

AMENDED IN ASSEMBLY MARCH 20, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1141**

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**Introduced by Assembly Member Dahle**

February 22, 2013

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An act to amend Sections 20020, 20021, 20025, ~~20027, 20030, and 20035, 20040, and 20040.5~~ of, to amend the heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of, to add Sections 20000.5, 20028, 20038, and 20039 ~~to, and 20044 to~~, to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of, *and* to repeal Section 20026 of, ~~and to repeal and add Section 20036 of~~, the Business and Professions Code, and to amend Sections 31001, 31012, ~~Section~~31220, 31300, 31302, 31302.5, 31303, 31306, and 31512 of, to add Section 31110.5 to, to repeal Sections 31301 and 31304 of, and to repeal and add Section 31201 of, the Corporations Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 1141, as amended, Dahle. Franchises.

(1) Existing law provides for the regulation of franchises and establishes certain duties, obligations, and remedies for parties to a franchise agreement. The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises, among other things. The Franchise Investment Law authorizes regulations relative to the registration of an offer or sale of a franchise, unless exempted, and prohibits certain fraudulent and unfair practices.

This bill would revise both the California Franchise Relations Act and the Franchise Investment Law.

(A) With respect to the California Franchise Relations Act, existing law generally prohibits a franchisor from terminating a franchise prior to expiration of its term except for good cause, which is defined to include the failure of a franchisee to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity, which need not exceed 30 days, to cure the failure.

This bill would provide that good cause in a termination case consists of a substantial and material breach of the franchise agreement after the franchisee is given written notice and 60 days to cure the failure. The bill would also require the termination to be in accordance with the current terms and standards equally applicable to all franchisees, with limited exceptions.

Existing law provides that immediate termination of a franchise is deemed reasonable without an opportunity to cure upon the occurrence of certain events. One of those events is the failure by the franchisee to pay franchise fees or other amounts due with 5 days of receiving written notice that these amounts are overdue.

This bill would exempt situations where the franchisee establishes that the event was caused in substantial manner by conduct of the franchisor. The bill would require certain noncompliance by the franchisee allowing immediate termination to be substantial and material. The bill would provide ~~60~~ 30 rather than 5 days for the franchisee to pay overdue amounts.

Existing law requires at least 180 days written notice to the franchisee of the franchisor's intention not to renew the franchise. Existing law imposes certain requirements on the franchisor in that regard relative to the franchisee's interests.

This bill would delete these provisions and instead require a franchisor to renew a franchise unless the franchisee has substantially and materially breached the franchise agreement, and would authorize the renewal to be for the same term as the previous term and would require the renewal to be under the franchise agreement terms then being offered to new franchisees. The bill would continue to require 180 days' written notice if the franchisor has grounds not to renew the franchise. The bill would also prohibit a franchisor, upon termination or expiration of a franchise, from enforcing against the franchisee any covenant not to compete.

~~Existing law provides that a franchisor, for a reasonable time after the death of the franchisee, may not deny the surviving spouse, heirs, or estate of the franchisee the opportunity to participate in the ownership~~

~~of the franchise under the then-current qualifications and standards applicable to franchisees.~~

~~This bill would require the qualifications and standards to be reasonable.~~

Existing law requires a franchisor that terminates or fails to renew a franchise other than as permitted under the act to offer to repurchase the franchisee's resalable current inventory, as specified.

This bill would instead require the franchisor to reinstate the franchisee and to pay all associated damages, or to pay to the franchisee the fair market value of the franchise or franchise assets.

Existing law allows a franchisor and franchisee to agree to binding arbitration of claims arising under the act subject to certain conditions.

This bill would also require the arbitration procedures and costs to allow franchisees the opportunity to vindicate their rights under the act.

This bill would also add new provisions to the California Franchise Relations Act. The bill would require the parties to a franchise agreement to deal with each other in good faith. The bill would provide that certain acts and practices by a franchisor or subfranchisor are unfair or deceptive acts or practices or an unfair method of competition. ~~The bill would provide certain rights to a franchisee if the franchisor develops a new location or grants a new franchise in essentially the same market in unreasonable proximity to an existing franchise. The bill would provide that franchisors owe a duty of competence to franchisees. The bill would provide that a condition, stipulation, or provision in a franchise agreement requiring the application of the law of another state is void. The bill would provide additional remedies for violations of provisions governing actions of franchisors relative to termination, nonrenewal, and transfer of franchises, including specified damages in certain cases, injunctive relief, and that a franchisee prevailing in an action pursuant to these provisions is entitled to an award of attorney's fees and costs to a franchisee prevailing in an action.~~

(B) ~~With respect to the Franchise Investment Law, existing law makes it unlawful for a person to offer or sell a franchise by means of a communication that includes an untrue statement of a material fact or omits to state a material fact necessary in order for the statements made to not be misleading.~~

~~This bill would also make it unlawful for a person offering or selling a franchise to intentionally misrepresent certain matters, including the prospects or chances for success of a franchise, the known required~~

~~total investment for a franchise, and efforts to sell or establish more franchises than a market or market area can sustain.~~

~~Existing law provides that any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of a franchise or who engages in other willful acts that operate as a fraud or deceit is guilty of a crime.~~

~~This bill would allow these matters to also be the subject of civil litigation, as specified.~~

