the

---

<sup>10</sup> Maze, *supra* note 1.

<sup>11</sup> Gerhards, *supra* note 8.

<sup>12</sup> Bethany L. Appleby et al., *Cause of Action Alchemy: Little FTC Act Claims Based on Alleged Disclosure Violations*, 36 FRANCHISE L.J. 429, 433 (2017); see FTC Franchise Rule, 16 C.F.R. § 436.5 (2024).

<sup>13</sup> Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts*, 63 FLA. L. REV. 163, 164-65 (2011).

<sup>14</sup> Kevin M. Kennedy, *Drafting an Enforceable Franchise Agreement Arbitration Clause*, 22 FRANCHISE L.J. 112, 113 (2002).

proposed solution to these problems in the Rule. Part III addresses criticisms and policy implications that may result from the proposed solution. This will include the structure of the proposed amendment, examples of success seen in private right-of-action provisions in other regulatory schemes, and exactly how this proposed provision would directly fill the void created by the existing Rule. Part IV will then provide case studies and scenarios in which the proposed solution offered in this Comment would have resulted in a more favorable outcome. Finally, Part V will offer an ultimate conclusion regarding a cause of action under the Rule.

## I. FTC FRANCHISE RULE

### A. Overview & Purpose

The FTC Franchise Rule, first enacted in 1979 and later amended, was designed to promote transparency and protect prospective franchisees from deceptive practices in the franchising industry.<sup>15</sup> As franchising grew into a dominant business model, the Rule sought to address the significant information asymmetry between franchisors and franchisees, ensuring that potential investors could make informed decisions before entering legally binding agreements.<sup>16</sup>

At its core, the Franchise Rule requires franchisors to provide a comprehensive Franchise Disclosure Document (“FDD”) to prospective franchisees at least fourteen days before signing a contract or paying any fees.<sup>17</sup> This FDD includes critical information about the franchise system, such as initial costs, ongoing fees, franchisor obligations, and financial performance representations.<sup>18</sup> The intent is to provide franchisees with a clear picture of the risks and rewards of the investment, empowering

---

<sup>15</sup> See generally 16 C.F.R. § 436.1 (2023) (detailing the requirements for franchisor disclosures under the FTC Franchise Rule to prevent fraud and misrepresentation).

<sup>16</sup> See generally Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 Fed. Reg. 59,614, 59,625 (Dec. 21, 1978) (codified at 16 C.F.R. 436), <https://www.govinfo.gov/content/pkg/FR-1978-12-21/pdf/FR-1978-12-21.pdf> [<https://perma.cc/VJ8Q-86E9>] (explaining that the Rule’s purpose is to address the significant information imbalance between franchisors and franchisees to protect prospective franchisees) [hereinafter Disclosure Requirements and Prohibitions].

<sup>17</sup> 16 C.F.R. § 436.2(a) (2023).

<sup>18</sup> See § 436.4.

them to evaluate whether a particular franchise opportunity aligns with their financial and professional goals.<sup>19</sup>

By standardizing these disclosure requirements, the Franchise Rule aims to create a level playing field and deter franchisors from engaging in fraudulent or misleading practices. However, the Rule relies solely on the FTC to enforce compliance, focusing on penalties such as fines and injunctions against violators. While this centralized approach avoids inconsistent enforcement at the state level, it leaves franchisees with limited recourse in individual disputes, particularly when the FTC prioritizes large-scale fraud over isolated cases.<sup>20</sup> This gap highlights the need for stronger mechanisms to enforce the Rule and protect franchisees.

### B. Key Provisions (FDD Requirements)

The centerpiece of the FTC Franchise Rule is the FDD, which franchisors are required to provide to prospective franchisees at least fourteen days before entering any binding agreement or accepting any payments.<sup>21</sup> The FDD is intended to ensure transparency by mandating the disclosure of twenty-three specific items deemed material to a franchisee's investment decision.<sup>22</sup> These provisions provide a detailed overview of the franchise opportunity, empowering potential franchisees to assess the associated risks and rewards.<sup>23</sup>

---

<sup>19</sup> See generally § 436.2(a)-(b) (mandating that franchisors furnish prospective franchisees with a Franchise Disclosure Document at least fourteen days before the execution of any binding agreement or payment of fees); see also *FTC Announces Rule Banning Noncompetes*, FED. TRADE COMM'N (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes> [<https://perma.cc/AK9P-2EMK>] (explaining the twenty-three required disclosure items in the FDD, including financial performance representations, costs, and franchisor obligations).

<sup>20</sup> *What You Need to Know About Federal Franchise Laws*, FRANNET, (Oct. 1, 2024) <https://frannet.com/resources/business-opportunity-2/what-you-need-to-know-about-federal-franchise-laws> [<https://perma.cc/LGT6-2P8Q>] [hereinafter *What You Need to Know About Federal Franchise Laws*].

<sup>21</sup> 16 C.F.R. § 436.2(a) (2023).

<sup>22</sup> See § 436.5 (listing the twenty-three items franchisors must disclose in the FDD to ensure transparency and provide prospective franchisees with material information).

<sup>23</sup> *Id.*

Key FDD requirements include disclosures about the franchisor's business history, litigation, and bankruptcy records, offering insight into the stability and credibility of the franchisor.<sup>24</sup> The FDD must also detail the initial investment costs, including franchise fees, equipment, real estate, and other expenses required to start the business.<sup>25</sup> Ongoing obligations, such as royalties, advertising fees, and operational restrictions, are also disclosed to ensure franchisees understand their long-term financial commitments.<sup>26</sup>

Of particular importance is Item 19, which addresses financial performance representations.<sup>27</sup> Although optional, many franchisors include projections of expected revenue and profitability to entice prospective franchisees.<sup>28</sup> If such representations are made, they must be supported by substantiating data to avoid misleading claims.<sup>29</sup> Other crucial items include the territorial rights of franchisees, renewal terms, and conditions for termination.<sup>30</sup>

---

<sup>24</sup> § 436.5(a)-(c), (k) (requiring franchisors to disclose their business experience, pending or past litigation, and bankruptcy history to provide prospective franchisees with insight into the franchisor's stability and credibility).

<sup>25</sup> § 436.5(e)-(f) (requiring franchisors to disclose initial fees, estimated initial investment costs, and other expenses, including equipment and real estate, necessary to start the franchise business).

<sup>26</sup> § 436.5(g)-(h), (l) (requiring franchisors to disclose ongoing royalties, advertising fees, and restrictions on franchisee operations to ensure franchisees understand their long-term financial obligations and commitments).

<sup>27</sup> § 436.5(s) (requiring franchisors to disclose financial performance representations under Item 19, if provided, to ensure transparency regarding the franchise's potential financial outcomes).

<sup>28</sup> Rochelle Spandorf, *Making a Financial Performance Representation (Item 19 Disclosure) in 2021*, DAVID WRIGHT TREMAINE LLP (Jan. 5, 2021), <https://www.dwt.com/insights/2021/01/fpr-item-19-pre-covid-disclosure-requirements> [<https://perma.cc/U97G-UN5X>].

<sup>29</sup> § 436.5(s)(3).

<sup>30</sup> *Id.*

Despite the comprehensive nature of these requirements, enforcement is weak.<sup>31</sup> The Rule does not mandate that franchisors actively educate franchisees on these disclosures, and violations often go unnoticed unless the FTC intervenes.<sup>32</sup> This reliance on FTC enforcement, without a private right of action, leaves franchisees vulnerable to exploitation and misrepresentation.<sup>33</sup>

### C. Enforcement Mechanisms & Limitations

The FTC Franchise Rule is enforced exclusively by the FTC, which has the authority to investigate violations and impose penalties such as fines, injunctions, and other equitable remedies.<sup>34</sup> These enforcement actions are designed to deter franchisors from engaging in deceptive practices and ensure compliance with the Rule's disclosure requirements.<sup>35</sup> The FTC focuses primarily on widespread violations that have the potential to harm a significant number of franchisees, prioritizing systemic fraud and patterns of misconduct over isolated disputes.<sup>36</sup>

However, this centralized enforcement framework has significant limitations. The FTC's resources are finite, and it is unable to investigate every complaint. Individual franchisees who suffer from franchisor misrepresentations or noncompliance with the FDD requirements are often left without recourse, as their claims may not meet the FTC's threshold for action.<sup>37</sup> Additionally, the Franchise Rule does not provide a private right of action,

---

<sup>31</sup> U.S. GEN. ACCOUNTING OFFICE, GAO-01-776, FEDERAL TRADE COMMISSION: ENFORCEMENT OF THE FRANCHISE RULE 14 (2001), (available at <https://www.gao.gov/assets/gao-01-776.pdf> [<https://perma.cc/X46X-CWS8>] (last visited Apr. 15, 2025)) [hereinafter ENFORCEMENT OF FRANCHISE RULE].

