

Can't Give It Away: Statutory Prohibitions That Protect Franchisees from Releases

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Most states regulate the relationship between manufacturers and distributors in certain industries, such as motor vehicle or petroleum product sales, and many regulate the relationship between franchisors and franchisees in other businesses as well. Legislatures enacting franchise and distribution laws act on the basis of a shared recognition that prospective franchisees often face significant initial investment decisions without adequate information and come from a position of little, if any, meaningful bargaining power. As a result, registration and disclosure requirements exist in many states to protect prospective franchisees at the outset of the franchise relationship. Most of these laws require franchisors to disclose specific information directly to prospective franchisees, and many additionally direct franchisors to register and file documents with the appropriate state agency or authority.

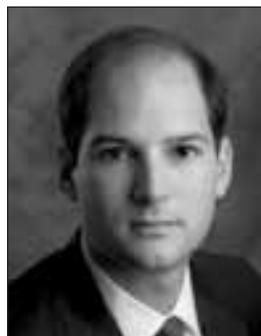
Some states also regulate the franchise or distribution relationship after its inception because legislatures perceive that the inequities of the franchise relationship extend beyond initial disclosures. Statutes requiring franchisors to have good cause for termination or nonrenewal of a franchise offer some protection to existing franchisees. In addition, some state statutes address advertising, the rights of franchisees to associate with one another, rebating, covenants not to compete, exclusivity, notice of termination or nonrenewal, and nonwaiver of statutory rights and release prohibitions.

This article discusses the statutory provisions concerning releases in state franchise and dealership acts. It also provides practitioners with a useful survey. For convenience, the authors have included a table that compiles release language from franchise and distribution acts in each of the fifty states, the District of Columbia, and federal acts specifically applicable to franchises and dealerships. Release prohibitions in franchise and distribution acts derive from the same concept of unequal bargaining power that underscores most franchise laws. It is telling that the FTC Rule, in an addition to the prohibitions of the old Franchise Rule, makes it an independent violation for a franchisor to disclaim, or require a franchisee to waive reliance on, any representation made in the disclosure document.¹

In terms of the state-specific franchise and distribution laws that regulate releases, most prohibit the franchisor from requiring the franchisee prospectively to agree to a release or waiver² of protections afforded the franchisee by that specific act or regulation.³ Most also apply only to



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prospective franchisees.⁴ Many statutes expressly permit existing franchisees to enter into releases, provided there is adequate consideration or the release is executed in connection with or as part of a voluntary settlement agreement.⁵ Problems arise for franchisors when they seek to include language in the franchise agreement to bargain around statutory protections and prohibitions. As the survey reflects, the state statutory prohibitions vary in scope.

Thus, this article examines three distinctions—in terms of legislation and case law—among statutory release prohibitions: first, whether the release prohibition applies only to claims under the respective franchise act; second, whether existing or only prospective franchisees are protected by the release prohibition; and,

third, whether the law prohibits only prospective releases.

Beyond these issues, however, the authors hope to encourage readers to consider all of the available options when asserting a release as a defense or arguing that a release is invalid. For example, an applicable unfair and deceptive trade practices act or even consumer protection act may alone, or in conjunction with the franchise act, prohibit or invalidate a release that a franchisee executed. On the other hand, common law considerations may convince a court to enforce a release that a franchisor insisted upon, particularly if the claim released was known to the franchisee at the time of execution.

DOES THE PROHIBITION APPLY ONLY TO CLAIMS UNDER THE FRANCHISE ACT?

LEGISLATION

Most state franchise acts prohibit releases or waivers of claims arising under the act itself,⁶ but a few statutes forbid franchisors from requiring franchisees to relieve the franchisor of any liability. The Utah New Automobile Franchise Act and Utah Powersport Vehicle Franchise Act, for example, prohibit franchisors from requiring franchisees prospectively

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to agree to a release that would relieve a franchisor of “any liability.”⁷⁷ The Georgia Motor Vehicle Fair Practices Act prohibits franchisors from requiring dealers prospectively to assent to a release that would relieve any person from liability to be imposed “by law,” without limitation to that act.⁸ Evidently, the Georgia legislature purposefully avoided such a limitation. In its statutes regulating dealers of agricultural equipment, the Georgia legislature made it unlawful and a violation of that code for a manufacturer to require a dealer to assent to a release that would relieve any person from liability imposed “by this article,” as opposed to “by law.”⁹⁹

Other state acts forbid franchisors from requiring franchisees to release or waive any right that a franchisee has under any state law. The Illinois Franchise Disclosure Act of 1987 states that “[a]ny condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void.”¹⁰ The South Dakota Franchise Act provides:

Any condition, stipulation, or provision in any agreement evidenced by a franchise agreement, sales agreement, security agreement, or other form of agreement or arrangement of like effect, purporting to waive compliance with any provision of this chapter, or other provision of state law applying to such agreements is void as a matter of public policy.¹¹

Three other state franchise acts have unique and more specific provisions. The Iowa Franchise Act prohibits franchisors from obligating a franchisee, as a condition to a transfer of a franchise, to relinquish any rights unrelated to the franchise proposed to be transferred or to enter into a release of claims that is not mutual.¹² The Minnesota Motor Vehicle Fuel Franchise Act prohibits parties to a marketing agreement from requiring that the other party assent to a release and further prohibits the inclusion of a release of claims as a condition to entering into the marketing agreement.¹³ Such a waiver or release is void.¹⁴ The Louisiana Motor Vehicle Commission Law prohibits franchisors from requiring dealers to assent to a release that would relieve any person from liability to be imposed by law unless the release is entered into in connection with a settlement agreement to resolve a pending matter or litigation.¹⁵

The federal Petroleum Marketing Practices Act (PMPA) includes a release prohibition that covers waivers of federal and state law. It states that “[n]o franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive—(A) any right that the franchisee has under this subchapter or other Federal law; or (B) any right that the franchisee may have under any valid and applicable State law.”¹⁶ The Virginia Petroleum Products Franchise Act prohibits waivers of rights afforded by that act and also by the PMPA: “Any provision in any agreement or franchise purporting to waive any right or remedy under this chapter or any applicable provisions of the Petroleum Marketing Practices Act (15 U.S.C. § 2802 et seq.) shall be null and void.”¹⁷

CASE LAW

When confronted with waiver and release allegations, courts inevitably examine the scope of release provisions to determine how broad the provision is, regardless of the applicable law. Courts also frequently will consider issues of fraud, duress, illegality, or mistake. Where the applicable law does not limit the scope of claims a franchisee can legally waive or the conditions under which the release may be validly executed, courts look to certain factors to determine whether the release is valid. Such factors include whether (1) the parties were in an adversarial relationship at the time the release was executed, (2) the party signing the release was represented by counsel, (3) the releasor knew that he or she should not rely on the releasee’s representations, (4) the releasor demanded information or relevant materials prior to executing the release, and (5) there was consideration.¹⁸

Arizona, for example, does not have a general franchise act applicable to hotel franchises that prohibits the release of certain claims. Thus, when Ramada Franchise Systems franchisees signed an amendment to their franchise agreement that released the franchisor from “any and all claims and causes of action whatsoever,” and there was no fraud or mutual mistake, the release was valid.¹⁹ The release was found to bar the franchisees’ claim that the doctrine of equitable recoupment should limit the amount of damages awarded to the franchisor.²⁰

In *Western Chance #2, Inc. v. KFC Corp.*, the Ninth Circuit, also applying Arizona law, held that a genuine issue of material fact existed as to the intended scope of a general release the parties had executed in connection with litigation over the closure of one of the franchisee’s outlets, thus precluding summary judgment.²¹ The general release purported to release franchisor Kentucky Fried Chicken from “any and all claims, demands, causes or action, and liabilities of every kind and nature, known and unknown, suspected and unsuspected, held by [franchisee] and relating to the subject matter of the litigation or any other matter involving [franchisee’s] franchise and commercial relationship with KFC.”²²

The North Dakota Motor Vehicle Dealer Licensing Law also does not prohibit releases of certain claims by existing franchisees.²³ Thus, when the District of New Jersey was faced with release language in a settlement agreement between Ford Motor Company and one of its distributors, calling for the application of North Dakota law, the court noted that under North Dakota law, “[i]f [a] contract is unambiguous, the intentions of the parties are to be ascertained from the contract alone.”²⁴ The release provision stated:

The Wallwork Parties release and forever discharge Ford . . . from all claims, actions, causes of actions, rights, or obligations, whether known or unknown, whether contingent or liquidated, of every kind, nature and description which arise directly or indirectly from any act or omission, or alleged act or omission, by each or any of the Ford Released Parties that occurred on or prior to the date of this Agreement

which the Wallwork Parties . . . has, had or may have against [Ford], including, without limitation, all allegations made or which could have been made in the Action and any and all liability, actions, claims, demands, causes of action, or suits arising out of, or resulting from, or in any manner pertaining to, damages, loss of enjoyment, loss of services, loss of business, loss of business opportunities, loss of profits, contractual rights, torts and any and all claims which might hereinafter result to the Wallwork Parties, arising out of or in any way connected with the Wallwork Parties' operation of the Ford dealership and other operations in Fargo, North Dakota, provided that (i) third-party claims brought for personal injury, product liability, breach of warranty; (ii) the obligations set forth under paragraphs 19, 21 and 23 of Wallwork's Ford Sales and Service Agreement for car and light truck; and (iii) Ford's obligation to make customary payments or grant customary credits for transactions between Ford and Wallwork in the ordinary course of business, are not released.²⁵

The release was unambiguous and barred the Wallwork parties' claims in the case, the court held. As a result, the court granted Ford's summary judgment motion with respect to those claims.²⁶

Courts also regularly examine the underlying franchise agreements between the parties in determining the validity of release provisions. The fact that the underlying agreement calls for the execution of releases at the time of renewal, transfer, or termination may support a franchisor's claim that a release in its favor is valid. In the Ford Motor Company case discussed above, the court was called upon to examine other release language in light of applicable Michigan law.²⁷ Multiple Ford dealers elected to terminate their dealership agreements following Ford's sale of its heavy-truck business, when Ford stopped supplying heavy trucks to its dealers.²⁸ The resigning dealers were required to execute general releases.²⁹ The Ford Heavy Duty Truck Sales and Service Agreements executed by plaintiffs all contained the following provision:

TERMINATION BENEFITS FULL COMPENSATION; GENERAL RELEASE 23. In the event of termination or nonrenewal of this agreement by the Company, the Company, within thirty (30) days after the effective date thereof, shall submit to the Dealer (1) a written tender of the benefits provided for in paragraph 21 (and in paragraph 22 where applicable) and (2) a form for the Dealer to use to elect either to reject all of such benefits or to accept one or more of them as full and complete compensation for such nonrenewal or termination. The Dealer shall have thirty (30) days after receipt of such form to return the same to the Company evidencing his election. If the Dealer fails to return the form stating such election within such thirty (30) days, the Dealer shall be deemed to have elected to accept such benefits. *Upon the Dealer's election to accept any of such benefits, or upon the Dealer's demand of any such benefits upon any termination or nonrenewal by the Dealer, the Company shall be released from*