~~Existing law prohibit specified acts with respect to franchise offers including, but not limited to, an act that operates as a fraud on a person.~~

~~This bill would prohibit the registration of any franchise offer that restricts venue for resolution of dispute solely to a forum outside this state.~~

~~Existing law makes it unlawful for a franchisor to restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for lawful purposes. A plaintiff may seek injunctive relief and damages for a violation of this provision. Existing law also authorizes the Deputy Commissioner of Business Oversight for the Division of Corporations to bring an action to enforce compliance with the Franchise Investment Law, as specified.~~

~~This bill would also make it unlawful for a franchisor to refuse to recognize and deal fairly and in good faith with an independent franchisee association disclosed in the current franchise disclosure document.~~

~~Existing law provides that a person who offers or sells a franchise in violation of specified provisions of the Franchise Investment Law is liable for damages to the franchisee or subfranchisor, with certain exceptions. Existing law also provides rescission as a remedy for willful violations of these provisions.~~

~~This bill would extend civil liability for damages to any violation of the Franchise Investment Law. The bill, following purchase of a franchise, would allow a franchisee or subfranchisor to seek rescission, restitution, and ancillary damages without the requirement for the violation to be willful. The bill would extend liability for any violation of the Franchise Investment Law, on a joint and several basis, to various other parties associated with the franchisor. The bill would also provide for injunctive relief for any violation of the Franchise Investment Law.~~

~~Existing law imposes time limits of one, 2, or 4 years for the bringing of an action to enforce specific liabilities under the Franchise Investment Law. Existing law provides that if the franchisor delivers a written~~

~~notice to the franchisee disclosing a violation of certain disclosure provisions, an action must be brought within 90 days.~~

~~This bill would require the written notice to include an offer of restitution of investment and ancillary damages and would extend the time for bringing an action to 180 days. The bill would allow 4 years to bring other actions to enforce liabilities under the Franchise Investment Law.~~

~~Existing law provides that any condition, stipulation, or provision purporting to bind any person acquiring a franchise to waive compliance with the Franchise Investment Law is void.~~

~~This bill would provide that certain other provisions, if included in the offer or sale of a franchise and associated documents, are also void.~~

~~Existing law provides that a willful violation of any provision of the Franchise Investment Law is a crime, unless specifically excepted. Because the bill would change the definition of certain crimes, it would impose a state-mandated local program.~~

~~(2) The bill would make other related changes.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.~~

~~State-mandated local program: *yes-no*.~~

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited, as  
2 “The Small Business Investment Protection Act of 2013.”

3 SEC. 2. Section 20000.5 is added to the Business and  
4 Professions Code, to read:

5 20000.5. The Legislature hereby finds and declares all of the  
6 following:

7 (a) ~~The widespread use of one-sided and nonnegotiable franchise~~  
8 ~~agreements has created numerous problems for franchisees in~~  
9 ~~California. Many franchisees lack knowledge and experience with~~  
10 ~~franchise agreements, knowledge of particular industries and their~~  
11 ~~franchisors’ systems, and equality in bargaining power. In addition,~~  
12 ~~many franchisees~~ *California franchisees are a major force in the*  
13 *state’s economic development. As opposed to corporate entities*

1 *that are franchisors and most often reside outside California,*  
 2 *franchisees are the local small business owners who personally*  
 3 *fund the franchise brand development, sales, use, and income tax,*  
 4 *and who invest in building, equipment, pay leases, and other spill*  
 5 *over investments. Franchisees invest their substantial assets, take*  
 6 *loans sometimes secured by their family homes, and enter into*  
 7 *long-term commercial leases and other obligations while looking*  
 8 *to their franchise businesses for their livelihoods.*

9 (b) Unlike investments in securities, an investment in a franchise  
 10 may lead to substantial additional losses well beyond the initial  
 11 risk capital, *including franchisees' homes, and sometimes filing*  
 12 *for bankruptcy.* Unlike employment, due to long-term contractual  
 13 and lease obligations, franchisees generally cannot resign and leave  
 14 without substantial liabilities.

15 ~~(e) The inability of many franchisees to negotiate on an equal~~  
 16 ~~footing extends not only to individual first-time franchisees, but~~  
 17 ~~also to experienced multiunit and well-represented franchisees.~~  
 18 ~~As a result of one-sided franchise agreements, California~~  
 19 ~~franchisees have been the victims of economic opportunism of~~  
 20 ~~franchisors. Many franchisees have lost their substantial~~  
 21 ~~investments and sometimes more, including their homes, and others~~  
 22 ~~have had to file for bankruptcy. California franchisees have also~~  
 23 ~~been victimized by territorial encroachment, franchisor lack of~~  
 24 ~~competence and negligence, unfair required purchases, and other~~  
 25 ~~misconduct. The liabilities. The California Franchise Relations~~  
 26 ~~Act is designed to protect franchisees and end abuses from those~~  
 27 ~~practices and unfair contract provisions.~~

28 (c) *California franchise law is a vitally needed component of*  
 29 *franchise regulation that serves the public good as that no*  
 30 *substantial oversight or cause of action exists via Federal*  
 31 *regulation other than common law provisions.*

32 SEC. 3. Article 2.5 (commencing with Section 20016) is added  
 33 to Chapter 5.5 of Division 8 of the Business and Professions Code,  
 34 to read:

35  
 36 Article 2.5. Relationships Between Franchisor or Subfranchisor  
 37 and Franchisees  
 38

39 20016. Without limiting the other provisions of this chapter,  
 40 the following specific rights and prohibitions shall govern the

1 relations between the franchisor or subfranchisor and its  
2 franchisees:

3 (a) (1) The parties shall deal with each other in good faith in  
4 the performance and enforcement of the franchise agreement.