<sup>32</sup> *Id.* at 24.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> See Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15,444, 15,445 (Mar. 30, 2007) (codified at 16 C.F.R. §§ 436-437).

<sup>35</sup> See *id.* at 15,449.

<sup>36</sup> See, e.g., *U.S. FTC Issues Warning to Franchisors Over Unfair Business Practices*, REUTERS (Dec. 12, 2024), <https://www.reuters.com/business/retail-consumer/us-ftc-issues-warning-franchisors-over-unfair-business-practices-2024-07-12/> [<https://perma.cc/VFF8-ZWNJ>]; see also *FTC Announces Rule Banning Noncompetes*, *supra* note 19.

<sup>37</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 14.

meaning franchisees cannot sue franchisors directly under the Rule.<sup>38</sup>

This reliance on FTC enforcement creates a critical gap in the protection of franchisees, particularly in cases where violations affect only a small number of individuals or involve nuanced contractual disputes. The lack of a private right of action leaves franchisees vulnerable, highlighting the need for a more robust and accessible enforcement mechanism.

## II. STATE “LITTLE-FTC ACTS”

### A. *History & Purpose*

State “Little FTC Acts” emerged in the mid-20th century as state-level consumer protection statutes modeled after the Federal Trade Commission Act (“FTC Act”).<sup>39</sup> These laws were designed to extend consumer protections to areas not adequately covered by federal enforcement.<sup>40</sup> By providing individuals and businesses with direct causes of action against unfair or deceptive trade practices, Little FTC Acts became a critical supplement to federal oversight.<sup>41</sup>

The primary purpose of these statutes is to fill enforcement gaps by allowing private parties to pursue claims against violators in state courts.<sup>42</sup> This approach decentralizes enforcement and empowers individuals to hold corporations accountable without relying exclusively on government agencies. Many states modeled their acts on the Uniform Deceptive Trade Practices Act (“UDTPA”) or the Model Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), adapting these frameworks to address local needs.<sup>43</sup>

---

<sup>38</sup> Victor Vital & Elizabeth Wirmani, *Surviving the Amended FTC Franchise Rule: Merger and Integration Clauses, Franchise Agreements, and Disclosure Documents*, 30 FRANCHISE L.J. 88, 89 (2010).

<sup>39</sup> See Appleby et al., *supra* note 12, at 429-30 (noting that state “Little FTC Acts” emerged as state-level consumer protection statutes modeled after the FTC Act).

<sup>40</sup> See *supra* note 34.

<sup>41</sup> Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163, 173 (2011).

<sup>42</sup> See Butler & Wright, *supra* note 13, at 169 (explaining that the primary purpose of Little FTC Acts is to fill enforcement gaps by allowing private parties to pursue claims in state courts).

<sup>43</sup> See *id.* at 170-71.

For franchisees, Little FTC Acts offer a potential avenue for redress when franchisors violate disclosure obligations under the FTC Franchise Rule. However, the protections afforded by these statutes vary widely across jurisdictions. While some states, such as Florida, provide robust remedies by recognizing violations of the Franchise Rule as per se violations of state law, others lack similar provisions, leaving franchisees with minimal or no legal recourse. This inconsistency underscores the need for uniform federal enforcement mechanisms.<sup>44</sup>

### *B. Spectrum of Coverage (High, Moderate, Low)*

State “Little FTC Acts” vary significantly in the protections they afford franchisees, creating a spectrum of coverage ranging from robust remedies to minimal enforcement. This patchwork landscape leaves franchisees with vastly different legal rights depending on their jurisdiction, complicating their ability to seek recourse for violations of the FTC Franchise Rule.

*High Coverage States:* States like Florida provide some of the strongest protections for franchisees. Under Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), any violation of an FTC rule, including the Franchise Rule, is a per se violation of state law.<sup>45</sup> This allows franchisees to bring direct claims against franchisors in state courts without the burden of proving additional elements. Similarly, states such as California and Illinois provide explicit private rights of action for unfair or deceptive trade practices, offering franchisees a clear path to recovery.<sup>46</sup>

*Moderate Coverage States:* Other states, like New York, offer private rights of action under their consumer protection statutes but impose additional burdens on franchisees.<sup>47</sup> For example, New York law requires plaintiffs to demonstrate that a deceptive practice was materially misleading and caused harm to consumers, not just franchisees.<sup>48</sup> These requirements, while not

---

<sup>44</sup> See generally, e.g., FLA. STAT. §§ 501.201-501.213; see also Michigan Consumer Protection Act, MICH. COMP. LAWS §§ 445.901-445.922.

<sup>45</sup> See FLA. STAT. § 501.201-501.13.

<sup>46</sup> See CAL. BUS. & PROF. CODE § 17200 (West); Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. 505/1 (2024).

<sup>47</sup> See N.Y. GEN. BUS. LAW § 349 (McKinney).

<sup>48</sup> *Id.*

insurmountable, make it more difficult for franchisees to prevail in court.

*Low or No Coverage States:* The majority of states fall into this category, either lacking a private right of action for Franchise Rule violations or failing to recognize such violations as actionable under state law. In states like Michigan, franchisees must rely solely on FTC enforcement, leaving them vulnerable to misrepresentation or fraud by franchisors.<sup>49</sup> These gaps in coverage expose franchisees to significant risks and create a legal landscape where the protections available depend entirely on geography.

This spectrum of coverage highlights the need for a uniform federal private right of action, ensuring that franchisees across all states have equal access to meaningful remedies.<sup>50</sup>

### C. *Exploitation by Choice-of-Law Provisions*

Franchise agreements often include choice-of-law provisions that dictate which state's laws will govern disputes between the franchisor and franchisee.<sup>51</sup> While these clauses are framed as tools to provide predictability and consistency, they are frequently exploited by franchisors to disadvantage franchisees.<sup>52</sup> By selecting jurisdictions with weak or no consumer protection laws, franchisors effectively shield themselves from accountability under state "Little FTC Acts."<sup>53</sup>

---

<sup>49</sup> See Michigan Consumer Protection Act, MICH. COMP. LAWS §§ 445.901-445.922.

<sup>50</sup> Butler & Wright, *supra* note 13, at 172-74 (explaining the disparities among state-level consumer protection acts and their enforcement mechanisms). While Florida's *Little-FTC Act* provides franchisees with a cause of action for unfair and deceptive practices, many other states lack comparable protections. This disparity often misleads practitioners who may underestimate the difficulties of pursuing franchise claims outside franchisee-friendly jurisdictions. For example, in states without a private right of action under a *Little-FTC Act*, franchisees harmed by deceptive disclosures are left without meaningful recourse unless significant consumer harm beyond the franchise relationship is demonstrated. See generally Carolyn Carter, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, NAT'L CONSUMER L. CTR. (Mar. 1, 2018), <https://www.nclc.org/resources/how-well-do-states-protect-consumers/> [<https://perma.cc/D4GJ-5VQ3>] (evaluating the strength of each state's consumer protection laws and noting significant gaps that franchisors may exploit) [hereinafter *Consumer Protection in the States*].

<sup>51</sup> Kerry L. Bundy, et al., *Choice of Law, Venue and Jurisdiction, Arbitration v. Litigation*, 10 INT'L J. FRANCHISING L. 3, 12 (2012).

<sup>52</sup> *Id.* at 18-19.

<sup>53</sup> See *Consumer Protection in the States*, *supra* note 50.

For example, a franchisor headquartered in a state with minimal consumer protection, such as Michigan, may require that disputes be governed by Michigan law, regardless of where the franchisee operates. This practice allows franchisors to avoid the stronger protections offered by states like Florida or California, where violations of the FTC Franchise Rule might otherwise provide a clear cause of action for the franchisee.