*any and all other liability to the Dealer with respect to all relationships and actions between the Dealer and the Company, however claimed to arise except any liability that the Company may have under subparagraph 19(f) and said paragraphs 21 and 22, and except for such amounts as the Company may have agreed in writing to pay to the Dealer. Simultaneously with the receipt of any benefits so elected or demanded, the Dealer shall execute and deliver to the Company a general release with exceptions, as above described, satisfactory to the company.*³⁰

The termination letters for all of the resigning dealers, which effectively terminated their agreements with Ford, stated that the resignations were being conducted pursuant to the provisions of the Ford Heavy Duty Truck Sales and Service Agreements. Most of the letters specifically referenced paragraph 23 of those agreements.³¹ Although the resigning dealers argued that Ford improperly obtained the releases, the court noted that this argument ignored the fact that the subject of the release was in exchange for termination benefits that were agreed upon well before the pending dispute arose.³² The court held that the resigning dealers' releases were enforceable under Michigan law.³³

The question for a court confronted with a release that is not prohibited by statute may be whether it appears to be "mere enforcement of terms to which [the franchisees] agreed when originally signing their franchise agreement."³⁴ In a case involving former owners of a West Coast Video franchise outlet in Maryland, the federal bankruptcy court in the Eastern District of Pennsylvania suggested in dicta that a general release by the former franchisees of the debtor West Coast Video was valid and barred their claims against the franchisor.³⁵

The release in the West Coast Video case was executed as part of the franchisees' assignment of their West Coast Video franchise to a buyer that assumed the franchisees' debt. In the release, the franchisees agreed to

[r]elease absolutely, unconditionally and forever discharge Franchisor and its officers, directors, affiliates, shareholders, agents and servants from any and all claims, actions, causes of action, damages, costs, debts, obligations, responsibilities, and liabilities of every name, nature, kind and description whatsoever, whether in tort, in contract, or under statute, arising directly or indirectly out of the negotiation of, execution of, performance of, non-performance of, or breach of the Franchise Agreement.³⁶

The bankruptcy court specifically took note that there was no evidence of coercion, direct consideration was received, and language contained in the original franchise agreement executed by the franchisee supported the franchisor's insistence that the franchisees execute a general release in favor of the franchisor as an absolute condition to its approval of the sale.³⁷ The bankruptcy court made its observations "as guidance to the parties and to possibly assist the overburdened state court in assessing the merits" of the matter.³⁸

As the bankruptcy court anticipated, the release was later held valid and enforceable by the Eastern District of Pennsylvania against the franchisees under Pennsylvania law. The release was found to bar the franchisees' Racketeer Influenced and Corrupt Organizations (RICO) Act claims against the franchisor. The franchisees argued unsuccessfully that the Maryland Franchise Registration and Disclosure Law (MFRDA) applied to their case (because their outlet operated in Maryland) and invalidated the release.³⁹ The franchisees relied on § 14-226 of the MFRDA, which provides: "As a condition of the sale of a franchise, a franchisor may not require a prospective franchisee to agree to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability under this subtitle."⁴⁰

The district court held that Pennsylvania law applied but found that even assuming Maryland law applied to the case, § 14-226 did not invalidate the release at issue because the parties' franchise agreement did not require the prospective franchisee to assent to a release. Rather, it stated that the franchisor may require a release as a condition of providing consent to a transfer or other such act.⁴¹ The district court found that by the time the franchisees were required to sign the release, they were no longer prospective franchisees protected by § 14-226 of the MFRDA.⁴²

On appeal, the Third Circuit affirmed. The court, however, did not address whether the district court correctly held § 14-226 inapplicable on the ground that plaintiffs were not prospective franchisees when they executed the release. The court instead held that assuming the Maryland law applied, the release barred plaintiffs from bringing their federal RICO action notwithstanding § 14-226 because § 14-226 invalidated the release only as to causes of action "grounded in the MFRDA."⁴³ Maryland could have forbidden franchisors from requiring franchisees to agree to a release that would relieve a person from liability generally, as other states have done, by invalidating releases of any claims or liability, but instead Maryland had limited the scope of its prohibition to liability only "under this subtitle."⁴⁴ Thus, the RICO action was barred by the release.

In a case involving a proposed transfer of an America's Favorite Chicken fast-food franchise, a Michigan appellate court analyzed similar statutory language limiting release prohibitions to the franchise act. That court held that the franchisor had good cause not to consent to the franchisees' transfer of a franchise where the franchisees refused to execute a general release that the franchisor required as a condition to its consent to the transfer.⁴⁵ The Michigan Franchise Investment Law (MFIL) provides in § 27:

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise: (b) A

Other state acts forbid franchisors from requiring franchisees to release or waive any right that a franchisee has under any state law.

requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.⁴⁶

The America's Favorite Chicken franchisees refused to execute a general release to accomplish a transfer of their franchise even after the franchisor modified the release so that it did not encompass any claims the franchisees had under the MFIL. As a result of the franchisees' refusal to execute the release, the franchisor refused to consent to the transfer. The franchisees claimed their refusal to sign a release was not good cause for the franchisor to refuse to consent to the transfer of their franchise.

The court disagreed with the franchisees and held that provisions of the franchise agreement entitling the franchisor to demand release of any and all claims as a condition of approving the transfer of the franchise were valid. The franchise agreement between the parties stated that the franchisor "shall not unreasonably withhold consent to any transfer," provided, however, that prior to the time of the transfer, the franchisee shall have "executed a General Release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor."⁴⁷ The franchisees' refusal to provide the release at the time of the transfer was a default of the franchise agreement, and failure to cure that default was good cause under the MFIL for the franchisor not to approve the transfer.⁴⁸

According to the court,

Under terms of the parties' contract, defendant was entitled to demand a release of any and all claims as a condition of approving the transfer of the franchise. Thus, unless the provision is void and unenforceable under the MFIL, defendant was entitled to withhold approval because plaintiffs refused to release their claims.⁴⁹

The court determined that the release sought by the franchisor did not encompass any claims the franchisees had against the franchisor under the MFIL and did not deprive the franchisees of any protections provided for by that statute and therefore was not void or unenforceable. Further, it was commercially reasonable for the franchisor to require resolution of all non-MFIL claims before the franchisor approved a transfer, the court concluded.⁵⁰

The New York Franchise Sales Act also prohibits franchisors from requiring releases by franchisees that relieve the franchisor from liability under the act.⁵¹ Specifically, the act provides that "[i]t is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability

imposed by this article.”⁵² New York courts have held that a waiver or release provision pursuant to which a franchisor seeks unlawfully to avoid the antifraud provisions of the New York Franchise Sales Act is contrary to the purposes of the act and will not bar a franchisee’s claims.⁵³ After executing a franchise agreement containing a general waiver and release, a Union Carbide franchisee brought fraud claims against the franchisor. The franchisor argued that the franchisee’s misrepresentation claims were precluded by the waiver and release provision, pursuant to which the “[f]ranchisee expressly and specifically waives any claims, demands or damages arising from . . . the loss of association with or identification of Union Carbide Marble Care, Inc.”⁵⁴ The court held that the provision in the franchise agreement unlawfully permitted the franchisor to circumvent the antifraud provisions of the act by contracting out of statutory liability.⁵⁵ Accordingly, the court denied the franchisor’s motion to dismiss those portions of the complaint alleging violations of the New York Franchise Sales Act.⁵⁶

Expressing a similar sentiment, in *Capital Equipment, Inc. v. CNH America, LLC*, the Eastern District of Arkansas noted that the franchisor could not use its dealership agreements to require franchisees to release statutory claims under the Arkansas Franchise Protection Act.⁵⁷ Like many such statutes, the Arkansas Franchise Protection Act prohibits a franchisor from requiring a franchisee to assent to a release that would relieve a person of liability imposed by that act “at the time of entering into the franchise arrangement.”⁵⁸ As discussed further in the next section, an existing franchisee may be bound by a release executed later in the franchise relationship.

DOES THE PROHIBITION APPLY ONLY TO NEW OR PROSPECTIVE FRANCHISEES?

LEGISLATION

Most statutes that prohibit franchisors from requiring releases seem designed to protect prospective or new franchisees from waiving claims that arose during the disclosure process, about which they probably have no knowledge when executing the franchise agreement. This is not surprising given the purpose of most franchise acts. In fact, of the many acts with nonwaiver and release provisions prohibiting releases of liability under the specific act or chapter, nearly half limit the protection to new or prospective franchisees. For example, the Arkansas Franchise Practices Act prohibits any franchisor from requiring a franchisee at the time of entering into a franchise arrangement to assent to a release that would relieve any person from liability imposed by that act.⁵⁹ The Nebraska Franchise Practices Act contains the

same prohibition,⁶⁰ as do the New Jersey Franchise Practices Act,⁶¹ the Hawaii Franchise Investment Law,⁶² and the Connecticut Gasoline Dealer’s Act.⁶³ The Missouri Motor Vehicle Franchise Protection Act and the Missouri Motorcycle and All-Terrain Vehicle Franchise Practices Act both make it unlawful for a franchisor to require a franchisee at the time of entering into a franchise arrangement to assent to a release that would relieve any person from liability imposed by those acts,⁶⁴ as does the Pennsylvania Gasoline, Petroleum Products and Motor Vehicle Accessories Law.⁶⁵ The North Dakota Franchise Investment Law provides: “Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order hereunder is void.”⁶⁶ The Illinois Franchise Disclosure Act of 1987, Minnesota Franchise Act, and Wisconsin Franchise Investment Law do substantively the same.⁶⁷

On the other hand, affording specific attention to existing franchisees in the midst of termination, cancellation, or nonrenewal, the Alabama Motor Vehicle Franchise Act provides in relevant part:

Notwithstanding the terms, provisions, or conditions of any dealer agreement or franchise or the terms or provisions of any waiver, prior to the termination, cancellation, or nonrenewal of any dealer agreement or franchise, the following acts or conduct shall constitute unfair and deceptive trade practices: (3) For any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch or distributor representative to do any of the following: To prospectively assent to a release, assignment, novation, agreement, waiver, or estoppel (i) which would relieve any person from any liability or obligation under this chapter.⁶⁸

The Iowa Franchise Act is also attentive to existing franchisees. That act voids any provision requiring a franchisee to waive compliance with or relieve a person of a duty or liability imposed by, or a right provided by, the act, including rights provided by the act related to transfer, encroachment, and termination.⁶⁹ The Iowa Franchise Act further provides that “[a] franchisor, as a condition to a transfer of a franchise, shall not obligate a franchisee to undertake obligations or relinquish any rights unrelated to the franchise proposed to be transferred, or to enter into a release of claims broader than a similar release of claims by the franchisor against the franchisee which is entered into by the franchisor.”⁷⁰ This provision is unique among the state franchise acts.

