

make reasonable provisions to pay any amount due the franchisor or the franchisor's affiliate, (4) the financial terms of the transfer at the time of the transfer comply with the franchisor's current financial requirements for franchisees. A franchisor may not condition its consent to a transfer on (1) a franchisee forgoing existing rights other than those contained in the franchise agreement, (2) entering into a release of claims broader in scope than a counterpart release of claims offered by the franchisor to the franchisee, or (3) requiring the franchisee or transferee to make, or agree to make, capital improvements, reinvestments, or purchases in an amount greater than the franchisor could have reasonably required under the terms of the franchisee's existing franchise agreement.

Subsection (e) permits a franchisee to assign his interest for the unexpired term of the franchise agreement and prohibits the franchisor from requiring the franchisee or transferee to enter an agreement which has different material terms or financial requirements as a condition of the transfer.

Subsection (f) prohibits a franchisor from withholding its consent without good cause to a franchisee making a public offering of its securities if the franchisee or owner of the franchisee's interest retains control over more than 25 percent of the voting power as the franchisee.

Subsection (g) prohibits a franchisor from withholding its consent to a pooling of interests, to a sale or exchange of assets or securities, or to any other business consolidation among its existing franchisees, provided the constituents are each in material compliance with their respective obligations to the franchisor.

Subsection (h) establishes six occurrences which shall not be considered transfers requiring the consent of the franchisor under a franchise agreement and for which the franchisor shall not impose any fees or payments or changes in excess of the franchisor's cost to review the matter.

Subsection (i) prohibits a franchisor from enforcing against the transferor any covenant of the franchise purporting to prohibit the transferor from engaging in any lawful occupation or enterprise after the transfer of a transferor's complete interest in a franchise. This subsection does not limit the franchisor from enforcing a contractual covenant against the transferor not to exploit the franchisor's trade secrets or intellectual property rights except by agreement with the franchisor.

SECTION 9. TRANSFER OF FRANCHISE BY FRANCHISOR

Subsection (1) prohibits a franchisor from transferring interest in a franchise by sale or in any other manner unless he give notice thirty days prior to the effective date of the transfer to every franchisee of his intent to transfer the interest.

Subsection (2) requires that the notice given contains a complete description of the business and financial terms of the proposed transfer or transfers.

Subsection (3) requires that the entity assuming the franchisor's obligations have the business experience and financial means necessary to perform the franchisor's obligations.

SECTION 10. INDEPENDENT SOURCING OF GOODS AND SERVICES

Subsection (a) prohibits a franchisor from prohibiting or restricting a franchisee from obtaining equipment, fixtures, supplies, goods or services used in the establishment or operation of the franchised business from sources of the franchisee's choosing, except that such goods or services may be required to meet established uniform system-wide

quality standards promulgated or enforced by the franchisor.

Subsection (b) requires that if the franchisor approves vendors of equipment, fixtures, supplies, goods, or services used in the establishment or operation of the franchised business, the franchisor will provide and continuously update an inclusive list of approved vendors and will promptly evaluate and respond to reasonable requests by franchisees for approval of competitive sources of supply. The franchisor shall approve not fewer than two vendors for each piece of equipment, each fixture, each supply, good, or service.

Subsection (c) requires a franchisor and its affiliates officers and/or its managing agents, must fully disclose whether or not it receives any rebates, commissions, payments, or other benefits from vendors as a result of the purchase of goods or services by franchisees and requires a franchisor to pass all such rebates, commissions, payments, and other benefits directly to the franchisee.

Subsection (d) requires a franchisor to report not less frequently than annually, using generally accepted accounting principles, the amount of revenue and profit it earns from the sale of equipment, fixtures, supplies, goods, or services to the franchisee.

Subsection (e) excepts reasonable quantities of goods and services that the franchisor requires the franchisee to obtain from the franchisor or its affiliate from the requirements of subsection (a), but only if the goods and services are central to the franchised business and either are actually manufactured or produced by the franchisor or its affiliate, or incorporate a trade secret owned by the franchisor or its affiliate.