Choice-of-law provisions exacerbate the enforcement gap by limiting franchisees' ability to pursue claims in favorable jurisdictions. Even in cases where franchisees could demonstrate violations of the Franchise Rule, their rights are curtailed if the governing law does not recognize these violations as actionable. This systemic issue illustrates how franchisors exploit contractual terms to neutralize the already fragmented protections offered by Little FTC Acts, further underscoring the need for a uniform federal private right of action.<sup>54</sup>

### III. FRANCHISE AGREEMENTS

Franchise agreements are often lengthy, complex contracts drafted by franchisors to protect their interests. These agreements typically contain numerous provisions that disproportionately favor franchisors, leaving franchisees with limited bargaining power and few legal options in the event of a dispute.<sup>55</sup> While franchisors justify these terms as necessary to maintain uniformity and protect the brand, they often result in significant disadvantages for franchisees.

---

<sup>54</sup> See, e.g., *Lakeside Surfaces, Inc. v. Cambria Co.*, 16 F.4th 209, 220-21 (6th Cir. 2021) (“[T]he MFIL’s prohibition on forum-selection clauses is a strong Michigan public policy and . . . enforcing the forum-selection clause here would clearly contravene that policy.”). *Id.* Franchisors often rely on choice-of-law and forum-selection clauses to sidestep the protections offered by franchise-friendly states like California or Florida. See generally *Bundy et al.*, *supra* note 51. In *Lakeside Surfaces*, the Sixth Circuit reaffirmed that Michigan’s public policy under the Michigan Franchise Investment Law (MFIL) prohibits forum-selection clauses that undermine franchisee protections, demonstrating how contractual terms may be used to exploit disparities in state-level consumer protection laws. This illustrates the systemic limitations franchisees face in securing meaningful remedies across jurisdictions. *Lakeside Surfaces*, 16 F.4th at 220-21.

<sup>55</sup> *Bundy et al.*, *supra* note 51, at 10.

Most franchise agreements require disputes to be resolved through binding arbitration rather than in court. Arbitration clauses often prohibit class actions, limit discovery, and require franchisees to arbitrate in the franchisor's chosen venue.<sup>56</sup> While arbitration is promoted as a faster, more cost-effective alternative to litigation, it frequently benefits franchisors by limiting franchisees' ability to fully present their claims.<sup>57</sup> Moreover, arbitrators may favor repeat players, such as franchisors, who frequently engage in their services.<sup>58</sup>

As discussed, choice-of-law provisions allow franchisors to designate the governing law, often selecting jurisdictions with weaker consumer protection laws.<sup>59</sup> Forum-selection clauses further compound this issue by requiring disputes to be litigated or arbitrated in the franchisor's home state, regardless of where the franchisee operates. These clauses increase costs and inconvenience for franchisees, deterring them from pursuing valid claims.<sup>60</sup>

Franchise agreements commonly include waivers of the franchisee's right to a jury trial. By requiring disputes to be decided by a judge or arbitrator, franchisors avoid the risk of a jury awarding significant damages to the franchisee.<sup>61</sup> This limits franchisees' access to a more sympathetic forum and often results in less favorable outcomes.

Integration and merger clauses are standard in franchise agreements and stipulate that the written contract represents the entire agreement between the parties.<sup>62</sup> These clauses bar franchisees from introducing evidence of oral statements or

---

<sup>56</sup> See generally *id.*

<sup>57</sup> See generally *Lakeside Surfaces, Inc.*, 16 F.4th at 217 (explaining that arbitration clauses in franchise agreements often favor franchisors by limiting access to more favorable state laws and courts).

<sup>58</sup> See Lisa B. Bingham, *Employment Arbitration: The Repeat Player Effect*, 1 EMP. RTS. & EMP. POL'Y J. 189, 209-10 (1997).

<sup>59</sup> *Bundy et al.*, *supra* note 51.

<sup>60</sup> See *Lakeside Surfaces, Inc.*, 16 F.4th at 218-19 (noting that forum-selection clauses in franchise agreements can impose significant burdens on franchisees by forcing disputes into inconvenient forums).

<sup>61</sup> Theodore Eisenberg & Geoffrey P. Miller, *Do Juries Add Value? Evidence from an Empirical Study of Jury Trial Waiver Clauses in Large Corporate Contracts*, 4 J. EMPIRICAL L. STUDIES 539, 544 (2007).

<sup>62</sup> *Id.*

promises made by franchisors during the negotiation process, even if those representations influenced the franchisee's decision to invest. This shields franchisors from liability for misrepresentations not explicitly included in the agreement.

Franchise agreements typically give franchisors broad discretion to terminate or refuse to renew the agreement.<sup>63</sup> Reasons for termination can range from alleged violations of brand standards to failure to meet financial performance thresholds. The power imbalance in these provisions leaves franchisees with little security, even after years of investment in the franchise.

Many agreements include restrictive covenants preventing franchisees from operating a similar business during the franchise term and for a period after termination.<sup>64</sup> These clauses often extend to broad geographic areas and severely limit franchisees' ability to continue earning a livelihood after leaving the franchise system.

Franchisees are often required to pay ongoing royalties, advertising fees, and other charges, regardless of their business's financial performance.<sup>65</sup> These payments are typically calculated as a percentage of gross sales rather than net profits, ensuring that franchisors receive their fees even when franchisees operate at a loss.

Collectively, these terms create a contractual environment in which franchisors hold the vast majority of power.<sup>66</sup> Franchisees face significant hurdles when attempting to assert their rights or seek remedies for violations of the Franchise Rule, highlighting the urgent need for a federal private right of action to balance these inequities.

---

<sup>63</sup> *Id.*

<sup>64</sup> *See generally* *FTC Announces Rule Banning Noncompetes*, *supra* note 19 (discussing the nationwide ban on most non-compete clauses, with certain exemptions for franchisor-franchisee agreements). The FTC's final rule banning most non-compete clauses aims to promote worker mobility and competition but exempts non-compete clauses between franchisors and franchisees. *Id.* This exemption reflects the distinct nature of franchise agreements, where restrictive covenants are often used to protect proprietary business models and brand value. *Id.*

<sup>65</sup> Myrick, *supra* note 3.

<sup>66</sup> *See generally* 16 C.F.R. §§ 1.98, 436.9 (2024) (authorizing the Commission to impose monetary fines for violations and to pursue injunctions to prevent ongoing or future noncompliance); *see also* 15 U.S.C. § 45(l) (empowering the FTC to impose civil penalties for violations of trade regulation rules).

## IV. PROBLEM: THE ENFORCEMENT GAP

The FTC Franchise Rule's enforcement framework is inherently limited, leaving significant gaps that fail to protect franchisees adequately. Enforcement is centralized with the Federal Trade Commission (FTC), which investigates complaints and imposes penalties such as fines and injunctions.<sup>67</sup> While this approach ensures uniform application of the Rule at the federal level, it has critical shortcomings that disproportionately impact individual franchisees.

One major issue is the FTC's limited resources. The Commission prioritizes cases of systemic fraud and widespread violations, often overlooking individual franchisees' grievances unless they demonstrate broader consumer harm.<sup>68</sup> This leaves franchisees who experience isolated but devastating misrepresentations, such as inflated financial performance data or undisclosed costs, without meaningful remedies. For these individuals, the FTC's oversight offers little protection, especially when the misrepresentation affects only a single franchisee or a small group.

Moreover, the Franchise Rule lacks a private right of action, barring franchisees from directly suing franchisors in federal court for violations.<sup>69</sup> Franchisees must instead rely on state "Little FTC Acts" or traditional contract and tort claims, which vary widely in their effectiveness.<sup>70</sup> In many states, Little FTC Acts either do not provide a cause of action for Franchise Rule violations or impose onerous requirements that discourage litigation.<sup>71</sup> Additionally, contractual terms like arbitration clauses, choice-of-law provisions, and jury trial waivers further limit franchisees' ability to seek redress.<sup>72</sup>

---

<sup>67</sup> See sources cited *supra* note 66.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See generally Appleby et al., *supra* note 12.

<sup>71</sup> See Michigan Consumer Protection Act, MICH. COMP. LAWS §§ 445.901-445.922.

<sup>72</sup> See sources cited *supra* notes 54 & 61.

This fragmented framework creates significant disparities in enforcement and protection based on geography, the franchisor's resources, and the willingness of state regulators to intervene. The result is a legal environment that overwhelmingly favors franchisors, leaving franchisees exposed to financial loss and legal vulnerability. Closing this enforcement gap through a federal private right of action would empower franchisees and create a more equitable and effective system for addressing Franchise Rule violations.

