

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 9, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 610

Introduced by Senator Jackson

February 22, 2013

An act to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of the Business and Professions Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

SB 610, as amended, Jackson. Franchises.

The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises between a franchisor, subfranchisor, and franchisee, as those terms are defined. *Existing law provides that any condition purporting to bind any person to waive compliance with the act is contrary to public policy and void.*

This bill would require these parties to deal with each other in good faith, as defined, and prohibit a franchisor or subfranchisor from restricting the right of a franchisee to join or participate in an association of franchisees to the extent the restriction is prohibited by existing law. ~~This~~ *The* bill would authorize a franchisee to bring an action against a franchisor or subfranchisor who offers to sell, sells, fails to renew or transfer, or terminates a franchise in violation of these provisions for *temporary and permanent injunctive relief, and damages caused thereby, or for rescission or other relief deemed appropriate by the court.* ~~This~~ *The* bill would additionally authorize a court in its discretion to award

reasonable costs and attorney’s fees to a prevailing plaintiff. ~~This~~ *The bill would also authorize a franchisor or subfranchisor who becomes liable to make payments for a violation of these provisions to recover contributions from any person who, if sued separately, would also have been liable to make the same payments. The bill would prohibit a franchisor or subfranchisor from requiring a franchisee to waive its rights as a condition of doing business with the franchisor or subfranchisor, and would provide that any waiver that is required as a condition of doing business shall be presumed unenforceable. The bill would authorize a franchisor or subfranchisor to enforce a waiver of rights under these provisions only if the waiver is knowing, voluntary, and not made as a condition of doing business with the franchisor or subfranchisor.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

1 SECTION 1. Article 2.5 (commencing with Section 20016) is
 2 added to Chapter 5.5 of Division 8 of the Business and Professions
 3 Code, to read:

4
 5 Article 2.5. Relationships Between Franchisor or Subfranchisor
 6 and Franchisees
 7

8 20016. Without limiting the other provisions of this chapter,
 9 the following specific rights and prohibitions shall govern the
 10 relations between a franchisor, subfranchisor, and franchisee:

11 (a) (1) These parties shall deal with each other in good faith in
 12 the performance and enforcement of the franchise agreement.

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

16 (b) A franchisor or subfranchisor shall not restrict the right of
 17 a franchisee to join or participate in an association of franchisees
 18 to the extent the restriction is prohibited by Section 31220 of the
 19 Corporations Code.

20 20017. (a) A franchisee may bring an action against a
 21 franchisor or subfranchisor who offers to sell, sells, fails to renew
 22 or transfer, or terminates a franchise in violation of Section 20016

1 *for temporary and permanent injunctive relief, and* for damages
2 *caused thereby, or for rescission or other relief deemed appropriate*
3 *by the court. In addition, the court may in its discretion award*
4 *reasonable costs and attorney’s fees to a prevailing plaintiff.*

5 (b) A franchisor or subfranchisor who becomes liable to make
6 payments under this section may recover contributions from any
7 person who, if sued separately, would have been liable to make
8 the same payments.

9 *20018. A franchisor or subfranchisor shall not require that*
10 *the franchisee waive any right provided for in this article as a*
11 *condition of doing business with the franchisor or subfranchisor.*
12 *Any waiver by the franchisee of a right under this article shall be*
13 *knowing and voluntary, and not made a condition of doing business*
14 *with a franchisor or subfranchisor. Any waiver that is required as*
15 *a condition of doing business with a franchisor or subfranchisor*
16 *shall be presumed involuntary, unconscionable, against public*
17 *policy, and unenforceable. The franchisor or subfranchisor may*
18 *enforce an agreement regarding any waiver of rights under this*
19 *article if the franchisor or subfranchisor shows that the agreement*
20 *was knowing, voluntary, and not made a condition of doing*
21 *business with the franchisor or subfranchisor.*