Other acts appear to extend their prohibitions beyond prospective or new franchisees but use language less specific than the Iowa Franchise Act.⁷¹ The Michigan Franchise

Investment Law, for example, makes void and unenforceable any provision in any document relating to a franchise that a franchisee assent to a release or waiver depriving it of rights and protections provided by that law.⁷²

CASE LAW

As discussed above, at least one court has held that the MFRDA did not invalidate a release executed by a video store franchisee because the parties' franchise agreement did not require the prospective franchisee to assent to a release. Rather, the franchise agreement permitted the franchisor to require a release from the franchisee as a condition of providing consent to a transfer later. By the time the franchisees were required to sign the release, they were no longer prospective franchisees protected by § 14-226 of the law.⁷³ This outcome, and the statutory language in most franchise acts that evidences a legislative intent to protect prospective franchisees, is consistent with the idea expressed in some statutes and cases that parties ought to be able to settle bona fide disputes or enter into valid release agreements for consideration and absent duress.⁷⁴

As the South Carolina Supreme Court noted in *Toyota of Florence, Inc. v. Lynch*, the state's Manufacturers, Distributors and Dealers Act does not make any and all releases void; rather, the plain language of the act invalidates a release only if the dealer is required to assent to it.⁷⁵ Specifically, the act provides:

(3) It shall be deemed a violation of paragraph (a) of § 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof:

(k) To require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter.⁷⁶

A South Carolina federal district court relied on the holding in *Lynch* when it decided *Hyman v. Ford Motor Co.*⁷⁷ The parties there had entered into a dealership agreement in 1991. Paragraph 21 stated, in relevant part:

Upon termination or nonrenewal of this agreement by the Company, the Dealer may elect as provided in paragraph 23 or, upon termination or nonrenewal of this agreement by the Dealer, the Dealer may demand in his notice of termination or nonrenewal, to have the Company purchase or accept upon return from the Dealer, in return for his general release specified in paragraph 23: [unused parts and inventory].

Paragraph 23 in turn provided:

In the event of termination or nonrenewal of this agreement by the Company, the Company, within thirty (30) days after the effective date thereof, shall submit to the Dealer (1) a written tender of the benefits provided for in paragraph 21. . . .

Upon the Dealer's election to accept any of such benefits, or upon the Dealer's demand of any such benefits upon any termination or nonrenewal by the Dealer, the Company shall be released from any and all other liability to the Dealer with respect to all relationships and actions between the Dealer and the Company. . . . Simultaneously with the receipt of any benefits so elected or demanded, the Dealer shall execute and deliver to the Company a general release with exceptions, as above described, satisfactory to the Company.⁷⁸

In 1996, the dealer executed a general release in exchange for the repurchase of assets by Ford and the assignment of the dealership agreement to a replacement dealer.⁷⁹ The general release was supported by adequate consideration.⁸⁰ The court noted that even if the dealer was under economic duress at the time of the assignment of the dealership agreement, the dealer did not allege that he was under duress when he entered into the franchise agreement, which called for the release Ford demanded at the time of the assignment.⁸¹ The court therefore determined that the general release was not void. The release did not violate the South Carolina Regulation of Manufacturers, Distributors and Dealers Act because the dealer was not required to execute the release but "did so under his own volition, after consultation with his attorney. Further, he voluntarily entered into the agreement with Ford in 1991 and agreed to the terms of the parts return privileges."⁸² The court also noted that the dealer ratified the release by retaining the benefits of the release, nearly \$200,000 for over three years.⁸³

As in the Ford Motor Company cases discussed in this section and above, it is not uncommon for franchisors, and particularly motor vehicle manufacturers, to require franchisees to execute releases in connection with the exercise of certain termination options. In a case involving Volkswagen, a Pennsylvania district court held that a motor vehicle dealer had standing to bring an action against an automobile manufacturer alleging breaches of the parties' franchise agreement, despite having signed a release.⁸⁴ The dealer executed a "Surrender of Dealer Agreement, Assignment of Franchise and Release" document in connection with the transfer of its franchise. The release stated that the manufacturer would be released from "all claims, demands, causes of action, judgments and executions . . ." except for "any claims that may exist against [manufacturer] with respect to its actions concerning the proposed dealership transferees."⁸⁵ The court found that the transfer agreement between the dealer and its successor did not convey clear intent to release the manufacturer from all liability with respect to the transfer, and the release carved out claims such as those advanced in the case.⁸⁶ However, in examining the dealership's claims, the court found that the dealer did not meet its burden of proving the manufacturer liable on all counts, and the court directed verdict to enter in favor of the manufacturer on all counts.⁸⁷

A general release executed in connection with a transfer that removes a franchisee from a franchisor's system will,

DOES THE PROHIBITION IMPOSE LIMITATIONS ONLY ON PROSPECTIVE LIABILITY?

LEGISLATION

more often than not, successfully prevent the franchisee from later maintaining an action against the franchisor.⁸⁸ A closer call arises when a franchisee executes a general release in connection with a renewal or extension of one agreement, and the franchisor later applies the release to preclude claims arising out of or related to a separate agreement. In a GNC Franchising case, though, another Pennsylvania district court granted summary judgment in favor of a franchisor on a franchisee's claims of breach of contract and failure to negotiate the renewal of a sublease. The court found that both claims were barred by a general release executed by the franchisee in connection with, and in consideration of, an extension of the expiration date of a franchise agreement for a store unrelated to the articulated claims.⁸⁹ The general release provided:

For and in consideration of the extension of the expiration date of the Franchise Agreement for GNC Store #6561 located at Perris Plaza, 1688 North Perris Blvd., Suite 3 in Perris, California, as of *April 26, 2004*, the Franchisee and the respective corporate parents, subsidiaries, affiliates and successors in interest and each of their respective directors, officers, agents, servants, employees as applicable (collectively "Franchise"), whether specifically mentioned herein or not, do hereby release, acquit and forever fully discharge Franchisor and each of its respective parents, subsidiaries and affiliates successors in interest, and each of its respective directors, officers, agents, servants, employees and whether specifically mentioned herein or not, of and from any and all liability, actions, causes of action, claims, demands, damages, costs, expenses, and compensation of whatsoever nature or character, whether known or unknown, foreseen or unforeseen, direct or indirect, contingent or actual, liquidated or unliquidated, whether in contract or in tort on account of or in any way connected with or related to Franchisor's offer, sale, grant of, construction or operation of or development and/or franchise rights in any and all franchise locations now or at any time awarded to the undersigned and from the inception of any contract with Franchisor to the date of this Release. It is the express intention of the undersigned that this Release be as broad as permitted by law. Franchisee represents and warrants that execution hereof is free and voluntary; that no inducements, threats, representations, or influences of any kind were made or exerted by or on behalf of Franchisor; and that, prior to the execution hereof, undersigned was given the opportunity, if desired, to consult with counsel. This Release shall be binding upon the undersigned, their heirs, successors and legal representatives.⁹⁰

Although the franchise outlets were located in California, the agreements at issue included Pennsylvania choice-of-law provisions; and, as such, the release was not prohibited by statute. The court found that the release barred the contract-based claims and granted summary judgment on the franchisee's tortious interference claim on other grounds.⁹¹

Most motor vehicle franchise acts, as well as some other franchise acts, prohibit franchisors from requiring dealers prospectively to assent to a release that would relieve any person from liability under that specific act.⁹² The Colorado Automobile Dealers Act and Powersports Vehicle Dealers Act do so but, unlike most other acts, specifically and expressly permit such a release "in settlement of a bona fide dispute."⁹³ The Delaware Motor Vehicle Franchising Practices Act prohibits franchisors from requiring dealers prospectively to assent to a release that would relieve any person from liability under that act⁹⁴ but goes on to state that it "shall not preclude dealers . . . from entering into valid releases consistent with the policy of this chapter." But "in no case shall a general release required to be executed as a condition to renewal of a franchise agreement be deemed to be consistent with the policy of this chapter."⁹⁵

The Georgia Motor Vehicle Fair Practices Act prohibits franchisors from requiring dealers prospectively to assent to a release that would relieve any person from liability to be imposed by law without limitation to that act.⁹⁶ Like the Georgia Motor Vehicle Fair Practices Act, the Louisiana Motor Vehicle Commission Law does not limit the scope of prohibited releases to that specific law. The statute prohibits franchisors from requiring dealers to assent to a release that would relieve any person from liability to be imposed by law unless the release is entered into in connection with a settlement agreement to resolve a pending matter or litigation.⁹⁷ The Massachusetts Automobile Dealer's Bill of Rights Statute prohibits releases that would prospectively relieve any person from liability imposed by that law, however, only if the manufacturer coerced the dealer to assent to the release.⁹⁸

A significant number of other motor vehicle franchise acts prohibit a manufacturer from requiring a motor vehicle dealer to assent to a release that would relieve any person from liability imposed by that particular statute and that would do so without limitation as to whether the manufacturer requires the release prospectively.⁹⁹ The New York Franchised Motor Vehicle Dealer Act, like at least six other such acts, prohibits a motor vehicle franchisor from requiring a franchised dealer to assent to a release that would relieve any person from liability imposed under that article. The New York law alone expressly adds that it does not prohibit the dealer from entering into a valid release or settlement agreement with a franchisor.¹⁰⁰

Beyond the automobile acts, the Indiana Deceptive Franchise Practices Act prohibits prospective releases as follows:

Sec. 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: (5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to

relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator.¹⁰¹

The Tennessee Franchise Terminations, Nonrenewals or Modifications Law is similar. It provides:

No franchisee may prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from any liability or obligation under this part, or would require any controversy between a franchisor or franchisee to be referred to any person other than the duly constituted courts of this state or the United States, or a state regulatory agency charged by law with adjudicating such controversy, if the referral would be binding on the franchisee.¹⁰²

The California Franchise Investment Law expressly permits modifications of franchise agreements between franchisors and existing franchisees and states that the modification may include a general release of all known and unknown claims by a party to the modification.¹⁰³

CASE LAW

Prospective releases purport to relieve the releasee of all liability for anything it does in the future after the release is signed. Many releases of claims against franchisors are not prospective and release only those claims the franchisee may have on the date of the agreement. This eliminates the need for legal analysis of whether a claim is barred, leaving the courts to decide only issues of fact. Notwithstanding, there are those franchisors that seek and obtain prospective releases.

