

Senate Bill No. 610

Passed the Senate August 21, 2014

Secretary of the Senate

Passed the Assembly August 14, 2014

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 20010, 20020, and 20035 of, and 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, 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 provide that a condition of a franchise agreement requiring the franchisee to waive the implied covenant of good faith and fair dealing is contrary to public policy and void. The bill would prohibit a franchise agreement 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. The bill would prohibit a franchise agreement from preventing a franchisee from selling or transferring a franchise or a part of the interest of a franchise to another person, except as provided. The bill would prohibit a franchise agreement from giving a franchisee a right to sell, transfer, or assign the franchise, or a right thereunder, without the consent of the franchisor, as provided. The bill would prohibit a franchise agreement from allowing the transferring franchisee to fail to notify the franchisor of the franchisee's decision to sell, transfer, or assign the franchise, as provided.

Existing law prohibits a franchisor from terminating a franchise agreement prior to the expiration of its term, except for good cause, as defined, and upon the occurrence of specified events.

This bill would prohibit a franchisor from terminating a franchise agreement prior to the expiration of its term unless there is a substantial and material breach on the part of the franchisee of a lawful requirement of the franchise agreement, except as otherwise provided.

Existing law requires a franchisor that terminates or fails to renew a franchise, other than in accordance with specified provisions of law, to offer to repurchase from the franchisee the franchisee's resalable current inventory, as specified.

This bill would require a franchisor that terminates or fails to allow the sale, transfer, or assignment of a franchise, other than in accordance with specified provisions of law, to, at the election of the franchisee, either reinstate the franchisee and pay specified damages or pay to the franchisee the fair market value of the franchise and franchise assets, as provided.

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

SECTION 1. Section 20010 of the Business and Professions Code is amended to read:

20010. Any condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of this law or to waive the implied covenant of good faith and fair dealing is contrary to public policy and void.

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

Article 2.5. Relationships Between Franchisor and Franchisees

20016. It is unlawful for a franchise agreement to do any of the following:

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

(b) (1) Prevent a franchisee from selling or transferring a franchise or a part of the interest of a franchise to another person, provided the person is qualified. A franchisee shall not, however, have the right to sell, transfer, or assign the franchise, or a right thereunder, without the consent of the franchisor except that the consent shall not be unreasonably withheld.

(2) (A) Allow the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchise or the sale, assignment, or transfer of all, or substantially all, of the assets of the franchised business or a controlling interest in the franchised business to

another person, to notify the franchisor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

- (i) The proposed transferee's name and address.
- (ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.
- (iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the franchisor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the franchisor shall notify the franchisee and the proposed transferee of information needed to make the application complete.

(B) For the franchisor, to fail, on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the franchisor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. A proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In an action in which the franchisor's withholding of consent under this subdivision is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

SEC. 3. Section 20020 of the Business and Professions Code is amended to read:

20020. Except as otherwise provided by this chapter, a franchisor shall not terminate a franchise prior to the expiration of its term, except upon a substantial and material breach on the part of the franchisee of a lawful requirement of the franchise agreement. If there is a substantial and material breach of a lawful

requirement of the franchise agreement, the franchisor shall allow the franchisee 30 days to cure the failure before termination.

SEC. 4. Section 20035 of the Business and Professions Code is amended to read:

20035. (a) In the event a franchisor terminates or fails to allow the sale, transfer, or assignment of a franchise other than in accordance with the provisions of this chapter, the franchisor shall reinstate the franchisee in accordance with the provisions of this chapter and shall pay all damages caused thereby, or, at the election of the franchisee, shall pay to the franchisee the fair market value of the franchise and franchise assets. A court shall be entitled to grant preliminary and permanent injunctions for violations of this chapter.

(b) In the event a franchisor fails to renew a franchise other than in accordance with the provisions of this chapter, the franchisor shall offer to repurchase from the franchisee the franchisee's resalable current inventory meeting the franchisor's present standards that is required by the franchise agreement or commercial practice and held for use or sale in the franchised business at the lower of the fair wholesale market value or the price paid by the franchisee. The franchisor shall not be liable for offering to purchase personalized items that have no value to the franchisor in the business that it franchises.

Approved _____, 2014

Governor