The enforcement gap in the FTC Franchise Rule leaves franchisees vulnerable to devastating financial losses and legal battles with little recourse for recovering their investments. Real-world examples highlight the severe consequences of this fragmented enforcement system and the inadequate remedies available to franchisees.<sup>73</sup>

One should consider a hypothetical but representative scenario: a prospective franchisee invests its life savings into a franchise opportunity, relying on misleading financial performance representations in the FDD. The franchisor's projections of profitability turn out to be grossly overstated, leading to significant financial losses. When the franchisee seeks remedies, it discovers that the FTC is unlikely to pursue the case because it does not involve systemic fraud or a pattern of misconduct. Instead, the franchisee must rely on state-level consumer protection statutes, only to find that the franchisor's choice-of-law provision designates a jurisdiction where Franchise Rule violations are not actionable.

This situation is not uncommon. In some states, franchisees face additional hurdles such as mandatory arbitration clauses, which limit discovery and often result in decisions favoring franchisors. Even in states with robust "Little FTC Acts," litigation can be prohibitively expensive and time-consuming, further discouraging franchisees from pursuing their claims.

---

<sup>73</sup> See *Yumilicious Franchise, LLC v. Barrie*, 819 F.3d 170 (5th Cir. 2016); *Altruist, LLC v. Medex Patient Transp., LLC*, 308 F. Supp. 3d 943 (M.D. Tenn. 2018); *Schwartzco Enters. LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331 (E.D.N.Y. 2014).

Anecdotal evidence from franchisees illustrates the personal toll of this enforcement gap. Stories of small business owners losing their life savings, struggling to support their families, and being forced into bankruptcy are alarmingly common. These franchisees often express frustration that the franchisor faces no meaningful consequences for deceptive practices, while the franchisees are left to bear the financial and emotional burden.<sup>74</sup>

The lack of uniform enforcement mechanisms and meaningful remedies disproportionately impacts smaller franchisees, particularly those who cannot afford costly legal battles. These real-world consequences underscore the urgent need for a federal private right of action, which would empower franchisees to hold franchisors accountable and prevent similar losses in the future.<sup>75</sup>

## V. PROPOSED SOLUTION

### A. *The Case for a Federal Private Right of Action*

The current enforcement framework for the FTC Franchise Rule is fragmented and ineffective, leaving franchisees at the mercy of inconsistent state laws and an under-resourced federal agency. A federal private right of action is essential to address these shortcomings and provide franchisees with a uniform enforcement mechanism as well as access to meaningful remedies. This solution would not only enhance accountability for franchisors but also create a level playing field for franchisees nationwide.

State “Little FTC Acts” vary widely in their scopes and effectiveness, creating a patchwork of protections for franchisees. In states like Florida, violations of the FTC Franchise Rule are per se violations of state law and grant franchisees a clear cause of action.<sup>76</sup> However, the majority of states offer limited or no such

---

<sup>74</sup> See generally *Judge upholds settlement in Quiznos class action*, NATION'S RESTAURANT NEWS, (Aug. 16, 2010) <https://www.nrn.com/restaurant-franchising/judge-upholds-settlement-in-quiznos-class-action> [<https://perma.cc/TUR5-7VYV>]; see also Sarah Sharples, *Iconic Aussie Brand Under Fire*, NEWS.COM.AU (Sept. 9, 2024, 12:00 P.M.), <https://www.news.com.au/finance/iconic-aussie-brand-under-fire/news-story/3df7164956122db506e98e9cdaf1bd66> [<https://perma.cc/V9KG-LC87>] (highlighting the severe financial and emotional toll on franchisees misled by Jim's Group franchisor promises).

<sup>75</sup> See sources cited, *supra* note 74.

<sup>76</sup> FLA. STAT. ANN. § 501.203 (West 2017).

protections.<sup>77</sup> For example, Michigan's consumer protection statute does not recognize violations of the Franchise Rule as actionable under state law, which leaves franchisees without any meaningful recourse.<sup>78</sup> This disparity forces franchisees to navigate a complex and often unpredictable legal landscape where their ability to seek redress depends entirely on the jurisdiction in which they operate.

Choice-of-law provisions in franchise agreements further exacerbate this issue. By requiring disputes to be governed by the laws of the franchisor's home state, these provisions allow franchisors to avoid jurisdictions with stronger consumer protections. This practice not only undermines the intent of the FTC Franchise Rule but also places franchisees at a significant disadvantage as they are often forced to litigate under laws that provide minimal safeguards.<sup>79</sup>

The FTC is the sole federal enforcer of the Franchise Rule, but the FTC's resources are insufficient to address the volume and complexity of franchisee complaints.<sup>80</sup> The agency prioritizes cases involving systemic fraud or widespread harm, often leaving individual franchisees with no recourse for violations that directly impact their businesses.<sup>81</sup> Even when the FTC takes action, the remedies it imposes, fines and injunctions, rarely make affected franchisees whole. The absence of a private right of action effectively bars franchisees from pursuing claims under the Rule, further limiting their ability to hold franchisors accountable.<sup>82</sup>

A federal private right of action would eliminate the inconsistencies and inequities inherent in the current framework by providing franchisees with a uniform standard of enforcement. This elimination would ensure that all franchisees, regardless of their locations or the choice-of-law provisions in their agreements, have access to the same legal remedies. A consistent federal standard would also prevent franchisors from exploiting

---

<sup>77</sup> See Maze, *supra* note 1.

<sup>78</sup> See Michigan Consumer Protection Act, MICH. COMP. LAWS §§ 445.901-445.922 (West 2025).

<sup>79</sup> See 16 C.F.R. § 436.5 (2024); see also Disclosure Requirements and Prohibitions, *supra* note 16, at 59,635-59,336 (discussing the purpose of franchise disclosure requirements and the need to protect franchisees from unfair practices).

<sup>80</sup> See Butler & Wright, *supra* note 13, at 165.

<sup>81</sup> See *id.*

<sup>82</sup> See generally ENFORCEMENT OF FRANCHISE RULE, *supra* note 31.

jurisdictional loopholes, creating a fairer and more predictable legal environment for all parties.

In addition to uniformity, a private right of action would provide franchisees with enhanced remedies that better align with the harms they experience. While state “Little FTC Acts” and the FTC’s enforcement mechanisms focus primarily on deterring misconduct, they often fail to address the financial and emotional toll of franchisor violations.<sup>83</sup> A federal private right of action could include provisions for actual damages, equitable relief such as contract rescission, and recovery of attorney’s fees and costs.<sup>84</sup> These remedies would not only compensate franchisees for their losses but also deter franchisors from engaging in deceptive practices.

The lack of meaningful enforcement mechanisms disproportionately impacts smaller franchisees who lack the resources to pursue complex legal battles. Unlike larger franchisees or multi-unit operators, smaller franchisees often operate on thin margins and cannot afford the financial or time commitments required to navigate the current system.<sup>85</sup> A federal private right of action would empower these franchisees by providing a straightforward and accessible avenue for seeking redress, ensuring that all franchisees, regardless of size, are protected.

---

<sup>83</sup> See Butler & Wright, *supra* note 13, at 165.

<sup>84</sup> See *e.g.*, H.R. 6551, 117th Cong. (2022) (available at <https://www.congress.gov/bill/117th-congress/house-bill/6551?q=%7B%22search%22%3A%22hr+6551%22%7D&s=5&r=1> [https://perma.cc/QN9X-2E4U] (last visited Apr. 28, 2025)).

<sup>85</sup> *Franchise Financial Problems: What’s Going on in 2023?*, BUDDERFLY BLOG (Aug. 1, 2023), <https://blog.budderfly.com/franchise-financial-problems-2023> [https://perma.cc/HG5W-4Y9A] (last visited Apr. 15, 2025).

The case for a federal private right of action is clear; it would provide uniformity, enhanced remedies, and greater access to justice for franchisees.<sup>86</sup> By addressing the shortcomings of the current framework, this solution would promote fairness and accountability in the franchising industry, safeguarding the investments and livelihoods of franchisees nationwide. Without such a measure, the enforcement gap will continue to grow, which would leave franchisees vulnerable to exploitation and financial ruin.

The case for introducing a federal private right of action under the FTC Franchise Rule is bolstered by examining other federal statutes that include private rights of action. These statutes provide valuable lessons on how such provisions can balance enforcement goals with fairness and accountability, ensuring effective remedies for harmed parties. In particular, the Securities Act of 1933,<sup>87</sup> the Securities Exchange Act of 1934,<sup>88</sup> and the Fair Debt Collection Practices Act (“FDCPA”)<sup>89</sup> demonstrate how private rights of action can supplement regulatory oversight, enhance uniformity, and provide accessible remedies.