In the well-known decision *Scheck v. Burger King Corp.*,¹⁰⁴ the Southern District of Florida was faced with two release provisions, including one that arguably released future claims. The first release provided in relevant part:

[I]n further consideration of the execution of this Agreement . . . [the parties] mutually release one another . . . of and from any and all claims whatsoever in law or in equity, which it may have, nor has or may have by reason of any matter, cause or thing whatsoever arising out of or in connection with the Lease, the relationship between [the parties] or any other cause or circumstance.¹⁰⁵

The second release clearly applied only retrospectively and stated:

Assignor and Assignee hereby mutually release each other . . . of and from any and all claims whatsoever, in law or in equity, which they have or may have by reason of any matter, cause or thing whatsoever arising out of or in connection with the Agreements, relationships, or a course of dealings between [the parties] or for any other cause or circumstance which existed prior to the date of this Agreement.¹⁰⁶

The court recognized that “[u]nder Florida law, a general release ‘will ordinarily be regarded as embracing all claims or demands which had matured at the time of its execution.’”¹⁰⁷ And “[c]onversely, a general release cannot be held to bar a claim which did not exist when it was signed.”¹⁰⁸ Therefore, the releases did not bar the franchisee’s claims against the franchisor raised in the action. Even though the franchisee may have had an idea that those claims would arise, they were not yet ripe at the time of the execution of the release.¹⁰⁹

Also following Florida law, the Middle District of Florida recently held that a release provision of a settlement agreement between a new motor vehicle franchisor and a franchised dealer, in which the dealer released the franchisor from liability for any act committed by the franchisor with respect to its dealership prior to the date of the agreement, was not void as a matter of public policy.¹¹⁰ The court explained, “The Florida legislature . . . has set forth . . . specifically its policy concerning releases relating to motor vehicle dealerships in Section 320.64(20) of the Florida Statutes. This provision prohibits, in a franchise agreement, the prospective release of claims concerning violations of the DPA.”¹¹¹ The court found that as the release did not apply prospectively, it did not “run afoul” of § 320.64(20), so the court did not hold the release invalid as contrary to public policy.¹¹²

Similarly, in *Lee v. GNC Franchising, Inc.*, the Ninth Circuit held that a release executed by a franchisee in consideration of a renewal was not unconscionable or in violation of California public policy because the release did not purport to absolve the franchisor of future liability for fraud or other intentional wrongs.¹¹³ Likewise, the First Circuit, in *Rochester Ford Sales, Inc. v. Ford Motor Co.*, was called upon to construe Michigan and New Hampshire law and enforced a release that was not “prospective” or “mandatory” but rather was executed in accordance with the terms of the original dealership agreement, much like in the other cases involving Ford Motor Company discussed in this article.¹¹⁴ The court held that the release here was not a “prospective release” and therefore did not violate Michigan’s Dealer-Agreement Statute,¹¹⁵ furthermore, it was not “mandatory” and therefore was not prohibited by New Hampshire’s Vehicle Manufacturers, Distributors and Dealers Act.¹¹⁶ The release was given in exchange for Ford’s approval of a transfer of the dealership and repurchase of parts in the dealership’s inventory.¹¹⁷ The dealership was free to refuse the repurchase and assignment option and retain its right to sue Ford Motor Company but chose otherwise.¹¹⁸

In *Edwards v. Kia Motors of America, Inc.*, the Alabama Supreme Court answered a question regarding releases certified to it by the Eleventh Circuit upholding the validity of a retrospective release based on the Alabama Motor Vehicle Franchise Act.¹¹⁹ In that case, plaintiff dealer sought to sell his dealership. Pursuant to his dealership agreement with Kia, the dealer was required to secure Kia’s approval of the transfer.¹²⁰ Kia required the dealer to execute a mutual release agreement as a condition of its approval of the sale, which provided in relevant part that the parties agreed to

release, acquit and forever discharge one another of and from all claims which have arisen or may ever arise, demands and causes of action arising from, related to, or in any manner connected with the sale and service of Kia Products, including, without limitation, the Dealer Agreement, and from any and all claims for damages, related to or in any manner connected with the Dealer Agreement or the parties' business relationship.¹²¹

After executing the release and selling the dealership, the dealer brought an action alleging that Kia violated Alabama's Motor Vehicle Franchise Act and engaged in other wrongful acts.¹²² Faced with the release, the Eleventh Circuit certified the following question to the Alabama Supreme Court: "[Does] the Franchise Act permit[] an automobile dealer to bring a claim under the Act, despite the fact that both parties already executed a mutual release agreement in which the dealer relinquished all existing legal claims against the manufacturer in exchange for valid consideration[?]"¹²³ The state supreme court answered the question in the negative.

The Alabama Motor Vehicle Franchise Act provides in relevant part:

Notwithstanding the terms, provisions, or conditions of any dealer agreement or franchise or the terms or provisions of any waiver, and notwithstanding any other legal remedies available, any person who is injured in his business or property by a violation of this chapter by the commission of any unfair and deceptive trade practices, or because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in a court of competent jurisdiction in this state to enjoin further violations, to recover the damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.¹²⁴

Therefore, the state court found the dispositive issue before it to be whether the legislature intended the term *any waiver* to apply to the type of mutual release agreement required by *Kia*,

in other words, whether the legislature intended § 8-20-11 [of the Motor Vehicle Franchise Act] to apply so broadly as to preclude parties subject to [the Motor Vehicle Franchise Act] from reaching any form of binding agreement by which then existing, ripe claims could be mutually settled without resort to judicial determination of the claim.¹²⁵

In concluding it did not, the court considered the purpose of the Motor Vehicle Franchise Act, which, it stated, "is to protect the state's citizens from abuses by motor vehicle

manufacturers and dealers, and, to that end, to regulate manufacturers and dealers and the dealings between manufacturers and their dealers."¹²⁶ "If the legislature had wished to include the settlement and release of known claims in the language of § 8-20-11," the court noted, "it knew how to do so."¹²⁷ The court explained that "[t]he legislature lists prospective releases and waivers in describing specific unfair trade practices under the Franchise Act. . . . The legislature did not similarly include a retrospective release as an unfair trade practice or include such a release in its list of ineffective provisions in § 8-20-11."¹²⁸ Thus, the remedial purpose of the Motor Vehicle Franchise Act prohibited the dealer, having released Kia from such claims, from bringing his action against Kia.

Despite the public policy issues that underscore the prohibitions on prospective releases in this context, at least one case has upheld a prospective release of a franchisor by a franchisee where adequate consider-

ation was given and the terms of the release were unambiguous. Under Louisiana law, the Eastern District of Louisiana held that an unambiguous provision in an assignment agreement releasing a franchisor from future claims by its franchisee, following assignment of franchise rights to a third party, was valid and supported by adequate consideration despite the franchisee's claim that the franchisor unreasonably withheld consent to transfer by requiring the franchisee to sign the release.¹²⁹ The release in that case provided:

Assignor hereby forever relinquishes all rights, interests and claims of whatever nature to, in or under the Development Agreement and Franchise Agreements, the purchase thereof and the relationships created thereby, and does hereby forever discharge and release Franchisor, its predecessors, its successors, and its present and former officers, directors, agents and employees from any and all claims, causes of action, obligations and liabilities arising from, under or out of the Development Agreement and Franchise Agreements prior to the effective date hereof, and further does hereby generally release all said parties from all manner of action(s), cause(s) of action, suits, damages, judgments, executions, claims and demands whatsoever in law or in equity which Assignor ever had, now has or may hereafter have, known or unknown, arising out of, under, from or in connection with the Development Agreement and Franchise Agreements, the purchase thereof, the relationships created thereby, or any other act or occurrence of any kind whatsoever.¹³⁰

CONCLUSION

Although many of the release regulations are borne from the idea that a franchisee must be protected from a more powerful franchisor, the protection is not absolute. Statutes

At least one decision has upheld a prospective release where adequate consideration was given and the release terms were ambiguous.

vary in how they limit the scope of acceptable releases. As the cases discussed above demonstrate, concepts of mutuality, good faith, and adequate consideration generally will support the validity of a general release, particularly where it is retrospective in nature.

ENDNOTES

1. 16 U.S.C. § 436.9 (Mar. 30, 2007).
2. The focus of this article is on releases and release language and specifically does not analyze federal arbitration act preemption issues that arise in connection with no-waiver statutes. For a discussion regarding whether integration clauses and choice-of-law provisions violate no-waiver statutes, see W. MICHAEL GARNER, 2 *FRANCHISE & DISTRIBUTION LAW & PRACTICE* § 10:46.
3. See table accompanying this article: ARK. CODE ANN. § 4-72-206; CAL. BUS. & PROF. CODE § 20010; CONN. GEN. STAT. §§ 42-133f, 42-133i; D.C. CODE § 36-303.01; HAW. CODE R. § 482E-6; MO. ANN. STAT. §§ 407.825, 407.1034; NEB. REV. STAT. § 87-406; N.J. STAT. ANN. § 56:10-7; OHIO REV. CODE ANN. § 1334.06; PA. CONS. STAT. § 202.4.
4. See accompanying table: ARK. CODE ANN. § 4-72-206; CONN. GEN. STAT. § 42-133i; MO. ANN. STAT. §§ 407.825, 407.1034; NEB. REV. STAT. § 87-406; N.J. STAT. ANN. § 56:10-7; PA. CONS. STAT. § 202-4.
5. See accompanying table: Georgia Motor Vehicle Franchise Practices Act, GA. CODE ANN. § 10-1-623 (June 4, 2010); GA. CODE ANN. § 10-1-627 (June 4, 2010); Illinois Franchise Disclosure Act of 1987, ILL. COMP. STAT. 705/41; Louisiana Motor Vehicle Commission Law, LA. REV. STAT. ANN. § 32:1261; Massachusetts Equipment Dealers Law, MASS. GEN. LAWS ch. 93G, § 10; Michigan Franchise Investment Law, MICH. COMP. LAWS § 445.1527; Missouri Motorcycle and All-Terrain Vehicle Franchise Practices Act, MO. ANN. STAT. § 407.1034; Nebraska Beer Distribution Law, NEB. REV. STAT. § 53-221; New York Franchised Motor Vehicle Dealer Act, N.Y. VEH. & TRAF. LAW § 463; Rhode Island Franchise Investment Act, R.I. GEN. LAWS § 19-28.1-15; Tennessee Franchise Terminations, Nonrenewals or Modifications Law, TENN. CODE ANN. § 47-25-1507; Vermont Machinery Dealerships Law, VT. STAT. ANN. tit. 9, § 4080; Virginia Motor Vehicle Dealers Act, VA. CODE ANN. § 46.2-1572.3 (Apr. 8, 2010); Washington Franchise Investment Protection Act, WASH. REV. CODE ANN. § 19.100.220; Wisconsin Motor Vehicle Dealers Law, WIS. STAT. ANN. § 218.0133; Wyoming Relations Between Malt Beverage Distributors and Manufacturers Act, WYO. STAT. ANN. § 12-9-104.
6. ALA. CODE § 8-20-4; ARK. CODE ANN. § 4-72-206; D.C. CODE § 36-310.01; FLA. STAT. §§ 686.413, 686.611; HAW. CODE R. § 482E-1; IND. CODE § 23-2-2.7-1; MD. CODE ANN. § 14-226; MICH. COMP. LAWS § 445.1527; NEB. REV. STAT. § 87-406; N.H. REV. STAT. ANN. § 339-C:8; N.J. STAT. ANN. § 56:10-7; N.Y. GEN. BUS. LAW § 687; OKLA. STAT. ANN. tit. 15, § 245A; OR. REV. STAT. § 650.210; TENN. CODE ANN. § 47-25-1510; WASH. REV. CODE ANN. § 19.100.180; WYO. STAT. ANN. § 12-9-104.
7. UTAH CODE ANN. §§ 13-14-201, 13-35-201.
8. GA. CODE ANN. § 10-1-662(a)(6) (June 4, 2010).
9. Compare GA. CODE ANN. § 13-8-15(c)(10), with GA. CODE ANN. § 10-1-662 (June 4, 2010).
10. ILL. COMP. STAT. ANN. 705/41.
11. S.D. CODIFIED LAWS § 37-5-12.
12. IOWA CODE § 523H.5.
13. MINN. STAT. § 80F.11.
14. *Id.*
15. LA. REV. STAT. ANN. § 32:1261.
16. 15 U.S.C. § 2805 (2010).
17. VA. CODE ANN. § 59.1-21.11.
18. See *Hall v. Burger King Corp.*, 912 F. Supp. 1509 (S.D. Fla. 1995).
19. *Ramada Franchise Sys., Inc. v. Capitol View II Ltd. P'ship Venture*, 132 F. Supp. 2d 358 (D. Md. 2001).
20. *Id.*
21. *W. Chance #2, Inc. v. KFC Corp.*, 957 F.2d 1538 (9th Cir. 1992).
22. *Id.* at 1543.
23. N.D. CENT. CODE § 39-22-01 et seq.
24. *Bayshore Ford Truck v. Ford Motor Co.*, No. 99-741, 2009 WL 3817930 (D.N.J. Nov. 16, 2009) (quoting *First Nat'l Bank & Trust Co. v. Scherr*, 435 N.W.2d 704, 706 (N.D. 1989)).
25. *Id.* at *11.
26. *Id.*
27. *Id.* at *8.
28. *Id.* at *1.
29. *Id.* at *7.
30. *Id.* at *8.
31. *Id.*
32. *Id.* at *10.
33. *Id.*
34. *In re W. Coast Video Enters., Inc.*, 174 B.R. 906, 913 (E.D. Pa. 1994) (reopening case to determine rights of former franchisees of debtor and holding that the franchisees were unknown creditors and the releases of nondebtors included in the reorganization plan could not be enforced against them).
35. *Id.*
36. Brief of Appellees, *Williams v. Stone*, No. 96-1433, 1996 WL 3341447, at *6 (3d Cir. Sept. 20, 1996).
37. *W. Coast Video*, 174 B.R. at 913.
38. *Id.*
39. *Williams v. Stone*, 923 F. Supp. 689 (E.D. Pa. 1996), *aff'd*, 109 F.3d 890 (3d Cir. 1997).
40. MD. CODE ANN. § 14-226.
41. 923 F. Supp. at 692-93.
42. *Id.*
43. 109 F.3d at 894.
44. *Id.* at 894.
45. *Franchise Mgmt. Unltd., Inc. v. Am.'s Favorite Chicken*, 561 N.W.2d 123 (Mich. Ct. App. 1997), *appeal granted*, 577 N.W.2d 690 (1998), *vacated and leave to appeal denied*, 590 N.W.2d 570, *reconsideration denied*, 595 N.W.2d 843 (1999).
46. MICH. COMP. LAWS § 445.1527.
47. *Franchise Mgmt.*, 561 N.W.2d at 126.
48. *Id.*
49. *Id.*
50. *Id.* at 247-48. For a discussion and comparison of releases construed under Michigan law that are limited to claims relating to the surrender of a franchise and therefore not general releases of liability between franchisor and franchisee, and releases that apply to all claims, both known and unknown, and therefore a general