5 (2) “Good faith” for purposes of this subdivision means honesty  
6 in fact and the observance of reasonable commercial standards of  
7 fair dealing in the trade.

8 (b) For the purposes of this chapter and without limiting its  
9 general application, it shall be an unfair or deceptive act or practice  
10 or an unfair method of competition for a franchisor or subfranchisor  
11 to do any of the following:

12 (1) Restrict the right of a franchisee to join or participate in an  
13 association of franchisees to the extent the restriction is prohibited  
14 by Section 20016.4 or Section 31220 of the Corporations Code.

15 ~~(2) Require a franchisee to purchase or lease goods or services  
16 in a manner prohibited by Section 20016.3.~~

17 ~~(3) Discriminate between franchisees in the charges offered or  
18 made for royalties, goods, services, equipment, rentals, advertising  
19 services, or in any other business dealings, unless and to the extent  
20 that any classification of or discrimination between franchisees is  
21 any of the following:~~

22 ~~(A) Based on franchises granted at materially different times,  
23 and the discrimination is reasonably related to differences in time.~~

24 ~~(B) Related to one or more programs for making franchises  
25 available to persons with insufficient capital, training, business  
26 experience, or education, or who lack other qualifications.~~

27 ~~(C) Related to local or regional experimentation with, or  
28 variations in, product or service lines or business formats or  
29 designs.~~

30 ~~(D) Related to efforts by one or more franchisees to cure  
31 deficiencies in the operation of franchise businesses or defaults in  
32 franchise agreements.~~

33 ~~(E) Based on other reasonable distinctions considering the  
34 purposes of this chapter and is not arbitrary.~~

35 (4) ~~Obtain money, goods, services, anything of value, or any  
36 other benefit from any other person with whom the franchisee does  
37 business on account of that business unless the franchisor advises  
38 the franchisee in advance of the franchisor’s intention to receive  
39 that benefit.~~

1     ~~(5) Establish a similar business or grant a franchise for the~~  
 2 ~~establishment of a similar business at a location within a~~  
 3 ~~geographical area specifically designated as the exclusive territory~~  
 4 ~~in a franchise previously granted to another franchisee in a~~  
 5 ~~currently effective agreement, except under the circumstances or~~  
 6 ~~conditions prescribed in the agreement. The fact that other~~  
 7 ~~franchisees or the franchisor may solicit business or sell goods or~~  
 8 ~~services to people residing in that geographical territory shall not~~  
 9 ~~constitute the establishment of a similar business within the~~  
 10 ~~exclusive territory.~~

11     ~~(6) Require a franchisee at the time of entering into a franchise~~  
 12 ~~to assent to a release, assignment, novation, or waiver that would~~  
 13 ~~relieve any person from liability imposed by this chapter. Any~~  
 14 ~~condition, stipulation, or provision purporting to bind any person~~  
 15 ~~acquiring any franchise to waive compliance with any provision~~  
 16 ~~of this chapter shall be void. This paragraph shall not bar or affect~~  
 17 ~~the settlement of disputes, claims, or civil suits arising or brought~~  
 18 ~~under this chapter.~~

19     ~~(7) Impose on a franchisee by contract, rule, or regulation,~~  
 20 ~~whether written or oral, any unreasonable and arbitrary standard~~  
 21 ~~of conduct.~~

22     ~~(8)~~  
 23     ~~(2) Terminate a franchise in violation of Article 3 (commencing~~  
 24 ~~with Section 20020), refuse to renew a franchise in violation of~~  
 25 ~~Article 4 (commencing with Section 20025), or refuse to permit~~  
 26 ~~a transfer of a franchise in violation of Article 4.4 (commencing~~  
 27 ~~with Section 20027).~~

28     ~~(c) The provisions of this chapter shall apply to all written or~~  
 29 ~~oral arrangements with the franchisee, including, but not limited~~  
 30 ~~to, the franchise offering; and the franchise agreement, sales of~~  
 31 ~~goods or services, leases and mortgages of real or personal~~  
 32 ~~property, promises to pay, security interest, pledges, insurance~~  
 33 ~~contracts, advertising contracts, construction or installation~~  
 34 ~~contracts, servicing contracts, and all other arrangements in which~~  
 35 ~~the franchisor or subfranchisor has any direct or indirect interest.~~

36     ~~(d) In any proceedings, damages may be based on reasonable~~  
 37 ~~approximations but not on speculation.~~

38     ~~20016.1. (a) The commission of any unfair or deceptive act~~  
 39 ~~or practice or unfair method of competition prohibited by Section~~  
 40 ~~20016 shall constitute an unfair or deceptive act or practice~~

1 pursuant to Chapter 5 (commencing with Section 17200) of Part  
2 of Division 7.