The Securities Act of 1933 explicitly grants investors a private right of action under Section 11, allowing them to sue issuers for material misstatements or omissions in securities registration statements.<sup>90</sup> This provision addresses the power imbalance between investors and issuers by enabling direct enforcement of disclosure requirements.<sup>91</sup> Similarly, franchisees face significant informational asymmetries in their relationships with franchisors, particularly regarding disclosures in FDDs.<sup>92</sup> An explicit private right of action under the Franchise Rule would empower

---

<sup>86</sup> Coalition of Franchisee Associations, *Private Right of Action*, CFA, <https://thecfainc.com/private-right> [<https://perma.cc/BU5X-F8N4>] (last visited Apr. 15, 2025).

<sup>87</sup> See generally Securities Act of 1933, 15 U.S.C. §§ 77a–77aa.

<sup>88</sup> See generally Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq.

<sup>89</sup> See generally Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p, 91 Stat. 874, 883.

<sup>90</sup> Securities Act of 1933 § 11, formerly known as 15 U.S.C. § 77(k).

<sup>91</sup> Bracewell LLP, *Section 11 Review: A Reminder to Directors and Officers*, BRACEWELL (Feb. 22, 2023), <https://www.bracewell.com/resources/section-11-review-a-reminder-to-directors-and-officers> [<https://perma.cc/W58Z-KP2R>].

<sup>92</sup> See Disclosure Items, 16 C.F.R. § 436.5 (2024).

franchisees to seek remedies for misrepresentations, creating accountability where federal agency oversight is insufficient.

Section 11's success also highlights the importance of enhanced remedies. By allowing for recovery of actual damages, this provision deters issuers from providing false or misleading information, incentivizing compliance with disclosure obligations.<sup>93</sup> A similar approach under the Franchise Rule could deter franchisors from engaging in deceptive practices and encourage greater transparency in FDDs.

The Securities Exchange Act of 1934, while not explicitly providing a private right of action under Section 10(b), has been interpreted by courts to allow such claims for securities fraud.<sup>94</sup> This implied right of action has become a cornerstone of securities litigation, enabling investors to hold issuers accountable for fraudulent practices.<sup>95</sup> Importantly, this litigation exists alongside the Securities and Exchange Commission's ("SEC") enforcement efforts, which demonstrates how private claims can complement regulatory oversight.

In the franchising context, the FTC similarly prioritizes systemic violations, leaving individual franchisees without recourse for isolated harms.<sup>96</sup> Allowing franchisees to bring private actions under the Franchise Rule would fill this gap, just as Section 10(b) litigation addresses gaps in SEC enforcement.<sup>97</sup> Moreover, heightened pleading standards and other safeguards in securities litigation could be adapted to the Franchise Rule to mitigate concerns about frivolous lawsuits.

---

<sup>93</sup> *Cf. Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-88 (1983) (holding that plaintiffs alleging misstatements or omissions in a registration statement under Section 11 of the Securities Act of 1933 need only prove materiality and a discrepancy from the truth, without proving intent to defraud, to prevail).

<sup>94</sup> *See generally* *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 196-97 (1976) (recognizing the implied private right of action for securities fraud under Section 10(b) and Rule 10b-5 promulgated by the SEC).

<sup>95</sup> *See id.*

<sup>96</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 14.

<sup>97</sup> 15 U.S.C. § 78j(b); *Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971).

The FDCPA provides another example of a federal statute that successfully incorporates a private right of action.<sup>98</sup> The FDCPA allows consumers to sue debt collectors for violations of its provisions, ensuring that individuals have a direct means of addressing abusive or deceptive practices.<sup>99</sup> Importantly, the FDCPA includes safeguards such as caps on statutory damages and limitations on attorney's fees to prevent abuse of the legal system.<sup>100</sup>

This balanced approach could serve as a model for the Franchise Rule. A federal private right of action could include reasonable limitations to protect franchisors from excessive litigation while still providing franchisees with meaningful remedies. For example, damages could be capped at actual losses, and penalties for frivolous claims could deter abuse.

These statutes illustrate the potential for a federal private right of action to enhance enforcement and provide effective remedies without overwhelming the legal system. By incorporating explicit rights as seen in the Securities Act or by leveraging judicial interpretation as with the Securities Exchange Act,<sup>101</sup> Congress can empower franchisees while maintaining consistency with existing federal frameworks. Safeguards from the FDCPA can further ensure that the provision is fair and not subject to exploitation.

Uniformity is another critical takeaway. Both the securities laws and the FDCPA establish nationwide standards, eliminating the inconsistencies that currently plague state "Little FTC Acts."<sup>102</sup> By creating a uniform enforcement mechanism under the Franchise Rule, franchisees across all states would have equal access to legal remedies, reducing the disparities that arise from geographic or contractual terms.

---

<sup>98</sup> See generally 15 U.S.C. § 1692k (providing that any debt collector who violates the FDCPA is liable to the affected individual for actual damages, statutory damages, and attorney's fees).

<sup>99</sup> See *id.*

<sup>100</sup> See *id.*

<sup>101</sup> *But see* Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (holding that private individuals could not enforce disparate-impact regulations under Title VI of the Civil Rights Act because the statute did not create an implied private right of action).

<sup>102</sup> 15 U.S.C. § 1692k(d); 15 U.S.C. § 77(k); 15 U.S.C. § 78j(b); Superintendent of Ins. of N.Y. v. Bankers Life & Casualty. Co., 404 U.S. 6, 12-13 (1971).

The experiences under the Securities Act, Securities Exchange Act, and FDCPA demonstrate that private rights of action are effective tools for enforcing federal regulations and protecting vulnerable parties. Applying these lessons to the FTC Franchise Rule would address the current enforcement gaps, provide franchisees with meaningful remedies, and ensure consistent application of the Rule across jurisdictions. With appropriate safeguards in place, a federal private right of action could bring much-needed accountability and fairness to the franchising industry.

### *B. Legislative History & Past Efforts*

When the FTC Franchise Rule was first promulgated in 1979, the Federal Trade Commission sought to address widespread deceptive practices in the franchising industry. The Rule's primary goal was to protect prospective franchisees by requiring franchisors to disclose essential information through the FDD.<sup>103</sup> This transparency is aimed to level the playing field between franchisors and franchisees, empowering the latter to make informed investment decisions.<sup>104</sup>

Initially, the FTC considered including a private right of action as part of the Franchise Rule, recognizing the importance of providing franchisees with a direct mechanism for holding franchisors accountable.<sup>105</sup> However, the agency ultimately opted for a regulatory framework that focused on enforcement through fines, injunctions, and other equitable remedies.<sup>106</sup> The decision was based on the belief that the FTC could efficiently oversee compliance and that state "Little FTC Acts" would fill any enforcement gaps by allowing private actions under state law.<sup>107</sup>

---

<sup>103</sup> See generally Disclosure Requirements and Prohibitions, *supra* note 16, at 59,623-59,624 (explaining that the FTC Franchise Rule was designed to address widespread deceptive practices in the franchising industry and to protect prospective franchisees by mandating the disclosure of essential information through the Franchise Disclosure Document).

<sup>104</sup> *What You Need to Know About Federal Franchise Laws*, *supra* note 20.

<sup>105</sup> See generally Disclosure Requirements and Prohibitions, *supra* note 16, at 59,622-59,723 (noting that the FTC considered a private right of action for franchisees during the rulemaking process but ultimately opted to rely on FTC enforcement mechanisms).

<sup>106</sup> See 16 C.F.R. §§ 436.1-436.11 (2025).

<sup>107</sup> Appleby et al., *supra* note 12, at 434.

Despite these intentions, the reliance on state-level enforcement has proven inadequate. Many states did not adopt robust Little FTC Acts, and those that did often excluded violations of the Franchise Rule from their scope.<sup>108</sup> This lack of uniformity created a fragmented legal landscape that has left countless franchisees without meaningful remedies.

Moreover, the FTC's enforcement priorities shifted over time. Resource constraints and a focus on large-scale fraud cases meant that individual franchisee disputes often fell by the wayside. This divergence from the Rule's original intent has exacerbated the enforcement gap, highlighting the need to revisit the initial considerations for a private right of action.