release that applies to all conduct between the parties, see *Pinnacle Pizza Co., Inc. v. Little Caesar Enterprises, Inc.*, 560 F. Supp. 2d 786 (D.S.D. 2008).

51. N.Y. GEN. BUS. LAW § 687.

52. *Id.* The Washington Franchise Investment Protection Act does the same. WASH. REV. CODE ANN. § 19.100.180. In these statutes, and others like them, the word *require* seems critical: parties who enter voluntarily into settlement agreements or releases under other conditions for valuable consideration are unlikely to be deemed to have been required to assent to a release. However, it is noteworthy that when enacting the New York Franchised Motor Vehicle Dealer Act statute with a virtually identical prohibition, the New York legislature added the following language: “. . . provided that this paragraph shall not be construed to prevent a franchised motor vehicle dealer from entering into a valid release or settlement agreement with a franchisor.” N.Y. VEH. & TRAF. LAW § 463. Furthermore, the Washington legislature expressly permitted releases as part of a negotiated settlement in connection with a bona fide dispute, arising after the franchise agreement has taken effect, in which the person giving the release is represented by counsel. WASH. REV. CODE ANN. § 19.100.220.

53. *A.J. Temple Marble & Tile, Inc. v. Union Carbide Marble Care, Inc.*, 618 N.Y.S.2d 155 (Sup. Ct. 1994).

54. *Id.* at 158.

55. *Id.* at 159.

56. *Id.* at 162.

57. 471 F. Supp. 2d 951 (E.D. Ark. 2006).

58. ARK. CODE ANN. § 4-72-206.

59. *Id.* § 4-72-206.

60. NEB. REV. STAT. § 87-406.

61. N.J. STAT. ANN. § 56:10-7.

62. HAW. CODE R. § 482E-6.

63. CONN. GEN. STAT. § 42-1331.

64. MO. ANN. STAT. §§ 407.825, 407.1034.

65. PA. CONS. STAT. § 202-4.

66. N.D. CENT. CODE § 51-19-16(7).

67. *See* ILL. COMP. STAT. 705/41; MINN. STAT. § 80C.21; WIS. STAT. ANN. § 553.76.

68. ALA. CODE § 8-20-4 (2010).

69. IOWA CODE § 523H.4.

70. *Id.* § 523H.5.

71. *See* MICH. COMP. LAWS § 445.1527; MISS. CODE ANN. § 75-77-19; MONT. CODE ANN. § 16-3-221; NEB. REV. STAT. § 53-221; NEV. REV. STAT. § 482.3638; N.H. REV. STAT. ANN. § 339-C:8; N.Y. GEN. BUS. LAW § 687; N.C. GEN. STAT. § 20-308.22; R.I. GEN. LAWS § 6-46-11; S.D. CODIFIED LAWS § 37-5-12; TENN. CODE ANN. § 47-25-1507; VT. STAT. ANN. tit. 9, § 4080; WASH. REV. CODE ANN. § 19.100.180; WYO. STAT. ANN. § 31-16-108.

72. MICH. COMP. LAWS § 445.1527.

73. *Williams v. Stone*, 923 F. Supp. 689, 692–93 (E.D. Pa. 1996).

74. *Compare* *Gruver v. Midas Int'l Corp.*, 925 F.2d 280 (9th Cir. 1991) (holding that where franchisees knew of potentially successful claim for misrepresentation but nevertheless executed releases in favor of franchisor in connection with satisfaction of debts owed to franchisor, there was no economic duress), *with* *Eulrich v. Snap-On Tools Corp.*, 853 P.2d 1350 (Or. Ct. App. 1993), *cert. granted, judgment vacated*, 512 U.S. 1231, 114 S. Ct. 2731 (1994) (holding that where a franchisor insisted on a release in connection with the

repurchase of franchisee's inventory when franchisee was in financial distress, it was not error for a jury to find economic duress that voided release); *accord* *Dupage Forklift Serv., Inc. v. Mach. Distrib., Inc.*, No. 94 C 7357, 1995 WL 623093 (N.D. Ill. Oct. 20, 1995).

75. 442 S.E.2d 611 (S.C. 1994).

76. S.C. CODE ANN. § 56-15-40.

77. *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735 (D.S.C. 2001).

78. *Id.* at 743.

79. *Id.* at 740.

80. *Id.* at 743.

81. *Id.* at 745–46.

82. *Id.* at 746.

83. *Id.* at 748–49.

84. *Sabe Staino Motors, Inc. v. Volkswagen of Am., Inc.*, No. Civ.A.99-5034, 2005 WL 1041196 (E.D. Pa. Apr. 29, 2005).

85. *Id.* at *8.

86. *Id.*

87. *Id.*

88. *See* *Wells v. Entre Computer Ctrs., Inc.*, 915 F.2d 1566 (4th Cir. 1990) (holding that under Texas law, general releases executed by franchisees at the time they transferred rights under various franchise agreements were valid and effective; the last release each franchisee signed coincided with the termination of that franchisee's relationship with the franchisor, and all of the franchisees' claims were covered by the releases, which the franchisees entered into voluntarily and in accordance with the provisions of their original franchise agreements); *accord* *Brock v. Entre Computer Ctrs., Inc.*, 933 F.2d 1253 (4th Cir. 1991) (applying Virginia law and reaching same result); *Blockbuster, Inc. v. C-Span Entm't, Inc.*, 276 S.W.3d 482 (Tex. 2008) (entering judgment in favor of franchisor, holding that under Texas law a general release executed in connection with the transfer of franchises from the individual franchisee to the individual's corporation did not lack consideration where the agreements contained recitations of consideration and franchisor's consent to the transfer was only effective upon execution of documents including the release; the claims raised by the franchisee fell within the scope of the release because the release applied to claims under the agreements at issue (federal, state, or local law), and the franchisee's breach of contract and fraudulent inducement claims arose under state law).

89. *GNC Franchising, LLC v. Farid*, No. 2:05-cv-1741, 2007 WL 1437443 (W.D. Pa. May 14, 2007).

90. Mem. Supp. of Plaintiff's Motion Summary Judgment, *GNC Franchising, LLC v. Farid*, 2007 WL 4782622 (W.D. Pa. Mar. 15, 2007).

91. *Farid*, 2007 WL 1437443, at *3.

92. Alabama Motor Vehicle Franchise Act, ALA. CODE § 8-20-4; Connecticut Motor Vehicle Dealer's Act, CONN. GEN. STAT. § 42-133bb; Florida Automobile Dealer's Act, FLA. STAT. § 320.64; Idaho Dealers and Salesmen Licensing Act, IDAHO CODE ANN. § 49-1613; Maine Motor Vehicle Dealers Act and Maine Personal Sports Mobile Business Practices Act, ME. REV. STAT. ANN. tit. 10, §§ 1174, 1243; Michigan Dealer-Agreement Statute, MICH. COMP. LAWS § 445.1573; Minnesota Motor Vehicle Sales and Distribution Regulations, MINN. STAT. § 80E.12 (May 13, 2010); Nebraska Motor Vehicle Industry Relation Act, NEB. REV. STAT. § 60-1436; North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law,

N.C. GEN. STAT. § 20-305; Tennessee Motor Vehicle Sales Licensing Act, TENN. CODE ANN. § 55-17-114.

93. COLO. REV. STAT. §§ 12-6-120, 12-6-501.

94. DEL. CODE ANN. tit. 6, § 4913.

95. *Id.* § 4914.