3 (b) Any person who sells or offers to sell a franchise in violation  
4 of this chapter shall be liable to the franchisee or subfranchisor,  
5 who may sue for damages caused thereby or for rescission or other  
6 relief as the court may deem appropriate. Rescission shall not be  
7 available to the plaintiff if the defendant proves that the plaintiff  
8 knew the facts concerning the untruth or omission or that the  
9 defendant exercised reasonable care and did not know, or, if the  
10 defendant had exercised reasonable care, would not have known,  
11 of the untruth or omission.

12 (c) The suit authorized under subdivision (b) may be brought  
13 to recover the actual damages sustained by the plaintiff together  
14 with the cost of the suit, including reasonable attorney's fees, and  
15 the court may in its discretion increase the award of damages to  
16 an amount not to exceed three times the actual damages sustained.

17 (d) Any person who becomes liable to make payments under  
18 this section may recover contributions from any persons who, if  
19 sued separately, would have been liable to make the same payment.

20 (e) A final judgment, order, or decree rendered against a person  
21 under antitrust laws or this chapter shall be regarded as evidence  
22 against that person in an action brought by any party against that  
23 person under subdivision (a) or (b) as to all matters with respect  
24 to which the judgment, order, or decree would be an estoppel  
25 between the parties.

26 20016.2. (a) If a franchisor develops, or grants to a franchisee  
27 the right to develop, a new outlet or location that sells essentially  
28 the same goods or services under the same trademark, service  
29 mark, trade name, logotype, or other commercial symbol as an  
30 existing franchisee and the new outlet or location is in unreasonable  
31 proximity to the existing franchisee's outlet or location and has  
32 an adverse effect on the gross sales of the existing franchisee's  
33 outlet or location, the existing adversely affected franchisee has a  
34 cause of action for monetary damages in an amount calculated  
35 pursuant to subdivision (b), unless any of the following apply:

36 (1) The franchisor has first offered the new outlet or location  
37 to the existing franchisee on the same basic terms and conditions  
38 available to the other potential franchisee and the existing  
39 franchisee meets the reasonable current qualifications of the  
40 franchisor including any financial requirements, or, if the new

1 outlet or location is to be owned by the franchisor, on the terms  
2 and conditions that would ordinarily be offered to a franchisee for  
3 a similarly situated outlet or location.

4 (2) ~~The adverse impact on the existing franchisee's annual gross~~  
5 ~~sales, based on a comparison to the annual gross sales from the~~  
6 ~~existing outlet or location during the 12-month period immediately~~  
7 ~~preceding the opening of the new outlet or location, is determined~~  
8 ~~to have been less than 6 percent during the first 12 months of~~  
9 ~~operation of the new outlet or location.~~

10 (3) ~~The existing franchisee, at the time the franchisor develops,~~  
11 ~~or grants to a franchisee the right to develop, a new outlet or~~  
12 ~~location, is not in compliance with the franchisor's then current~~  
13 ~~reasonable criteria for eligibility for a new franchise, not including~~  
14 ~~any financial requirements.~~

15 (4) ~~The existing franchisee has been granted reasonable~~  
16 ~~territorial rights and the new outlet or location does not violate~~  
17 ~~those territorial rights.~~

18 (b) ~~In establishing damages under a cause of action brought~~  
19 ~~pursuant to this section, the franchisee has the burden of proving~~  
20 ~~the amount of lost profits attributable to the compensable sales.~~  
21 ~~For purposes of this subdivision, "compensable sales" means the~~  
22 ~~annual gross sales from the existing outlet or location.~~  
23 ~~Compensable sales shall exclude any amount attributable to factors~~  
24 ~~other than the opening and operation of the new outlet or location.~~

25 (e) ~~Any cause of action brought under this section shall be filed~~  
26 ~~within two years of the opening of the new outlet or location.~~

27 20016.3. (a) ~~A franchisor shall not require that a franchisee~~  
28 ~~purchase goods, supplies, inventories, or services exclusively from~~  
29 ~~the franchisor or from a source or sources of supply specifically~~  
30 ~~designated by the franchisor where those goods, supplies,~~  
31 ~~inventories, or services of comparable quality are available from~~  
32 ~~sources other than those designated by the franchisor, unless~~  
33 ~~necessary for a lawful purpose that is justified on business grounds.~~

34 (b) ~~The publication by the franchisor of a list of approved~~  
35 ~~suppliers of goods, supplies, inventories, or services, or the~~  
36 ~~requirement that goods, supplies, inventories, or services comply~~  
37 ~~with specifications and standards prescribed by the franchisor,~~  
38 ~~does not constitute designation of a source under subdivision (a).~~  
39 ~~Additionally, the reasonable right of a franchisor to disapprove a~~

1 ~~supplier does not constitute a designation of source under~~  
2 ~~subdivision (a):~~

3 ~~(e) This section does not apply to the principal goods, supplies,~~  
4 ~~inventories, or services manufactured by the franchisor, or any~~  
5 ~~goods, supplies, inventories, or services entitled to protection as~~  
6 ~~a trade secret.~~

7 20016.4. A franchisor shall not restrict a franchisee from  
8 associating with other franchisees or from participating in a trade  
9 association, and shall not retaliate against a franchisee for engaging  
10 in these activities.