SECTION 11. ENCROACHMENT

Subsection (a) prohibits a franchisor from placing, or licensing another to place, one or more, new outlet(s) in unreasonable proximity to an established outlet, if (i) the intent or probable effect of establishing the new outlet(s) is to cause a diminution of gross sales by the established outlet of more than five percent of the twelve months immediately following establishment of the new outlet(s), and (ii) the established franchisee offers goods or services identified by the same trademark as those offered by the new outlet(s), or has premises that are identified by the same trademark as the new outlet(s).

Subsection (b) creates an exception to this section if, before a new outlet(s) opens for business, a franchisor offers in writing to each franchisee of an established outlet concerned to pay to the franchisee an amount equal to fifty percent of the gross sales of the new outlet(s), for the first twenty-four months of operation of the new outlet(s), if the sales of the established outlet decline by more than five percent in the twelve months immediately following establishment of the new outlet(s), as a consequence of the opening of such outlet(s).

Subsection (c) places upon the franchisor the burden of proof to show that, or the extent to which, a decline in sales of an established franchised outlet occurred for reasons other than the opening of the new outlet(s), if the franchisor makes a written offer under subsection (b) or in an action or proceeding brought under section 12.

SECTION 12. PRIVATE RIGHT OF ACTION

Subsection (a) gives a party to a franchise who is injured by a violation or impending violation of this Act a right of action for all damages caused by the violation, including costs of litigation and reasonable attorney's fees, against any person found to be liable for such violation.

Subsection (b) makes jointly and severally liable every person who directly or indirectly controls a person liable under sub-

section (a), every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions and every employee of a person so liable who materially aids in the act or transaction constituting the violation, unless that person who would otherwise be liable hereunder had no knowledge of or reasonable grounds to know of the existence of the facts by reason of which the liability is alleged to exist.

Subsection (c) states that nothing in the Act shall be construed to limit the right of a franchisor and a franchisee to engage in arbitration, mediation, or other nonjudicial dispute resolution, either in advance or after a dispute arises, provided that the standards and protections applied in any binding nonjudicial procedure agreed to the parties are not less than the requirements set forth in the Act.

Subsection (d) prohibits an action from being commenced more than five years after the date on which the violation occurs, or three years after the date on which the violation is discovered or should have been discovered through exercise of reasonable diligence.

Subsection (e) provides for venue in the jurisdiction where the franchise business is located.

Subsection (f) states that the private rights created by the Act are in addition to, and not in lieu of, other rights or remedies created by Federal or State law.

SECTION 13. SCOPE AND APPLICABILITY

Subsection (a) applies the requirements of the Act to franchise agreements entered into, amended, exchanged, or renewed after the date of enactment of the Act, except as provided in subsection (b).

Subsection (b) delays implementation of Section 3 of the act until ninety days after the date or enactment of the Act and applies Section 3's requirements only to actions, practices, disclosures, and statements occurring on or after such date.

SECTION 14. DEFINITIONS

Defines terms used in the Act.

H. CON. RES. 283 ON TIBET

SPEECH OF

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1998

Mr. BERMAN. Mr. Speaker, I am proud that House Concurrent Resolution 283, expressing the sense of the Congress on the December 1997 report on Tibet of the International Commission of Jurists and on United States policy on Tibet, is being considered now.

I offered this Resolution in an effort to maintain the world's attention on developments in Tibet. A comparable provision has been offered and passed in the Senate. With 66 co-sponsors in the House, this resolution has strong bipartisan support.

Tibet remains on the American foreign policy agenda today and it remains on the international community's agenda largely because the U.S. Congress does not let anyone forget what is happening to Tibetans and Tibet culture under Chinese rule. This resolution reflects our serious concern for the plight of the Tibetan people and our strong support for the Dalai Lama's efforts to enter into serious discussions with the Chinese leadership on the future of Tibet.

The resolution cites a recent and comprehensive report by the International Committee of Jurists entitled "Tibet: Human Rights and the Rule of Law." It is the fourth report on Tibet by this distinguished body since 1959 and their first since 1964. The December 1997 report was inspired by the situation in Tibet that by all credible accounts, including the Department of State, remains unsettled and in many ways has grown more desperate.