96. GA. CODE ANN. § 10-1-662(a)(6) (June 4, 2010).

97. LA. REV. STAT. ANN. § 32:1261.

98. MASS. GEN. LAWS ch. 93B, § 4.

99. Illinois Motor Vehicle Franchise Act, ILL. COMP. STAT. 710/4; Nevada Franchises for Sales of Motor Vehicles Act, NEV. REV. STAT. § 482.3638; New Hampshire Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act, N.H. REV. STAT. ANN. § 357-C:3; New Mexico Motor Vehicle Dealers Franchising Act, N.M. STAT. § 57-16-5; New York Franchised Motor Vehicle Dealer Act, N.Y. VEH. & TRAF. LAW § 463; South Carolina Regulation of Manufacturers, Distributors and Dealers Act, S.C. CODE ANN. § 56-15-40; Vermont Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act, VT. STAT ANN. tit. 9, § 4096.

100. N.Y. VEH. & TRAF. LAW § 463.

101. IND. CODE § 23-2-2.7-1.

102. TENN. CODE ANN. § 47-25-1510.

103. CAL. CORP. CODE § 31125.

104. 756 F. Supp. 543 (S.D. Fla. 1991), *overruled on other grounds* by Burger King Corp. v. Weaver, 169 F.3d 1310 (11th Cir. 1999).

105. 756 F. Supp. at 546, n.3.

106. *Id.* at 547, n.4.

107. *Id.* (quoting Sottile v. Gaines Constr. Co., 281 So. 2d 558, 561 (Fla. Dist. Ct. App. 1973), *cert. denied*, 289 So. 2d 737 (Fla. 1974).

108. *Id.*

109. *Id.* at 547.

110. Action Nissan, Inc. v. Hyundai Motor Am., 617 F. Supp. 2d 1177 (M.D. Fla. 2008). The release provision at issue provided: “[Plaintiff] and its Shareholders hereby release, acquit, and agree not to sue [Defendant] for any act committed by [Defendant] with respect to its Hyundai dealership prior to the date of this Agreement.” *Id.* at 1185.

111. *Id.* at 1189.

112. *Id.*

113. 73 F. App’x 202 (9th Cir. 2003).

114. 287 F.3d 32, 35–36 (1st Cir. 2002); *see also* Hyman v. Ford Motor Co., 142 F. Supp. 2d 735 (D.S.C. 2001).

115. *Rochester Ford Sales*, 287 F.3d at 41.

116. *Id.* at 41, n.5.

117. *See id.* at 35–36.

118. *Id.* at 41, n.5.

119. 8 So. 3d 277 (Ala. 2008).

120. *Id.* at 278.

121. *Id.*

122. *Id.* at 279.

123. *Id.* at 278–79.

124. *Id.* at 283–84.

125. *Id.* at 280.

126. *Id.* at 282 (quoting Sutherlin Toyota, Inc. v. Toyota Motor Sales USA, Inc., 549 So. 2d 460, 461 (1989)).

127. *Id.*

128. *Id.*

129. Am.’s Favorite Chicken Co. v. Suryoutomo, 889 F. Supp. 916 (E.D. La. 1995).

130. *Id.* at 918.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Alabama	It shall be a violation of this chapter for a supplier to do any of the following: (9) To require the dealer to agree to a release, agreement, waiver, or any other modification that would relieve supplier or dealer from liability imposed by this chapter. Alabama Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act a/k/a Equipment Franchise Act, ALA. CODE § 8-21A-3.	<ul style="list-style-type: none"> Alabama Tractor, Lawn and Garden and Light Industrial Equipment Franchise Act a/k/a Equipment Franchise Act, ALA. CODE § 8-21A-12. Alabama Motor Vehicle Franchise Act, ALA. CODE § 8-20-4 (2010); ALA. CODE § 8-20-5; ALA. CODE § 8-20-11.
Alaska	The terms and conditions in an agreement between a manufacturer and a new motor vehicle dealer in this state, including a motor vehicle franchise agreement, that are inconsistent with the law of this state do not have any force or effect in this state. Alaska Motor Vehicle Transactions Act, ALASKA STAT. § 45.25.100.	

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Arizona	<p>A. In the event of any termination, cancellation or failure to renew, whether by mutual agreement or otherwise, a distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors and assigns, at the current wholesale prices, any and all merchantable products purchased by such dealer from the distributor, provided that the distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer. Such repurchase shall not constitute a waiver of the dealer's other rights and remedies under this article. Arizona Petroleum Products Franchise Act, ARIZ. REV. STAT. § 44-1558.</p>	
Arkansas	<p>It shall be a violation of this subchapter for any franchisor, through any officer, agent, or employee to engage directly or indirectly in any of the following practices: (1) To require a franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this subchapter. Arkansas Franchise Practices Act, ARK. CODE ANN. § 4-72-206.</p>	
California	<p>(c) Any modification of a franchise agreement with an existing franchisee of a franchisor shall be exempted from the provisions of this chapter, if all of the following are met . . . provided (A) the agreement is not executed within 12 months after the date of the franchise agreement, and (B) the modification does not waive any right of the franchisee under the California Franchise Relations Act (Chapter 5.5 (commencing with Section 20000) of Division 8 of the Business and Professions Code), but the modification may include a general release of all known and unknown claims by a party to the modification. California Franchise Investment Law, CAL. CORP. CODE § 31125.</p>	<ul style="list-style-type: none"> • California Franchise Relations Act, CAL. BUS. & PROF. CODE § 20010. • California Motor Vehicle Dealers Act, CAL. VEH. CODE § 11713.3.
Colorado	<p>(1) It shall be unlawful and a violation of this part 1 for any manufacturer, distributor, or manufacturer representative: (o) To require, coerce, or attempt to coerce any motor vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute. Colorado Automobile Dealers Act, COLO. REV. STAT. § 12-6-120.</p>	<ul style="list-style-type: none"> • Colorado Powersports Vehicle Dealers Act, COLO. REV. STAT. § 12-6-523.
Connecticut	<p>(f) No franchisor, directly or indirectly, through any officer, agent or employee, shall do any of the following: (1) Require a franchisee at the time of entering into an agreement to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by sections 42-133j to 42-133n, inclusive. Connecticut Gasoline Dealer's Act, CONN. GEN. STAT. § 42-133l.</p>	<ul style="list-style-type: none"> • Connecticut Franchise Act, CONN. GEN. STAT. § 42-133f. • Connecticut Motor Vehicle Dealer's Act, CONN. GEN. STAT. § 42-133v; CONN. GEN. STAT. § 42-133bb; CONN. GEN. STAT. § 42-133ee.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Delaware	(b) This chapter shall not preclude dealers, manufacturers or distributors from entering into valid releases or settlement agreements consistent with the policy of this chapter. In no case shall a general release required to be executed as a condition to renewal of a franchise agreement be deemed to be consistent with the policy of this chapter. Delaware Motor Vehicle Franchising Practices Act, DEL. CODE ANN. tit. 6, § 4914.	<ul style="list-style-type: none"> • Delaware Motor Vehicle Franchising Practices Act, DEL. CODE ANN. tit. 6, § 4906; DEL. CODE ANN. tit. 6, § 4913; DEL. CODE ANN. tit. 6, § 4916.
District of Columbia	(a) All marketing agreements shall be in writing and shall be subject to the nonwaiverable conditions set forth in this section, whether or not such conditions are expressly set forth in such marketing agreements. For the purposes of this section, the term “marketing agreement” shall also include any oral or written collateral or ancillary agreement. No marketing agreement shall: (9) Contain any provision which requires the retail dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from any liability imposed by this subchapter or would negate any rights granted to a retail dealer by this subchapter. District of Columbia Retail Service Stations Act, D.C. CODE § 36-303.01.	
Florida	Unfair methods of competition and unfair or deceptive acts or practices in the conduct of the manufacturing, distribution, wholesaling, franchising, sale, and advertising of equipment are declared to be unlawful. (3) It is deemed a violation of this section for a manufacturer, factory branch or division, distributor, distributor branch or division, wholesaler, or wholesale branch or division, or officer, agent, or other representative thereof: (l) To require a dealer to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by ss. 686.40-686.418. Florida Agricultural Machinery and Equipment Franchise Act a/k/a Sales, Distribution, and Franchise Relationships Act, FLA. STAT. § 686.413.	<ul style="list-style-type: none"> • Florida Automobile Dealer’s Act a/k/a Florida’s Dealer Protection Act, FLA. STAT. § 320.64. • Florida Agricultural Machinery and Equipment Franchise Act a/k/a Sales, Distribution, and Franchise Relationships Act, FLA. STAT. § 686.611.
Georgia	(c) It shall be deemed a violation of Code Section 13-8-14 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent, or other representative thereof: (10) To require a dealer to assent to a release, assignment, notation, waiver, or estoppel which would relieve any person from liability imposed by this article. Georgia Regulation of Agricultural Equipment Manufacturers, Distributors, and Dealers Act, GA. CODE § 13-8-15.	<ul style="list-style-type: none"> • Georgia Motor Vehicle Franchise Practices Act, GA. CODE § 10-1-623; GA. CODE § 10-1-624; GA. CODE. § 10-1-627 (June 4, 2010). • Georgia Motor Vehicle Franchise Continuation and Succession Act, GA. CODE § 10-1-651 (June 4, 2010). • Georgia Motor Vehicle Fair Practices Act, GA. CODE § 10-1-662 (June 4, 2010). • Georgia Sale of Recreational Vehicles Act, GA. CODE § 10-1-679.1. • Georgia Retail Petroleum Product Dealers Act, GA. CODE § 10-1-721.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Hawaii	<p>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: (F) Require a franchisee at the time of entering into a franchise to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. Any condition, stipulation or provision binding any person acquiring any franchise to waive compliance with any provision of this chapter or a rule promulgated hereunder shall be void. This paragraph shall not bar or affect the settlement of disputes, claims or civil suits arising or brought under this chapter. Hawaii Franchise Investment Law, HAW. CODE § 482E-6.</p>	
Idaho	<p>(2) It shall be unlawful for any manufacturer licensed under this chapter to require, attempt to require, coerce, or attempt to coerce, any new vehicle dealer in this state to: (g) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this chapter or to require any controversy between a dealer and a manufacturer, distributor, or representatives, to be referred to any person other than the duly constituted courts of the state or the United States, or to the director, if that referral would be binding upon the dealer. Idaho Motor Vehicles Dealers and Salesmen Licensing Act, IDAHO CODE § 49-1613.</p>	
Illinois	<p>§ 20. Nonrenewal of a franchise. It shall be a violation of this Act for a franchisor to refuse to renew a franchise of a franchised business located in this State without compensating the franchisee either by repurchase or by other means for the diminution in the value of the franchised business caused by the expiration of the franchise where:</p> <p>(a) the franchisee is barred by the franchise agreement (or by the refusal of the franchisor at least 6 months prior to the expiration date of the franchise to waive any portion of the franchise agreement which prohibits the franchisee) from continuing to conduct substantially the same business under another trademark, service mark, trade name or commercial symbol in the same area subsequent to the expiration of the franchise; or</p> <p>(b) the franchisee has not been sent notice of the franchisor's intent not to renew the franchise at least 6 months prior to the expiration date or any extension thereof of the franchise. Illinois Franchise Disclosure Act of 1987, 815 ILL. COMP. STAT. 705/20.</p>	<ul style="list-style-type: none"> • Illinois Franchise Disclosure Act of 1987, ILL. COMP. STAT. 705/26; ILL. COMP. STAT. 705/41. • Illinois Motor Vehicle Franchise Act, 815 ILL. COMP. STAT. 710/4. • Illinois Equipment Fair Dealership Law, 815 ILL. COMP. STAT. 175/10.
Indiana	<p>§ 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: (5) Requiring the franchisee to prospectively assent to a release, assignment, novation, waiver, or estoppel which purports to relieve any person from liability to be imposed by this chapter or requiring any controversy between the franchisee and the franchisor to be referred to any person, if referral would be binding on the franchisee. This subdivision does not apply to arbitration before an independent arbitrator. Indiana Deceptive Franchise Practices Act, IND. CODE § 23-2-2.7-1.</p>	