11 ~~20016.5. The duty of good faith is imposed in situations~~  
12 ~~including, but not limited to, where the franchisor opens a new~~  
13 ~~outlet or location that has an adverse impact on an existing~~  
14 ~~franchisee. A determination of whether the duty of good faith with~~  
15 ~~respect to a new outlet or location has been met shall be made~~  
16 ~~pursuant to the provisions, standards, and procedures in Section~~  
17 ~~20016.2. “Good faith” for purposes of this section shall have the~~  
18 ~~same meaning as defined in paragraph (2) of subdivision (a) of~~  
19 ~~Section 20016.~~

20 ~~20016.6. Franchisors shall owe a duty of competence to~~  
21 ~~franchisees operating in the state regarding all goods, services,~~  
22 ~~programs, advertising, and operating manuals required to be used~~  
23 ~~or provided to franchisees for their use.~~

24 SEC. 4. Section 20020 of the Business and Professions Code  
25 is amended to read:

26 20020. Except as otherwise provided by this chapter, no  
27 franchisor may terminate a franchise prior to the expiration of its  
28 term, except for good cause, and in accordance with the current  
29 terms and standards established by the franchisor then equally  
30 applicable to all franchisees, except with respect to any  
31 classification of, or discrimination between, franchisees that is  
32 reasonable, is based on proper and justifiable distinctions  
33 considering the purposes of this chapter, and is not arbitrary. In  
34 any proceeding under this section, the franchisor shall have the  
35 burden of proving that a classification or discrimination meets the  
36 requirements of this section. Good cause in a termination case  
37 shall consist of a substantial and material breach of any lawful  
38 requirement of the franchise agreement after being given written  
39 notice thereof and 60 days to cure the failure.

1 SEC. 5. Section 20021 of the Business and Professions Code  
2 is amended to read:

3 20021. If during the period in which the franchise is in effect,  
4 there occurs any of the following events which is relevant to the  
5 franchise, immediate notice of termination without an opportunity  
6 to cure shall be deemed reasonable unless the franchisee establishes  
7 that the event was caused in substantial manner by conduct of the  
8 franchisor:

9 (a) The franchisee or the business to which the franchise relates  
10 has been the subject of an order for relief in bankruptcy, judicially  
11 determined to be insolvent, all or a substantial part of the assets  
12 thereof are assigned to or for the benefit of any creditor, or the  
13 franchisee admits his or her inability to pay his or her debts as they  
14 come due;

15 (b) The franchisee abandons the franchise by failing to operate  
16 the business for five consecutive days during which the franchisee  
17 is required to operate the business under the terms of the franchise,  
18 or any shorter period after which it is not unreasonable under the  
19 facts and circumstances for the franchisor to conclude that the  
20 franchisee does not intend to continue to operate the franchise,  
21 unless such failure to operate is due to fire, flood, earthquake, or  
22 other similar causes beyond the franchisee's control;

23 (c) The franchisor and franchisee agree in writing to terminate  
24 the franchise;

25 (d) The franchisee makes any material misrepresentations  
26 relating to the acquisition of the franchise business or the franchisee  
27 engages in conduct which reflects materially and unfavorably upon  
28 the operation and reputation of the franchise business or system;

29 (e) The franchisee fails, for a period of 10 days after notification  
30 of noncompliance, to comply substantially with any federal, state,  
31 or local law or regulation applicable and material to the operation  
32 of the franchise;

33 (f) The franchisee, after curing any failure in accordance with  
34 Section 20020, engages in the same substantial and material  
35 noncompliance whether or not the noncompliance is corrected  
36 after notice;

37 (g) The franchisee repeatedly fails to comply with one or more  
38 substantial and material requirements of the franchise, whether or  
39 not corrected after notice;

1 (h) The franchised business or business premises of the franchise  
2 are seized, taken over, or foreclosed by a government official in  
3 the exercise of his or her duties, or seized, taken over, or foreclosed  
4 by a creditor, lienholder, or lessor, provided that a final judgment  
5 against the franchisee remains unsatisfied for 30 days (unless a  
6 supersedeas or other appeal bond has been filed); or a levy of  
7 execution has been made upon the license granted by the franchise  
8 agreement or upon any property used in the franchised business,  
9 and it is not discharged within five days of such levy;

10 (i) The franchisee is convicted of a felony or any other criminal  
11 misconduct which is relevant and material to the operation of the  
12 franchise;

13 (j) The franchisee fails to pay any franchise fees or other  
14 amounts due to the franchisor or its affiliate within ~~60~~ 30 days  
15 after receiving written notice that the fees are overdue; or

16 (k) The franchisor makes a reasonable determination that  
17 continued operation of the franchise by the franchisee will result  
18 in an imminent danger to public health or safety.

19 SEC. 6. Section 20025 of the Business and Professions Code  
20 is amended to read:

21 20025. (a) No franchisor may fail to renew a franchise unless  
22 the franchisee has substantially and materially breached the  
23 franchise agreement. If the franchisee has not substantially and  
24 materially breached the franchise agreement at time of renewal,  
25 the franchisee may renew for the same term as the previous term.  
26 The renewal shall be under the franchise agreement terms then  
27 being offered new franchisees. If the franchisor has grounds not  
28 to renew a franchise under this chapter, then the franchisor shall  
29 provide at least 180 days prior written notice of its intention to not  
30 renew as set forth in this chapter.

31 (b) Upon the termination or expiration of the franchise, the  
32 franchisor shall not seek to enforce, against the franchisee, any  
33 covenant not to compete.