By revisiting the legislative history of the Franchise Rule, one can clearly see that the FTC's originally intended to provide comprehensive protections for franchisees.<sup>109</sup> Establishing a federal private right of action would fulfill this objective, ensuring that the Rule's protections are not undermined by inconsistent state laws or limited federal resources.

Over the years, Congress has made several attempts to introduce a federal private right of action into the FTC Franchise Rule.<sup>110</sup> These efforts reflect a recognition of both the enforcement gaps left by the Rule's current framework and the need for stronger protections for franchisees. However, despite the clear rationale for such a provision, these legislative attempts have faced significant resistance and ultimately failed to become law.

More recently, in 2022, Representative Jan Schakowsky introduced a bill aimed at creating a federal private right of action under the Franchise Rule.<sup>111</sup> This bill sought to empower franchisees to sue franchisors directly for violations, offering remedies such as actual damages, contract rescission, equitable relief, and the recovery of attorney's fees.<sup>112</sup> By including jurisdictional provisions allowing franchisees to pursue claims in both state and federal courts, the bill aimed to address the

---

<sup>108</sup> *Id.* at 435-37.

<sup>109</sup> *See* Disclosure Requirements and Prohibitions, *supra* note 16, at 59,723.

<sup>110</sup> *See e.g.*, H.R. 6551, *supra* note 84.

<sup>111</sup> *See id.*

<sup>112</sup> *Id.*

accessibility challenges posed by the current system.<sup>113</sup> Despite its comprehensive approach, the bill was referred to committee and has not progressed further.<sup>114</sup>

The failure of these legislative efforts can be attributed to several factors. Franchisor lobbying groups have consistently opposed the introduction of a private right of action, arguing that it would lead to a flood of frivolous lawsuits and disrupt the franchising industry.<sup>115</sup> Additionally, concerns about federal overreach and the potential for duplication with state “Little FTC Acts” have hindered bipartisan support for such measures.<sup>116</sup>

These past legislative attempts underscore the challenges of enacting a federal private right of action but also highlight its necessity. The persistent enforcement gap and the inconsistent protections under state laws continue to harm franchisees, making the case for renewed legislative efforts. By addressing the concerns raised in previous debates, heightened pleading standards and safeguards against meritless claims, Congress can finally create a mechanism that balances the interests of franchisees and franchisors while ensuring fairness and accountability in franchising.

### C. Structuring the Legislation

To effectively address the enforcement gap in the FTC Franchise Rule, the proposed legislation must be carefully structured to balance the rights of franchisees with the legitimate interests of franchisors. This solution requires crafting key provisions that provide robust protections for franchisees while incorporating safeguards to prevent abuse and ensuring clear jurisdictional guidelines.

---

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 70.

<sup>116</sup> *Id.* at 72-73; *see e.g.*, Emma Roth, *McDonald's Busted Ice Cream Machines Can Now Be Fixed - Legally*, VERGE (Oct. 25, 2024, 11:33 AM), <https://www.theverge.com/2024/10/25/24279371/mcdonalds-ice-cream-machines-right-to-repair-copyright> [<https://perma.cc/8MY7-SPGD>] (discussing the U.S. Copyright Office's decision to grant an exemption allowing franchisees to repair their ice cream machines, highlighting the FTC's support for the right-to-repair movement and its positive implications for consumers and franchisees).

The cornerstone of the legislation would be an explicit provision granting franchisees the right to sue franchisors in federal court for violations of the FTC Franchise Rule. This provision would provide franchisees with a uniform enforcement mechanism, bypassing the inconsistencies of state “Little FTC Acts.” This provision would allow franchisees to bring claims for misrepresentations or omissions in the Franchise Disclosure Document (FDD), violations of disclosure timelines, and other breaches of the Rule’s requirements. By anchoring these rights in federal law, the legislation ensures that all franchisees, regardless of location, have equal access to justice.

The legislation should include a range of remedies to make harmed franchisees whole and deter future violations. These remedies could include compensation for financial losses resulting directly from the franchisor’s violation as well as equitable relief, including rescission of contracts, reformation of unfair provisions, and other equitable remedies as deemed appropriate by the court. Also, in cases of willful or egregious misconduct, allowing courts to award punitive damages to discourage fraudulent behavior would prove necessary. To ensure accessibility for franchisees with limited financial resources, the legislation should allow successful plaintiffs to recover their legal costs.

By making these remedies available, the law would not only empower franchisees but also encourage franchisors to comply proactively with the Franchise Rule.

To address concerns about potential abuse, the legislation should incorporate safeguards similar to those found in other federal statutes, such as the FDCPA.<sup>117</sup> These safeguards could include heightened pleading standards, caps on non-economic damages, & penalties for meritless claims. These measures would strike a balance, ensuring that the private right of action is used to address legitimate grievances while discouraging opportunistic or unfounded claims.

---

<sup>117</sup> See generally, e.g., 15 U.S.C. § 1692k(a)(3) (providing that a court may award attorney’s fees to the defendant if the plaintiff brings an action in bad faith and for the purpose of harassment).

To ensure accessibility and fairness, the legislation should include clear jurisdictional guidelines. While the primary venue would be federal court, franchisees should have the option to file claims in state courts with concurrent jurisdiction. This ensures accessibility for franchisees who may prefer local venues. The legislation should preempt contractual provisions that mandate the application of laws from states with weaker consumer protections or require disputes to be litigated in distant jurisdictions. Instead, the governing law should default to the jurisdiction where the franchisee operates.

The proposed legislation should complement rather than replace the FTC's enforcement role. The legislation should empower franchisees to seek remedies in cases where the FTC does not intervene while preserving the Commission's authority to address systemic violations. Additionally, the FTC could be tasked with publishing annual reports on private enforcement actions, creating transparency, and identifying trends in franchisor misconduct.

By incorporating these key provisions, the legislation would create a balanced and effective framework for addressing violations of the FTC Franchise Rule. Robust remedies would empower franchisees to hold franchisors accountable while safeguards would protect franchisors from frivolous claims. Jurisdictional clarity would ensure fair access to courts, and synergy with the FTC would maintain consistency in enforcement. This structure would fill the current enforcement gap, providing fairness, accountability, and uniformity in the franchising industry.

Crafting a federal private right of action for violations of the FTC Franchise Rule requires careful consideration of the competing interests of franchisees and franchisors. While the goal is to provide franchisees with meaningful remedies and a uniform enforcement mechanism, the legislation must also ensure that it does not impose undue burdens on franchisors or disrupt the franchising business model. Striking this balance is essential for the law's effectiveness and long-term viability.

Franchisees typically operate at a significant informational and bargaining disadvantage compared to franchisors.<sup>118</sup> The proposed private right of action addresses this imbalance by allowing franchisees to hold franchisors accountable for violations of the Franchise Rule. By providing a direct mechanism to enforce compliance, the legislation would empower franchisees to seek redress for misleading financial performance representations, hidden costs, or other deceptive practices.

At the same time, the law must recognize the financial and operational constraints faced by smaller franchisees. Provisions for equitable relief, such as contract rescission or reformation, would allow franchisees to exit or renegotiate unfair agreements without incurring excessive legal costs. Additionally, the ability to recover attorneys' fees and costs would make enforcement accessible to franchisees with limited resources, leveling the playing field against well-capitalized franchisors.<sup>119</sup>

The franchising business model relies on a delicate balance between uniformity and autonomy. Franchisors need the flexibility to establish brand standards and enforce compliance across their networks. The proposed legislation should avoid provisions that would unduly interfere with this operational structure. For example, the law should not create a "joint employer" relationship between franchisors and franchisees because that could expose franchisors to broader liabilities unrelated to the Franchise Rule.<sup>120</sup>

By focusing narrowly on violations of the Rule, the legislation can protect franchisees without disrupting franchisors' ability to maintain brand consistency and efficiency. Moreover, the inclusion of safeguards against excessive litigation would ensure that franchisors are not deterred from expanding their networks or investing in new opportunities.

---

<sup>118</sup> *Bundy, et al.*, *supra* note 51, at 10.

<sup>119</sup> *See e.g.*, H.R. 6551, *supra* note 84.

<sup>120</sup> Franchising depends on preserving a balance between the franchisor's need for brand consistency and the franchisee's operational independence. Proposed legislation should carefully delineate responsibilities to avoid imposing a "joint employer" standard, which could result in unintended liabilities for franchisors and fundamentally alter the franchise relationship

Ultimately, the legislation would benefit both franchisees and franchisors by incentivizing compliance with the Franchise Rule. Franchisors that adhere to the Rule's disclosure requirements would avoid liability, creating a competitive advantage over those that engage in deceptive practices. This compliance-driven approach would foster greater transparency and trust within the franchising industry, which would strengthen its long-term sustainability.