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Iowa	<p>9. A franchisor, as a condition to a transfer of a franchise, shall not obligate a franchisee to undertake obligations or relinquish any rights unrelated to the franchise proposed to be transferred, or to enter into a release of claims broader than a similar release of claims by the franchisor against the franchisee which is entered into by the franchisor. Iowa Franchise Act, IOWA CODE § 523H.5.</p>	<ul style="list-style-type: none"> • Iowa Franchise Act, IOWA CODE § 523H.4. • Iowa Motor Vehicle Franchisers, IOWA CODE § 322A.21 (Mar. 22, 2010) (text subject to final changes). • Iowa Equipment Dealership Agreements, IOWA CODE § 322F.9. • Iowa Motor Fuel and Special Fuel, IOWA CODE § 323.13.
Kansas	<p>Any term of a dealership agreement, either expressed or implied, which is inconsistent with the terms of this act shall be void and unenforceable and shall not waive any rights which are provided to any person by this act. Kansas Agricultural Equipment Dealership Act, KAN. STAT. § 16-1206.</p>	
Kentucky	<p>(1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth: (i) To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or the United States of America, or to the commissioner, if the referral would be binding upon the dealer. Kentucky Motor Vehicle Sales Act, KY. REV. STAT. ANN. § 190.070.</p>	<ul style="list-style-type: none"> • Kentucky Motor Vehicle Sales Act, KY. REV. STAT. ANN. § 190.045; KY. REV. STAT. § 190.062.
Louisiana	<p>It shall be a violation of this Chapter:</p> <p>(iv) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation between a manufacturer, distributor, wholesaler, distributor branch or factory branch, or officer, agent, or other representative thereof. Louisiana Motor Vehicle Commission Law, LA. REV. STAT. § 32:1261.</p>	<ul style="list-style-type: none"> • Louisiana Motor Vehicle Commission Law, LA. REV. STAT. § 32:1261(v).
Maine	<p>The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any: Manufacturer or an officer, agent or other representative of a manufacturer: To require a personal sports mobile dealer to assent to a release assignment, novation, waiver or estoppel that would relieve any person from liability imposed by this chapter. Maine Personal Sports Mobile Business Practices Act, ME. REV. STAT. tit. 10, § 1243.</p>	<ul style="list-style-type: none"> • Maine Motor Vehicle Dealers Act, ME. REV. STAT. tit. 10, § 1174. • Maine Franchise Laws for Power Equipment, Machinery and Appliances, ME. REV. STAT. tit. 10, § 1363. • Maine Motor Fuel Distribution and Sales Act, ME. REV. STAT. tit. 10, § 1454.
Maryland	<p>As a condition of the sale of a franchise, a franchisor may not require a prospective franchisee to agree to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability under this subtitle. Maryland Franchise Registration and Disclosure Law, MD. CODE ANN., BUS. REG. § 14-226.</p>	

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Massachusetts	(c) It shall be deemed a violation of subsection (a) of section 3 for a manufacturer, distributor or franchisor representative: (11) to coerce a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would prospectively relieve any person from liability imposed by this chapter. Massachusetts Automobile Dealer's Bill of Rights Statute, MASS. GEN. LAWS ch. 93B § 4.	<ul style="list-style-type: none"> • Massachusetts Petroleum Products Marketing Act, MASS. GEN. LAWS ch. 93E, § 4A. • Massachusetts Equipment Dealers Law, MASS. GEN. LAWS ch. 93G, § 10.
Michigan	§ 27. Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise: (b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims. Michigan Franchise Investment Law, MICH. COMP. LAWS § 445.1527.	<ul style="list-style-type: none"> • Michigan Farm and Utility Equipment Act, MICH. COMP. LAWS § 445.1457. • Michigan Dealer-Agreement Statute, MICH. COMP. LAWS § 445.1573. • Michigan Recreational Vehicle Franchise Act, MICH. COMP. LAWS § 445.1945.
Minnesota	It shall be unlawful for any manufacturer, distributor, or factory branch to require a new motor vehicle dealer to do any of the following: (j) prospectively assent to a release, assignment, novation, waiver, or estoppel whereby a dealer relinquishes any rights under sections 80E.01 to 80E.17, or which would relieve any person from liability imposed by sections 80E.01 to 80E.17 or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or factory branch to be referred to any person or tribunal other than the duly constituted courts of this state or the United States, if the referral would be binding upon the new motor vehicle dealer. Minnesota Motor Vehicle Sales and Distribution Regulations, MINN. STAT. § 80E.12 (2010).	<ul style="list-style-type: none"> • Minnesota Franchise Act, MINN. STAT. § 80C.21. • Minnesota Motor Vehicle Sales and Distribution Regulations, MINN. STAT. § 80E.06; MINN. STAT. § 80E.08; MINN. STAT. § 80E.17; MINN. STAT. § 80E.135 (May 13, 2010). • Minnesota Motor Vehicle Fuel Franchise Act, MINN. STAT. § 80F.11. • Minnesota Agricultural Machinery Dealership Law, MINN. STAT. § 325E.064.
Mississippi	(3) Notwithstanding any provision in a franchise agreement to the contrary, any requirement that a dealer waive its right to a trial by jury is void and unenforceable. Mississippi Motor Vehicle Commission Law, MISS. CODE ANN. § 63-17-119.	<ul style="list-style-type: none"> • Mississippi Repurchase of Inventories from Retailers Upon Termination of Contract Law, MISS. CODE ANN. § 75-77-19.
Missouri	Notwithstanding the terms of any franchise agreement, the performance, whether by act or omission, by a motor vehicle franchisor of any or all of the following acts enumerated in this section are hereby defined as unlawful practices, the remedies for which are set forth in section 407.835: (10) To require a motor vehicle franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by sections 407.810 to 407.835. Missouri Motor Vehicle Franchise Protection Act, MO. ANN. STAT. § 407.825.	<ul style="list-style-type: none"> • Missouri Motorcycle and All-Terrain Vehicle Franchise Practices Act, MO. ANN. STAT. § 407.1034.
Montana	A wholesaler of beer licensed to conduct business in the state may not waive any of the protections or agree to any provision contrary to 16-3- 221 through 16-3-226 by any conduct, including but not limited to the signing of any contract or agreement with terms contrary to those provisions. Montana Regulation of Brewers, Beer Importers, and Beer Wholesalers Act, MONT. CODE ANN. § 16-3-221.	