34 SEC. 7. Section 20026 of the Business and Professions Code  
35 is repealed.

36 ~~SEC. 8. Section 20027 of the Business and Professions Code~~  
37 ~~is amended to read:~~

38 ~~20027. (a) No franchisor shall deny the surviving spouse, heirs,~~  
39 ~~or estate of a deceased franchisee or the majority shareholder of~~  
40 ~~the franchisee the opportunity to participate in the ownership of~~

1 the franchise under a valid franchise agreement for a reasonable  
2 time after the death of the franchisee or majority shareholder of  
3 the franchisee. During that time the surviving spouse, heirs, or  
4 estate of the deceased shall either satisfy all of the then current  
5 and reasonable qualifications for a purchaser of a franchise or sell,  
6 transfer, or assign the franchise to a person who satisfies the  
7 franchisor's then current and reasonable standards for new  
8 franchisees. The rights granted pursuant to this section shall be  
9 granted subject to the surviving spouse, heirs, or estate of the  
10 deceased maintaining all standards and obligations of the franchise.

11 (b) Nothing in subdivision (a) shall prohibit a franchisor from  
12 exercising the right of first refusal to purchase a franchise after  
13 receipt of a bona fide offer to purchase the franchise by a proposed  
14 purchaser of the franchise.

15 ~~SEC. 9.~~

16 *SEC. 8.* Section 20028 is added to the Business and Professions  
17 Code, to read:

18 20028. (a) (1) No franchisor shall refuse to permit a transfer  
19 of ownership of a franchise, or of a proprietorship, partnership,  
20 corporation, or other business entity that is a franchisee or  
21 subfranchisor, except for good cause.

22 (2) For purposes of this subdivision, good cause shall include,  
23 but not be limited to, any of the following:

24 (A) The failure of a proposed transferee to meet any of the  
25 franchisor's or subfranchisor's reasonable qualifications or  
26 standards then in effect for a franchisee or subfranchisor.

27 (B) The fact that the proposed transferee or any affiliated person  
28 of the proposed transferee is a competitor of the franchisor or  
29 subfranchisor.

30 (C) The inability or unwillingness of the proposed transferee to  
31 agree in writing to comply with and be bound by all lawful  
32 obligations imposed by the franchisor, including, without  
33 limitation, all instruction and training obligations, and to sign the  
34 current form of the franchise agreement used by the franchisor or  
35 subfranchisor.

36 (D) The failure of the franchisee or proposed transferee to pay  
37 any sums owing to the franchisor and to cure any default in the  
38 franchise agreement or other agreements with the franchisor  
39 existing at the time of the proposed transfer.

1 (b) A franchisor or subfranchisor shall have 30 days after being  
2 notified in writing of a proposed transfer to approve or disapprove  
3 in writing a proposed transfer of ownership or control of a  
4 franchise, or of a proprietorship, partnership, corporation, or other  
5 business entity that is a franchisee or subfranchisor, stating its  
6 reason for disapproval. If a franchisor or subfranchisor fails to  
7 approve or disapprove a proposed transfer in writing within that  
8 period, the franchisor or subfranchisor shall be deemed to have  
9 approved such transfer.

10 ~~SEC. 10. Section 20030 of the Business and Professions Code~~  
11 ~~is amended to read:~~

12 ~~20030. All notices of termination or nonrenewal required by~~  
13 ~~this chapter:~~

14 ~~(a) Shall be in writing;~~

15 ~~(b) Shall be posted by registered, certified or other receipted~~  
16 ~~mail, delivered by telegram, or personally delivered to the~~  
17 ~~franchisee; and~~

18 ~~(c) Shall contain a statement of intent to terminate or not renew~~  
19 ~~the franchise:~~

20 ~~(1) Together with all of the reasons therefor, and~~

21 ~~(2) The effective date of such termination or nonrenewal.~~

22 ~~SEC. 11.~~

23 ~~SEC. 9. The heading of Article 6 (commencing with Section~~  
24 ~~20035) of Chapter 5.5 of Division 8 of the Business and Professions~~  
25 ~~Code is amended to read:~~

26  
27 Article 6. Remedies  
28

29 ~~SEC. 12.~~

30 ~~SEC. 10. Section 20035 of the Business and Professions Code~~  
31 ~~is amended to read:~~

32 ~~20035. In the event a franchisor terminates or fails to renew a~~  
33 ~~franchise other than in accordance with the provisions of this~~  
34 ~~chapter, the franchisor shall reinstate the franchisee in accordance~~  
35 ~~with the provisions of this chapter and pay all damages caused~~  
36 ~~thereby, or at the election of the franchisee, shall pay to the~~  
37 ~~franchisee the fair market value of the franchise or the fair market~~  
38 ~~value of the franchise assets.~~

39 ~~SEC. 13. Section 20036 of the Business and Professions Code~~  
40 ~~is repealed.~~

1 ~~SEC. 14.~~ Section 20036 is added to the Business and Professions  
2 Code, to read:

3 20036. Any franchisee establishing a reasonable probability  
4 of prevailing in an action under this chapter shall be entitled to a  
5 temporary restraining order and preliminary injunction enjoining  
6 termination or nonrenewal pending trial without any showing of  
7 irreparable injury or posting bond.