Balancing franchisee and franchisor interests is critical to the success of a federal private right of action under the FTC Franchise Rule. By addressing franchisees' need for remedies while incorporating safeguards to protect franchisors from frivolous claims, the legislation can create a fair and effective framework. This balanced approach would enhance accountability, promote transparency, and preserve the integrity of the franchising model, ensuring that both parties can thrive under a more equitable system.

## VI. CRITICISMS & POLICY IMPLICATIONS

### A. *Criticisms of a Federal Private Right of Action*

Critics argue that granting franchisees a federal private right of action could lead to a surge in frivolous claims, increasing litigation costs and deterring smaller franchisors from entering the market.<sup>121</sup> Examples from statutes like the Americans with Disabilities Act highlight the potential for abuse in private enforcement mechanisms.<sup>122</sup> Franchisors worry that defending against baseless lawsuits would strain resources and disrupt operations.<sup>123</sup>

However, these concerns can be mitigated through safeguards. Federal statutes such as the FDCPA and the Securities Act of 1933 have successfully incorporated heightened pleading standards, caps on damages, and penalties for meritless claims.<sup>124</sup> Applying

---

<sup>121</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 70.

<sup>122</sup> Mark Pulliam, *The ADA Litigation Monster*, CITY J. (Spring 2017), <https://www.city-journal.org/article/the-ada-litigation-monster> [<https://perma.cc/8XJY-XBS3>].

<sup>123</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 70.

<sup>124</sup> 15 U.S.C. § 1692k(a)(3); 15 U.S.C. § 77(k).

these safeguards to the Franchise Rule would balance the need for franchisee protections with the legitimate concerns of franchisors, ensuring the system promotes justice rather than exploitation.<sup>125</sup>

Critics also argue that the FTC is better equipped to enforce the Rule, given the Commission's centralized authority and expertise.<sup>126</sup> They caution that private litigation could dilute the FTC's role and lead to inconsistent interpretations of the Rule by different courts.<sup>127</sup> Additionally, the FTC's ability to address systemic issues with singular enforcement actions is seen as more efficient than fragmented private litigation.<sup>128</sup>

While these concerns are valid, they overlook the FTC's resource limitations. The Commission often prioritizes large-scale fraud cases, leaving individual franchisees without recourse.<sup>129</sup> A private right of action would complement the FTC's role by addressing isolated harms in order to ensure both systemic and individual violations are effectively managed.

### *B. Counterarguments*

The success of private rights of action in other regulatory frameworks demonstrates their effectiveness in supplementing agency enforcement. For example, the FDCPA allows consumers to sue debt collectors while including safeguards against abuse, such as capped damages and fee-shifting provisions for frivolous claims.<sup>130</sup> Also, the Securities Act of 1933 (notably section 11) deters fraud by granting investors the right to sue for misstatements in registration documents, encouraging greater transparency.<sup>131</sup> Another regulatory framework as mentioned before is the Securities Exchange Act of 1934, which offers implied private rights

---

<sup>125</sup> See Press Release, *FTC Takes Action to Ensure Franchisees' Complaints are Heard and to Protect Against Illegal Fees* (July 12, 2024) <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-takes-action-ensure-franchisees-complaints-are-heard-protect-against-illegal-fees> [<https://perma.cc/Q66X-S9K7>].

<sup>126</sup> ENFORCEMENT OF FRANCHISE RULE, *supra* note 31, at 16.

<sup>127</sup> See Butler & Wright, *supra* note 13, at 166.

<sup>128</sup> *Id.*

<sup>129</sup> See sources cited *supra* note 36.

<sup>130</sup> 15 U.S.C. § 1692(k)(a)(1)-(3).

<sup>131</sup> 15 U.S.C. § 77(k).

under Section 10(b) that address gaps in SEC enforcement and protect investors from fraud.<sup>132</sup>

These examples highlight the potential for private litigation to empower individuals without overwhelming the judicial system or harming regulated industries. Applying similar principles to the Franchise Rule would fill enforcement gaps while maintaining balance between stakeholders.

### *C. Policy Implications*

There are several major policy implications presented by the notion of a private right of action underneath the framework of the Franchise Rule. The first of which is the impact on Franchisors. The introduction of a federal private right of action would encourage franchisors to comply more rigorously with the Franchise Rule, particularly its disclosure requirements. Heightened compliance would improve transparency and deter fraudulent practices, enhancing trust in the franchising model. Ethical franchisors would benefit from a stronger reputation, which would make their offerings more attractive to prospective franchisees.

Next, franchisees would become empowered. They would gain access to meaningful remedies for violations, reducing the financial and emotional toll of deceptive practices. This empowerment would level the playing field and foster confidence in the franchising model and enable franchisees to invest with greater security.

Finally, one must consider the broader consumer protection implications. Strengthening franchisee protections would indirectly benefit consumers by promoting more reliable and ethically managed franchise operations. Moreover, the legislation could serve as a blueprint for similar reforms in other industries where federal rules lack private enforcement mechanisms.

While an initial increase in litigation is likely, the long-term effects would stabilize the industry. Compliance-driven reforms would create a healthier franchising ecosystem, reinforcing the model's promise of mutual success for franchisors and franchisees alike.

---

<sup>132</sup> 15 U.S.C. § 78j(b); *Superintendent of Ins. of N.Y. v. Bankers Life & Casualty Co.*, 404 U.S. 6, 12–13 (1971).

## VII. CASE STUDIES &amp; SCENARIOS

The enforcement gaps within the FTC Franchise Rule are not theoretical; they manifest in the lived experiences of franchisees who face significant financial harm with little to no legal recourse. However, introducing a federal private right of action could drastically alter these outcomes, empowering franchisees to hold franchisors accountable and creating a more equitable franchising system. By examining both real-world examples and hypothetical scenarios, one can see the stark contrast between the status quo and the potential impact of the proposed legislation.

In *Yumilicious Franchise v. Barrie*, franchisees invested substantial capital into establishing frozen yogurt businesses based on the franchisor's assurances and disclosures regarding startup costs and supplier arrangements.<sup>133</sup> When the promised financial viability proved illusory, the franchisees sought to recover damages by alleging violations of the FTC Franchise Rule.<sup>134</sup> However, the court dismissed their claims, holding that the FTC Franchise Rule does not provide a private right of action.<sup>135</sup> Additionally, the court applied Texas's "economic loss rule," which barred the franchisees from recovering tort damages for economic injuries stemming from their franchise agreements.<sup>136</sup> The court effectively confined the claims to contractual remedies, and these remedies proved insufficient to address the franchisor's deceptive practices.<sup>137</sup>

The franchisees' reliance on state law exposed critical weaknesses in the current legal framework. First, because Texas law does not incorporate the FTC Franchise Rule as actionable, franchisees were left without any legal remedy for violations of federal disclosure requirements. Second, Texas's *economic loss rule* created an insurmountable barrier to recovery for claims of fraud or negligence, which should have been available to address the franchisor's misconduct. In this case, the franchisees, who had no access to a federal remedy, were left to absorb significant financial losses without recourse, demonstrating the inadequacies of state law to protect franchisees.

---

<sup>133</sup> See *Yumilicious Franchise, LLC v. Barrie*, 819 F.3d 170, 174-76 (5th Cir. 2016).

<sup>134</sup> *Id.* at 173-76.

<sup>135</sup> See *id.* at 175-77.

<sup>136</sup> See *id.* at 177-78.

<sup>137</sup> *Id.*

If the franchisees in *Yumilicious* had access to a federal private right of action under the FTC Franchise Rule, they could have directly sued the franchisor in federal court for failing to provide accurate financial disclosures. The FTC Rule imposes strict liability for such omissions, removing the need to prove intent or reliance. Under this framework, the franchisees could have demonstrated that Yumilicious violated its duty to disclose material financial information, such as startup costs and supplier agreements, as required under federal law. A uniform federal remedy would have precluded the application of Texas's *economic loss rule*, ensuring that franchisees could recover damages for their losses without being restricted to contract claims. This outcome would not only provide effective relief for the franchisees but also deter franchisors from engaging in similar deceptive practices.