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Nebraska	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 engage in any of the following practices: (1) To require a franchisee at the time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by sections 87-401 to 87-410. Nebraska Franchise Practices Act, NEB. REV. STAT. § 87-406.	<ul style="list-style-type: none"> • Nebraska Liquor Control Act, NEB. REV. STAT. § 53-170. • Nebraska Beer Distribution Law, NEB. REV. STAT. § 53-221. • Nebraska Motor Vehicle Industry Relation Act, NEB. REV. STAT. § 60-1436.
Nevada	It is an unfair act or practice for any manufacturer, distributor or factory branch, directly or through any representative, to: 1. Require a dealer to agree to a release, assignment, novation, waiver or estoppel which purports to relieve any person from liability imposed by this chapter, or require any controversy between a dealer and a manufacturer, distributor or representative to be referred to any person or agency except as set forth in this chapter if that referral would be binding on the dealer, except that this section does not prevent the parties from mutually agreeing to arbitration pursuant to law. Nevada Franchises For Sales of Motor Vehicles Act, NEV. REV. STAT. § 482.3638.	<ul style="list-style-type: none"> • Nevada Alcoholic Beverage Franchise Act, NEV. REV. STAT. § 597.157.
New Hampshire	Any of the following provisions in an agreement or lease, if one is included, whether oral or written, between a supplier and dealer, shall be void as against public policy: IV. Provisions requiring a dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this chapter. New Hampshire Regulation of Gasoline Franchises Act, N.H. REV. STAT. § 339-C:8.	<ul style="list-style-type: none"> • New Hampshire Regulation of Business Practices Between Motor Vehicle Manufacturers, Distributors and Dealers Act, N.H. REV. STAT. § 357-C:3; N.H. REV. STAT. § 357-C:7; N.H. REV. STAT. § 357-C:12.
New Jersey	It shall be a violation of this act for any franchisor, directly or indirectly, through any officer, agent or employee, to engage in any of the following practices: a. To require a franchisee at time of entering into a franchise arrangement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act. New Jersey Franchise Practices Act, N.J. STAT. ANN. § 56:10-7.	<ul style="list-style-type: none"> • New Jersey Franchise Practices Act, N.J. STAT. ANN. § 56:10-7.4. • New Jersey Act to Regulate Retail Sale of Motor Fuels, N.J. STAT. ANN. § 56:6-23.
New Mexico	It is unlawful for any manufacturer, distributor or representative to: N. require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve any person from liability imposed by Chapter 57, Article 16 NMSA 1978. New Mexico Motor Vehicle Dealers Franchising Act, N.M. STAT. ANN. § 57-16-5.	
New York	It is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability imposed by this article. New York Franchise Sales Act, N.Y. GEN. BUS. LAW § 687.	<ul style="list-style-type: none"> • New York Franchise Sales Act, N.Y. GEN. BUS. LAW § 687. • New York Motor-Fuel Franchise Law, N.Y. GEN. BUS. LAW § 199-e.- • New York Franchised Motor Vehicle Dealer Act, N.Y. VEH. & TRAF. LAW § 463.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
North Carolina	It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them: (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer. North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law, N.C. GEN. STAT. § 20-305.	<ul style="list-style-type: none"> • North Carolina Motor Vehicle Dealers and Manufacturers Licensing Law, N.C. GEN. STAT. § 20-305(31); N.C. GEN. STAT. § 20-308.1; N.C. GEN. STAT. § 20-308.2. • North Carolina Motor Vehicle Captive Finance Source Law, N.C. GEN. STAT. § 20-308.15; N.C. GEN. STAT. § 20-308.22. • North Carolina Farm Machinery Franchise Act, N.C. GEN. STAT. § 66-188.
North Dakota	7. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order hereunder is void. North Dakota Franchise Investment Law, N.D. CENT. CODE § 51-19-16.	<ul style="list-style-type: none"> • North Dakota Miscellaneous Provisions, N.D. CENT. CODE § 57-01-09.
Ohio	Notwithstanding the terms, provisions, or conditions of any agreement, franchise, or waiver, no franchisor shall: (N) Require or request a franchisee to waive any requirements of this section. Ohio Dealers Act, OHIO REV. CODE § 4517.59.	<ul style="list-style-type: none"> • Ohio Business Opportunity Purchasers Protection Act, OHIO REV. CODE § 1334.06; OHIO REV. CODE § 1334.15. • Ohio Alcoholic Beverage Franchise Act, OHIO REV. CODE § 1333.83. • Ohio Dealers Act, OHIO REV. CODE § 4517.55.
Oklahoma	A. It shall be a violation of Section 245 et seq. of this title for a supplier: 10. To require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by Section 245 et seq. of this title. Oklahoma Manufacturers, Wholesalers and Distributors--Repurchase of Inventory Law, OKLA. STAT. ANN. tit. 15 § 245A.	<ul style="list-style-type: none"> • Oklahoma Regulation and Licensing of Motor Vehicle Manufacturers, Distributors, Dealers, Salespersons Law, OKLA. STAT. ANN. tit. 47, § 565.2.
Oregon	(1) Notwithstanding the terms of any franchise or other agreement, it is unlawful for any manufacturer, distributor or importer to cancel, terminate or refuse to continue any franchise without showing good cause, provided the dealer protests the termination by filing a complaint in court of competent jurisdiction within the time period specified in subsection (3) of this section. Oregon Motor Vehicle Dealers Franchise Act, OR. REV. STAT. § 650.140.	<ul style="list-style-type: none"> • Oregon Motor Fuel Franchise Act, OR. REV. STAT. § 650.210.
Pennsylvania	It shall be a violation of this act for any lessor supplier, directly or indirectly, through any officer, agent or employee to engage in the following practices: (1) To require a lessee dealer at the time of entering into an agreement to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act. Pennsylvania Gasoline, Petroleum Products and Motor Vehicle Accessories Law, 73 PA. CONS. STAT. § 202-4.	<ul style="list-style-type: none"> • Pennsylvania Board of Vehicles Act, 22A PA. CONS. STAT. § 818.12; 22A PA. CONS. STAT. § 818.29.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Rhode Island	<p>A condition, stipulation or provision requiring a franchisee to waive compliance with or relieving a person of a duty of liability imposed by or a right provided by this act or a rule or order under this act is void. An acknowledgement provision, disclaimer or integration clause or a provision having a similar effect in a franchise agreement does not negate or act to remove from judicial review any statement, misrepresentations or action that would violate this act or a rule or order under this act. This section shall not affect the settlement of disputes, claims or civil lawsuits arising or brought under this act. Rhode Island Franchise Investment Act, R.I. GEN. LAWS § 19-28.1-15.</p>	<ul style="list-style-type: none"> • Rhode Island Motor Fuel Distribution and Sales Act, R.I. GEN. LAWS § 5-55-4. • Rhode Island Equipment Dealership Act, R.I. GEN. LAWS § 6-46-11. • Rhode Island Fair Dealership Act, R.I. GEN. LAWS § 6-50-3. • Rhode Island Regulation of Business Practices Among Motor Vehicle Manufacturers, Distributors, and Dealers Law, R.I. GEN. LAWS § 31-5.1-4; R.I. GEN. LAWS § 31-5.1-13.
South Carolina	<p>(3) It shall be deemed a violation of paragraph (a) of § 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or officer, agent or other representative thereof:</p> <p>(k) To require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter. South Carolina Regulation of Motor Vehicles Manufacturers, Distributors and Dealers Act, S.C. CODE ANN. § 56-15-40.</p>	<ul style="list-style-type: none"> • South Carolina Farm Implementation Franchise Act, S.C. CODE ANN. § 39-59-120.
South Dakota	<p>No person may, directly or indirectly, in connection with the offer or sale of a franchise: (8) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. However, this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contractual terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations. So. Dakota Franchise Investment Law, S.D. CODIFIED LAWS § 37-5B-26.</p>	<ul style="list-style-type: none"> • South Dakota Franchise Investment Law, S.D. CODIFIED LAWS § 37-5B-21. • South Dakota Franchise Act, S.D. CODIFIED LAWS § 37-5-12.
Tennessee	<p>No franchisee may prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from any liability or obligation under this part, or would require any controversy between a franchisor or franchisee to be referred to any person other than the duly constituted courts of this state or the United States, or a state regulatory agency charged by law with adjudicating such controversy, if the referral would be binding on the franchisee. Tennessee Franchise Terminations, Nonrenewals or Modifications Law, TENN. CODE ANN. § 47-25-1510.</p>	<ul style="list-style-type: none"> • Tennessee Franchise Terminations, Nonrenewals or Modifications Law, TENN. CODE ANN. § 47-25-1507; TENN. CODE ANN. § 47-25-1509. • Tennessee Petroleum Trade Practices Act, TENN. CODE ANN. § 47-25-622. • Tennessee Repurchase of Terminated Franchise Inventory Law, TENN. CODE ANN. § 47-25-1313. • Tennessee Motorcycle and Off-Road Vehicle Dealer Fairness Act, TENN. CODE ANN. § 47-25-1913. • Tennessee Motor Vehicle Sales Licensing Act, TENN. CODE ANN. § 55-17-114.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
Texas	A waiver of this chapter is contrary to public policy and void. Texas Business Opportunity Act, TEX. BUS. & COM. CODE ANN. § 51.006.	<ul style="list-style-type: none"> • Texas Sale or Lease of Motor Vehicles Law, TEX. OCC. CODE ANN. § 2301.003.
Utah	(1) A franchisor may not in this state: (e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would: (i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or (ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding. Utah New Automobile Franchise Act, UTAH CODE ANN. § 13-14-201.	<ul style="list-style-type: none"> • Utah New Automobile Franchise Act, UTAH CODE ANN. § 13-14-201(1)(l); UTAH CODE ANN. § 13-14-201(1)(gg). • Utah Powersport Vehicle Franchise Act, UTAH CODE ANN. § 13-35-201.
Vermont	Any of the following provisions in an agreement or lease, if one is included, whether oral or written, between a supplier and dealer, shall be void as against public policy, except as provided herein: (3) Provisions requiring a dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this chapter. Vermont Service Station Operators, Oil Companies and Franchises Act, VT. STAT. ANN. tit. 9, § 4108.	<ul style="list-style-type: none"> • Vermont Machinery Dealerships Law, VT. STAT. ANN. tit. 9, § 4080; VT. STAT. ANN. tit. 9, § 4082. • Vermont Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act, VT. STAT. ANN. tit. 9, § 4089; VT. STAT. ANN. tit. 9, § 4096; VT. STAT. ANN. tit. 9, § 4099.
Virginia	(c) Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void; provided, however, that nothing contained herein shall bar the right of a franchisor and franchisee to agree to binding arbitration of disputes consistent with the provisions of this chapter. Virginia Retail Franchising Act, VA. CODE ANN. § 13.1-571.	<ul style="list-style-type: none"> • Virginia Wine Franchise Act, VA. CODE ANN. § 4.1-416. • Virginia Beer Franchise Act, VA. CODE ANN. § 4.1-515. • Virginia Motor Vehicle Dealers Act, VA. CODE ANN. § 46.2-1572.3 (Apr. 8, 2010). • Virginia Petroleum Products Franchise Act, VA. CODE ANN. § 59.1-21.11; VA. CODE ANN. § 59.1-21.11:1.
Washington	Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the 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 and therefore unlawful and a violation of this chapter for any person to: (g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220. Washington Franchise Investment Protection Act, WASH. REV. CODE ANN. § 19.100.180.	<ul style="list-style-type: none"> • Washington Franchise Investment Protection Act, WASH. REV. CODE ANN. § 19.100.220. • Washington Motor Vehicles Dealers and Manufacturers Law, WASH. REV. CODE ANN. § 46.70.132; WASH. REV. CODE ANN. § 46.70.134. • Washington Motorsports Vehicles Law, WASH. REV. CODE ANN. § 46.93.030. • Washington Manufacturers' and Dealers' Franchise Agreements Act, WASH. REV. CODE ANN. § 46.96.0005; WASH. REV. CODE ANN. § 46.96.030; WASH. REV. CODE ANN. § 46.96.140; WASH. REV. CODE ANN. § 46.96.190.

SELECTED RELEASE LANGUAGE

State	Notable Language	Other Release Language ¹
West Virginia	<p>Every franchise agreement between a producer and a dealer shall be subject to the following provisions whether or not they are expressly set forth in the agreement:</p> <p>. . . (6) The right of either party to a trial by jury or to the interposition of counterclaims or crossclaims shall not be waived; (7) Liability imposed on, and rights granted to, any person by this article shall not be waived. West Virginia Petroleum Products Franchise Act, W. VA. CODE ANN. § 47-11C-3.</p>	
Wisconsin	<p>(6)(a) This section does not restrict the right of a motor vehicle dealer to pursue any other remedy available against a grantor who terminates, cancels or does not renew an agreement.</p> <p>(b) A grantor may not make the termination benefits payments under sub. (2) or (4) contingent on the motor vehicle dealer releasing or waiving any rights, claims or remedies. Wisconsin Motor Vehicle Dealers Law, WIS. STAT. ANN. § 218.0133.</p>	<ul style="list-style-type: none"> • Wisconsin Motor Vehicle Dealers Law, WIS. STAT. ANN. § 218.0133(9)(a). • Wisconsin Franchise Investment Law, WIS. STAT. ANN. § 553.76.
Wyoming	<p>(a) It shall be a violation of this act for a manufacturer or manufacturer's officer, agent or other representative thereof: (vii) To require a malt beverage distributor to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this act. However, nothing in this section shall be construed to limit or prohibit good faith dispute settlements entered into by the parties. Wyoming Relations Between Malt Beverage Distributors and Manufacturers Act, WYO. STAT. ANN. § 12-9-104.</p>	<ul style="list-style-type: none"> • Wyoming Motor Vehicle Franchises Act, WYO. STAT. ANN. § 31-16-108; WYO. STAT. ANN. § 31-16-109.
FTC Rule	<p>It is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act for any franchise seller covered by part 436 to: (h) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. Provided, however, that this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contract terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations. 16 U.S.C. § 436.9 (Mar. 30, 2007).</p>	
PMPA	<p>(f) Release or waiver of rights</p> <p>(1) No franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive</p> <p>(A) any right that the franchisee has under this subchapter or other Federal law; or</p> <p>(B) any right that the franchisee may have under any valid and applicable State law. 15 U.S.C.A. § 2805.</p>	

Endnote

1. A full version of this chart, including the language of all of the cited provisions affecting release language, is available from the authors.