8 ~~SEC. 15.~~

9 *SEC. 11.* Section 20038 is added to the Business and  
10 Professions Code, to read:

11 20038. Any franchisee prevailing in an action under this chapter  
12 shall be entitled to an award of reasonable attorney’s fees and  
13 costs.

14 ~~SEC. 16.~~

15 *SEC. 12.* Section 20039 is added to the Business and  
16 Professions Code, to read:

17 20039. A condition, stipulation, or provision in a franchise  
18 agreement requiring the application of the law of another state in  
19 lieu of this chapter is void.

20 ~~SEC. 17.~~ Section 20040 of the Business and Professions Code  
21 is amended to read:

22 20040. Nothing contained in this chapter shall limit the right  
23 of a franchisor and franchisee to agree before or after a dispute  
24 has arisen to binding arbitration of claims under this chapter,  
25 provided all of the following:

26 (a) The standards applied in the arbitration are not less than the  
27 requirements specified in this chapter.

28 (b) The arbitrator or arbitrators employed in the arbitration are  
29 chosen from a list of impartial arbitrators supplied by the American  
30 Arbitration Association or other impartial person.

31 (c) The arbitration procedures and costs allow franchisees the  
32 opportunity to vindicate their rights under this chapter.

33 ~~SEC. 18.~~ Section 20040.5 of the Business and Professions  
34 Code is amended to read:

35 20040.5. A provision in a franchise agreement restricting venue  
36 solely to a forum outside this state is void with respect to any claim  
37 arising under or relating to a franchise agreement involving a  
38 franchise business operating within this state.

39 ~~SEC. 19.~~ Section 20044 is added to the Business and  
40 Professions Code, to read:

1 ~~20044. This chapter shall be liberally construed to effectuate~~  
2 ~~its purposes.~~

3 ~~SEC. 20. Section 31001 of the Corporations Code is amended~~  
4 ~~to read:~~

5 ~~31001. The Legislature hereby finds and declares that the~~  
6 ~~widespread sale of franchises is a relatively new form of business~~  
7 ~~that has created numerous problems both from an investment and~~  
8 ~~a business point of view in the State of California. Prior to the~~  
9 ~~enactment of this division, the sale of franchises was regulated~~  
10 ~~only to the limited extent to which the Corporate Securities Law~~  
11 ~~of 1968 applied to those transactions. California franchisees have~~  
12 ~~suffered substantial losses where the franchisor or his or her~~  
13 ~~representative has not provided full and complete information~~  
14 ~~regarding the franchisor-franchisee relationship, the details of the~~  
15 ~~contract between franchisor and franchisee, and the prior business~~  
16 ~~experience of the franchisor.~~

17 ~~It is the intent of this law to provide each prospective franchisee~~  
18 ~~with the information necessary to make an intelligent decision~~  
19 ~~regarding franchises being offered. Further, it is the intent of this~~  
20 ~~law to prohibit the sale of franchises where the sale would lead to~~  
21 ~~fraud or a likelihood of deceit or that the franchisor's promises~~  
22 ~~would not be fulfilled, and to protect the franchisor and franchisee~~  
23 ~~by providing a better understanding of the relationship between~~  
24 ~~the franchisor and franchisee with regard to their business~~  
25 ~~relationship.~~

26 ~~SEC. 21. Section 31012 of the Corporations Code is amended~~  
27 ~~to read:~~

28 ~~31012. "Fraud," "deceit," "misrepresentation," and "omissions"~~  
29 ~~are not limited to common law fraud or deceit, and only actual~~  
30 ~~reliance is required for recovery for fraud, deceit,~~  
31 ~~misrepresentation, or omissions under this division.~~

32 ~~SEC. 22. Section 31110.5 is added to the Corporations Code,~~  
33 ~~to read:~~

34 ~~31110.5. The commissioner shall not register any franchise~~  
35 ~~offer that contains a provision in a franchise agreement, contrary~~  
36 ~~to Section 20040.5 of the Business and Professions Code,~~  
37 ~~restricting venue for resolution of disputes solely to a forum outside~~  
38 ~~this state.~~

39 ~~SEC. 23. Section 31201 of the Corporations Code is repealed.~~

1 ~~SEC. 24.~~ Section 31201 is added to the Corporations Code, to  
 2 read:

3 31201. (a) It is unlawful for any person in connection with the  
 4 offer, sale, or purchase of any franchise, or in any filing with the  
 5 commissioner, to do any of the following, directly or indirectly:

- 6 (1) ~~Employ any device, scheme, or artifice to defraud.~~
- 7 (2) ~~Make any untrue statements of a material fact or omit to~~  
 8 ~~state a material fact necessary to make the statement, in light of~~  
 9 ~~the circumstances under which they are made, not misleading.~~
- 10 (3) ~~Engage in any act that operates or that would operate as a~~  
 11 ~~fraud or deceit upon any person.~~

12 (b) ~~It is unlawful for any person when offering or selling a~~  
 13 ~~franchise to do any of the following:~~

- 14 (1) ~~Intentionally misrepresent the prospects or chances for~~  
 15 ~~success of a proposed or existing franchise.~~
- 16 (2) ~~Intentionally misrepresent, by failure to disclose or~~  
 17 ~~otherwise, the known required total investment for a franchise.~~
- 18 (3) ~~Intentionally misrepresent, or fail to disclose, efforts to sell~~  
 19 ~~or establish more franchises than is reasonable to expect the market~~  
 20 ~~or market area for the particular franchise to sustain.~~

21 ~~SEC. 25.~~

22 ~~SEC. 13.~~ Section 31220 of the Corporations Code is amended  
 23 to read:

24 31220. It shall be a violation of this division for any franchisor,  
 25 directly or indirectly, through any officer, agent, or employee, to  
 26 restrict or inhibit the right of franchisees to join a trade association  
 27 or to prohibit the right of free association among franchisees for  
 28 any lawful purpose, or to refuse to recognize and deal fairly and  
 29 in good faith with any independent franchisee association *disclosed*  
 30 *in the current franchise disclosure document*. Notwithstanding  
 31 Section 31410, a violation of this section shall not constitute a  
 32 crime.