The President has appointed a Special Coordinator for Tibetan Issues. Until recently, this position was held by Mr. Gregory Craig of the U.S. Department of State. I understand that he has played a very active and productive role behind the scenes in promoting discussions between the Dalai Lama and his representatives and the Chinese. I would hope that further progress will be made on opening this dialogue as President Jiang Zemin indicated that he would do during his summit meeting with President Clinton. Discussions must lead to negotiations and a positive outcome to those negotiations would improve substantially American relations with China.

Finally, I would like to draw the House's attention to the continuing detention of Gendun Choekyi Nyima. Over three years ago, the Dalai Lama announced the recognition of this young boy, then only six, as the Panchen Lama of Tibet. Within days, this child disappeared from his home. It was not until a year later that the Chinese Ambassador to Geneva admitted to a meeting of the United Nations Committee on the Rights of the Child that Gendun Choekyi Nyima was under the "protection" of the Chinese government. Repeated requests from governments and private humanitarian organizations to meet with the boy have been denied. No one knows where he is nor the conditions under which he lives. It is unconscionable that in today's world a young child, now nine years old, has apparently become a pawn in Beijing's political efforts to control Tibet.

I would like in particular to thank MR. PORTER, an original cosponsor of this resolution; MR. GILMAN, chairman of the International Relations Committee, and Mr. BEREUTER, chair of the Asia and Pacific Subcommittee, on which I serve as Ranking Member, for doing all they could to see that this resolution was brought forward for consideration. I appreciate the efforts they both made to achieve a compromise which would permit the House to consider this initiative. I would also like to note the contribution made by Mr. BEREUTER's subcommittee counsel, Dan Martz, who has negotiated in good faith with my staff to reach accommodation on this legislation. I understand that Mr. Martz will be soon leaving the subcommittee staff to join the private sector in New York City. His advice will be missed in the subcommittee but we all wish him well in his next endeavor.

I urge my colleagues to join me in introducing this resolution which calls for the release of Gendun Choekyi Nyima, the 11th Panchen Lama of Tibet, and for a dialogue between the Dalai Lama and Chinese authorities.

H. CON. RES. 283

Sponsor: Rep. Berman (introduced 05/22/98).
66 Cosponsors

Rep. Porter—05/22/98.
Rep. D. Payne—05/22/98.
Rep. Lantos—05/22/98.
Rep. Lowey—05/22/98.
Rep. Wolf—05/22/98.

Rep. C. Smith—05/22/98.
Rep. J. Kennedy—05/22/98.
Rep. Scarborough—06/25/98.
Rep. Menendez—06/25/98.
Rep. Hinchey—06/25/98.
Rep. Borski—06/25/98.
Rep. Woolsey—06/25/98.
Rep. LoBiondo—06/25/98.
Rep. Ehlers—07/17/98.
Rep. Allen—07/17/98.
Rep. Waxman—07/17/98.
Rep. S. Brown—07/17/98.
Rep. King—07/17/98.
Rep. Meehan—07/17/98.
Rep. Faleomavaega—08/06/98.
Rep. Cramer—08/06/98.
Rep. Olver—08/06/98.
Rep. Calvert—08/06/98.
Rep. Forbes—08/06/98.
Rep. Kelly—08/06/98.
Rep. Adam Smith—08/06/98.
Rep. Underwood—08/06/98.
Rep. Engel—08/06/98.
Rep. Kennelly—09/23/98.
Rep. Ackerman—09/23/98.
Rep. Furse—09/23/98.
Rep. Watts—09/25/98.
Rep. Slaughter—10/05/98.
Rep. C. Maloney—05/22/98.
Rep. Abercrombie—05/22/98.
Rep. Rohrabacher—05/22/98.
Rep. Gilman—05/22/98.
Rep. Cox—05/22/98.
Rep. Lofgren—05/22/98.
Rep. Pelosi—05/22/98.
Rep. Dixon—06/25/98.
Rep. Nadler—06/25/98.
Rep. Skaggs—06/25/98.
Rep. Farr—06/25/98.
Rep. Pappas—06/25/98.
Rep. Frank—06/25/98.
Rep. Rivers—07/17/98.
Rep. Roybal-Allard—07/17/98.
Rep. Solomon—07/17/98.
Rep. Pascrell—07/17/98.
Rep. Goodling—07/17/98.
Rep. Gejdenson—08/06/98.
Rep. John Lewis—08/06/98.
Rep. Stark—08/06/98.
Rep. McGovern—08/06/98.
Rep. Sherman—08/06/98.
Rep. English—08/06/98.
Rep. Dreier—08/06/98.
Rep. Sanders—08/06/98.
Rep. Rangel—08/06/98.
Rep. G. Miller—09/23/98.
Rep. Christensen—09/23/98.
Rep. Inglis—09/23/98.
Rep. Kilpatrick—09/23/98.
Rep. Salmon—10/05/98.
Rep. McKinney—10/07/98.