Next, in *Altruist, LLC v. Medex Patient Transport, LLC*, a franchisee alleged that the franchisor failed to disclose its owner's recent bankruptcy, a material fact required under the FTC Franchise Rule.<sup>138</sup> While the franchisee ultimately obtained rescission through arbitration, the process imposed significant burdens, delays and costs, that undermined the value of the remedy.<sup>139</sup> Tennessee's Consumer Protection Act ("TCPA") required the franchisee to prove that the franchisor's omission constituted a deceptive act, a higher burden of proof than the strict liability standard contemplated by the FTC Franchise Rule.<sup>140</sup>

This case illustrates two primary challenges faced by franchisees under state law. First, the requirement to arbitrate claims under Tennessee law delayed relief and added costs, a disadvantage not faced by franchisors who operate under more predictable and cost-effective terms. Second, the TCPA imposed evidentiary hurdles that would not exist under a federal private right of action. Specifically, the TCPA required proof of deceptive intent, a difficult standard when omissions, rather than explicit misstatements, are at issue. Although the franchisee prevailed, the absence of a clear and uniform federal remedy resulted in

---

<sup>138</sup> *Altruist, LLC v. Medex Patient Transp., LLC*, 308 F. Supp. 3d 943, 950 (M.D. Tenn. 2018).

<sup>139</sup> *See id.* at 946.

<sup>140</sup> *See id.* at 949.

unnecessary litigation costs and delays, underscoring the limitations of state consumer protection statutes.<sup>141</sup>

With a federal private right of action, the franchisee in *Altruist* could have bypassed arbitration and brought its claims directly in federal court. The franchisor's failure to disclose the owner's bankruptcy would constitute a clear violation of the FTC Franchise Rule, which imposes strict liability for omissions of material information. Under a federal standard, the franchisee would not need to prove that the omission was deceptive or intentional, significantly reducing the evidentiary burden.<sup>142</sup> Furthermore, a federal remedy would provide a faster and more cost-effective resolution than arbitration, ensuring that the franchisee received timely relief. This case serves as an example of how the availability of a clear federal cause of action would protect franchisees from the delays and costs associated with state arbitration and evidentiary requirements.

Furthermore, in *Schwartzco Enterprises LLC v. TMH Management, LLC*, a New York franchisee alleged that the franchisor failed to provide accurate financial disclosures in the Franchise Disclosure Document (FDD) as required by federal franchise regulations.<sup>143</sup> The franchisee argued that these omissions misrepresented the financial viability of the franchise opportunity.<sup>144</sup> However, the court dismissed the claims of fraud and negligent misrepresentation because the franchisee failed to meet New York's stringent pleading requirements under Rule 9(b), which demands detailed allegations of the "who' . . . 'what' . . . 'when' . . . 'how' and/or 'why'" of the alleged fraud.<sup>145</sup> Despite the clear omissions in the FDD, the court held that the franchisee could not sufficiently plead reliance on these omissions or establish their fraudulent nature.<sup>146</sup>

This case exposes critical flaws in state-level enforcement of franchisee protections. New York law imposes heightened pleading standards for fraud claims, a significant barrier for franchisees who

---

<sup>141</sup> See *id.* at 951.

<sup>142</sup> See Appleby et al., *supra* note 12, at 439.

<sup>143</sup> See *Schwartzco Enters. LLC v. TMH Mgmt., LLC*, 60 F. Supp. 3d 331, 339-40 (E.D.N.Y. 2014).

<sup>144</sup> *Id.* at 341.

<sup>145</sup> *Id.* at 345-46.

<sup>146</sup> See *id.* at 346.

often lack access to the detailed financial and operational information controlled by the franchisor. Moreover, the franchisee's inability to meet the reliance standard, even in the face of clear regulatory violations, highlights the inadequacy of state remedies to address franchisor misconduct. Without a federal private right of action, franchisees are forced to navigate complex state laws that often favor franchisors, leaving them without meaningful recourse for regulatory violations.

In a federal private right-of-action scenario, the franchisee in *Schwartzco* could have brought claims for the franchisor's failure to provide accurate financial disclosures under the FTC Franchise Rule. Unlike New York law, the federal standard would not require the franchisee to plead fraud with particularity or prove reliance. Instead, the focus would be on the franchisor's violation of its disclosure obligations, creating a straightforward path to recovery. By eliminating the need to meet New York's stringent pleading standards, the franchisee could have obtained rescission of the agreement and recovery of damages. A federal cause of action would ensure that franchisors face accountability for failing to comply with mandatory disclosure requirements, providing franchisees with an effective and consistent remedy.

The cases of *Yumilicious*, *Altruist*, and *Schwartzco Enterprises* collectively highlight the inadequacies of state law in addressing franchisor misconduct. State statutes impose burdensome evidentiary requirements, procedural hurdles, and fragmented enforcement mechanisms that leave franchisees without meaningful remedies. A federal private right of action under the FTC Franchise Rule would address these deficiencies by providing a uniform and enforceable standard for franchisor disclosures and conduct. By removing barriers such as heightened pleading standards, reliance requirements, and arbitration costs, a federal remedy would ensure that franchisees can hold franchisors accountable for violations, fostering a fairer and more transparent franchising system.

By closing the enforcement gaps that plague the current system, the proposed legislation would provide franchisees with uniform protections and meaningful remedies. Real-world injustices, such as those seen today, would be significantly reduced, and franchisors would have clear incentives to comply with the

Franchise Rule. This dual approach, empowering franchisees while fostering greater accountability, would not only improve individual outcomes but also strengthen the franchising industry as a whole.

#### CONCLUSION

The current enforcement framework of the FTC Franchise Rule leaves franchisees vulnerable to deceptive practices with limited recourse through inconsistent state laws and the under-resourced FTC.<sup>147</sup> Misleading financial projections, hidden fees, and exploitative contractual terms continue to harm franchisees, highlighting the urgent need for reform.<sup>148</sup>

A federal private right of action under the FTC Franchise Rule is the most effective solution to address these enforcement gaps.<sup>149</sup> By enabling franchisees to bring claims directly in federal court, this reform would provide uniform protections across jurisdictions, enhance remedies, and create a level playing field.<sup>150</sup> Safeguards such as heightened pleading standards and caps on non-economic damages would ensure that the system is not abused while offering franchisees meaningful access to justice.

This legislation would not only empower franchisees but also strengthen the franchising industry by fostering greater transparency, accountability, and trust.<sup>151</sup> Ethical franchisors adhering to the Rule's requirements would gain a competitive edge while bad actors would be deterred from deceptive practices. A consistent and enforceable framework would restore confidence in the franchising model and benefit all stakeholders.

---

<sup>147</sup> See Stanley M. Dub, *In Support of a New Uniform Franchise Disclosure Act; If Not Now, When*, 39 FRANCHISE L.J. 389-90 (2020) (noting the FTC's limited capacity and lack of resources for individual enforcement efforts).

<sup>148</sup> See generally Elliot Ginsburg & Carmen Caruso, *Fraud by Omission: An Argument for Broader Disclosures and Renewed Enforcement*, 35 FRANCHISE L.J. 1, 5 (2015).

<sup>149</sup> See generally Appleby et al., *supra* note 12 (discussing the lack of private remedies under the FTC Rule and challenges in seeking recourse).

<sup>150</sup> See Harper Palmer, *Regulating the Relationship between Franchisor and Franchisee: Has the American Dream Become a Corporate Scheme*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 186, 197 (2022) (advocating for a private right of action to empower franchisees and ensure accountability).

<sup>151</sup> See Robert W. Emerson, *Transparency in Franchising*, 2021 COLUM. BUS. L. REV. 172, 178 (2021) (emphasizing transparency as essential to improving franchising relationships and reducing disputes).

Franchising has long been celebrated as a pathway to entrepreneurship, but franchising's promise is too often undermined by risks and power imbalances.<sup>152</sup> By introducing a federal private right of action, Congress has the opportunity to close the enforcement gap, ensuring franchisees are not left to bear the financial and emotional toll of regulatory deficiencies. This reform would honor the entrepreneurial spirit at the heart of franchising by creating a fairer and more sustainable system.

The time to act is now. Congress must enact this transformative legislation to protect franchisees, uphold the integrity of the franchising industry, and reaffirm the Franchise Rule's purpose.<sup>153</sup> With this reform, franchisees can finally access the protections they deserve, and the franchising model can fulfill its potential as a vehicle for mutual success.

---

<sup>152</sup> See Palmer, *supra* note 150, at 186.

<sup>153</sup> Dub, *supra* note 147, at 392.