33 ~~SEC. 26.~~ Section 31300 of the Corporations Code is amended  
 34 to read:

35 31300. ~~Any person who offers or sells a franchise in violation~~  
 36 ~~of this division shall be liable to the franchisee or subfranchisor,~~  
 37 ~~who may sue for damages following the purchase of the franchise,~~  
 38 ~~or for rescission, restitution, and ancillary damages, unless the~~  
 39 ~~defendant proves that the plaintiff knew the facts concerning the~~  
 40 ~~untruth or omission, or that the defendant exercised reasonable~~

1 care and did not know, or, if he or she had exercised reasonable  
2 care, would not have known, of the untruth or omission.

3 ~~SEC. 27. Section 31301 of the Corporations Code is repealed.~~

4 ~~SEC. 28. Section 31302 of the Corporations Code is amended~~  
5 ~~to read:~~

6 ~~31302. Every person who directly or indirectly controls a~~  
7 ~~person liable under this chapter, every partner in a firm so liable,~~  
8 ~~every principal executive officer or director of a corporation so~~  
9 ~~liable, every person occupying a similar status or performing~~  
10 ~~similar functions, every employee of a person so liable who~~  
11 ~~materially aids in the act or transaction constituting the violation,~~  
12 ~~are also liable jointly and severally with and to the same extent as~~  
13 ~~such person, unless the other person who is so liable had no~~  
14 ~~knowledge of or reasonable grounds to believe in the existence of~~  
15 ~~the facts by reason of which the liability is alleged to exist.~~

16 ~~SEC. 29. Section 31302.5 of the Corporations Code is amended~~  
17 ~~to read:~~

18 ~~31302.5. (a) Any person who violates any provision of this~~  
19 ~~chapter may be sued in the superior court in the county in which~~  
20 ~~the defendant resides or where a franchise affected by the violation~~  
21 ~~does business, for temporary and permanent injunctive relief and~~  
22 ~~for damages. A plaintiff shall not be required to allege or prove~~  
23 ~~that actual damages have been suffered in order to obtain injunctive~~  
24 ~~relief.~~

25 ~~(b) A plaintiff prevailing in a claim for violation of any provision~~  
26 ~~of this chapter shall also be awarded costs of suit, including~~  
27 ~~reasonable attorney's fees.~~

28 ~~SEC. 30. Section 31303 of the Corporations Code is amended~~  
29 ~~to read:~~

30 ~~31303. No action shall be maintained to enforce any liability~~  
31 ~~under this chapter unless brought before the expiration of four~~  
32 ~~years after the act or transaction constituting the violation or 180~~  
33 ~~days after delivery to the franchisee of a written notice disclosing~~  
34 ~~any violation of Section 31110 or 31200, which notice shall be~~  
35 ~~approved as to form by the commissioner. The notice shall include~~  
36 ~~an offer of restitution of investment and ancillary damages to the~~  
37 ~~franchisee.~~

38 ~~SEC. 31. Section 31304 of the Corporations Code is repealed.~~

39 ~~SEC. 32. Section 31306 of the Corporations Code is amended~~  
40 ~~to read:~~

1     31306. ~~Nothing in this chapter shall preempt, supersede, limit,~~  
 2 ~~or repeal any liability that may exist by virtue of any other statute~~  
 3 ~~or under common law if this law were not in effect, including, but~~  
 4 ~~not limited to, common law fraud.~~

5     SEC. 33. ~~Section 31512 of the Corporations Code is amended~~  
 6 ~~to read:~~

7     31512. ~~Any condition, stipulation, or provision purporting to~~  
 8 ~~bind any person acquiring any franchise to waive compliance with~~  
 9 ~~any provision of this law or any rule or order hereunder is void~~  
 10 ~~and of no effect, without limitation. All no representation, no~~  
 11 ~~reliance, and choice of law, other than California law, clauses in~~  
 12 ~~the offer or sale of franchises, including in the franchise agreement,~~  
 13 ~~franchise disclosure document, or separate disclaimer, are void~~  
 14 ~~and of no effect.~~

15     SEC. 34. ~~No reimbursement is required by this act pursuant to~~  
 16 ~~Section 6 of Article XIII B of the California Constitution because~~  
 17 ~~the only costs that may be incurred by a local agency or school~~  
 18 ~~district will be incurred because this act creates a new crime or~~  
 19 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
 20 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
 21 ~~the Government Code, or changes the definition of a crime within~~  
 22 ~~the meaning of Section 6 of Article XIII B of the California~~  
 23 ~~Constitution.~~