H. CON. RES. 283

Whereas the International Commission of Jurists is a nongovernmental organization founded in 1952 to defend the rule of law throughout the world and to work toward the full observance of the provisions of the Universal Declaration of Human Rights;

Whereas in 1959, 1960, and 1964 the International Commission of Jurists examined Chinese policy in Tibet, violations of human rights in Tibet, and the position of Tibet in international law;

Whereas these findings were presented to the United Nations General Assembly, which adopted three resolutions (in 1959, 1961, and 1965) calling on the People's Republic of China to ensure respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life, and to cease practices which deprive the Tibetan people of their fundamental human rights and freedoms;

Whereas in December 1997, the International Commission of Jurists issued a fourth report on Tibet, examining human rights and the rule of law;

Whereas the President of the United States has repeatedly indicated his support for substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives; and

Whereas on October 31, 1997, the Secretary of State appointed a Special Coordinator for Tibetan Issues to oversee United States policy regarding Tibet: Now, therefore be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) expresses grave concern regarding the findings of the report of the International Commission of Jurists on Tibet issued in December 1997, that—

(A) repression in Tibet has increased steadily since 1994, resulting in heightened control on religious activity, a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution, an increase in political arrests, suppression of peaceful protests, and an accelerated movement of Chinese people to Tibet; and

(B) in 1997, a senior office of the People's Republic of China labeled the Tibetan Buddhist culture, which has flourished in Tibet since the seventh century, as a "foreign culture" in order to facilitate indoctrination of Tibetans in Chinese socialist ideology and the process of national and cultural integration;

(2) supports the recommendations contained in the report referred to in paragraph (1) that—

(A) call on the People's Republic of China—

(i) to ensure respect for the fundamental human rights of the Tibetan people; and

(ii) to end those practices which threaten to erode the distinct cultural, religious, and linguistic identity of the Tibetan people;

(B) call on the United Nations General Assembly to resume its debate on Tibet; and

(C) call on the Dalai Lama or his representatives to enter into discussions with the Government of the People's Republic of China;

(3) commends the appointment by the Secretary of State of a United States Special Coordinator for Tibetan Issues—

(A) to promote substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

(B) to coordinate United States Government policies, programs, and projects concerning Tibet;

(C) to consult with the Congress on policies relevant to Tibet and the future and welfare of all Tibetan people, and to report to the Congress in accordance with the requirements of section 536(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236); and

(D) to advance United States policy which seeks to protect the unique religious, cultural, and linguistic heritage of Tibet, and to encourage improved respect for Tibetan human rights;

(4) calls on the People's Republic of China to release from detention the 9-year-old child identified by the Dalai Lama as the Panchen Lama, Gedhun Choekyi Nyima, to his home in Tibet from which he was taken on May 17, 1995, and to allow him to pursue his religious studies without interference and according to tradition;

(5) recognizes that the Dalai Lama is not seeking independence but genuine autonomy and calls on the People's Republic of China to respond positively to the Dalai Lama's proposal for Tibet and to enter into discussions with him or his representatives;

(6) commends the President for publicly urging President Jiang Zemin, during their recent summit meeting in Beijing, to engage in dialogue with the Dalai Lama; and

(7) calls on the President to continue to work to secure an agreement to begin substantive negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives.