

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 525**

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**Introduced by Assembly Member ~~Members~~ Holden and Atkins**

February 23, 2015

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An act to amend ~~Section 7563 of the Business and Professions Code, relating to private investigators, and declaring the urgency thereof, to take effect immediately. Sections 20020, 20021, and 20036 of, to amend the heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of, to add Sections 20022, 20028, and 20029 to, and to repeal and add Sections 20025 and 20035 of, the Business and Professions Code, relating to franchises.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 525, as amended, Holden. ~~Private Investigators: fines. Franchise relations: renewal and termination.~~

*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.*

*That act, except as otherwise provided, prohibits a franchisor from terminating a franchise prior to the expiration of its term, except for good cause, which includes, but is not limited to, the failure of the franchisee to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity to cure the failure within 30 days.*

*This bill would instead limit good cause to be the failure of the franchisee to comply with any lawful requirement of the franchise*

agreement after being given notice at least 60 days in advance and a reasonable opportunity to cure the failure within 60 days or more.

The act prohibits a franchisor from failing to renew a franchise agreement unless the franchisor provides the franchisee at least 180 day's prior written notice of its intention not to renew and specified conditions are met.

This bill would instead prohibit a franchisor from failing to renew a franchise agreement unless the franchisee has failed to substantially comply with the franchise agreement. The bill would allow the franchisee to renew for the same duration as provided in the expiring franchise agreement and would require the renewal to be under the franchise agreement terms that are being offered to new franchisees. The bill would require, if the franchisor has grounds not to renew a franchise, the franchisor to provide written notice of its intention not to renew at least 180 days prior to the termination of the existing franchise agreement. The bill would, upon termination or expiration of the franchise, prohibit the franchisor from seeking to enforce against the franchisee any covenant not to compete.

This bill would make it unlawful for a franchise agreement to prevent a franchisee from selling or transferring a franchise or a part of an interest of a franchise to another person, provided that the person is qualified under the franchisor's then-existing and reasonable standards for approval of new franchisees.

This bill would provide that a franchise agreement require the franchisee, prior to the sale, assignment, or transfer of all or substantially all of the assets of the franchise business, or a controlling interest in the franchise business, to another person, to notify the franchisor of the franchisee's decision to sell, transfer, or assign the franchise, and would require the notice to be in writing and include specified information. The bill would provide that the franchise agreement require the franchisor, within a specified period, to notify the franchisee of the approval or disapproval of the sale, assignment, or transfer of the franchise, and would require the notice to be in writing and be personally served on the franchisee or sent by certified mail, return receipt requested. The bill would deem a proposed sale, assignment, or transfer approved, unless disapproved by the franchisor, as specified.

The act 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 renewal, sale, assignment, or transfer 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 the franchisee the fair market value of the franchise and franchise assets, as provided.

This bill would also allow a franchisee to have the opportunity to monetize any equity the franchise may have developed in the franchise business prior to the termination of the franchise agreement, as specified.

~~The Private Investigator Act provides for the licensure and regulation of private investigators by the Bureau of Security and Investigative Services within the Department of Consumer Affairs and makes a violation of the licensing requirements a crime. The act authorizes the Director of Consumer Affairs to impose a civil penalty of no greater than \$500 instead of suspending or revoking a license issued under the act for the violation of specified provisions if the director determines that the imposition of the civil penalty better serves the purposes of the act.~~

~~This bill would increase that civil penalty to an amount no greater than \$1,000 instead of \$500.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ -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. Section 20020 of the Business and Professions
- 2 Code is amended to read:
- 3 20020. Except as otherwise provided by this chapter, no
- 4 franchisor may terminate a franchise prior to the expiration of its
- 5 term, except for good cause. Good cause shall ~~include, but not~~ be
- 6 limited ~~to~~, to the failure of the franchisee to *substantially* comply
- 7 with any lawful requirement of the franchise agreement after being
- 8 given notice *at least 60 days in advance* thereof and a reasonable
- 9 opportunity, which in no event ~~need be more~~ *shall be less than 30*
- 10 60 days, to cure the failure.

1     *SEC. 2. 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:

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

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

21    (c) The franchisor and franchisee agree in writing to terminate  
22    the franchise;

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

27    (e) The franchisee fails, for a period of 10 days after notification  
28    of noncompliance, to comply with any federal, state or local law  
29    or ~~regulation~~ *regulation, including, but not limited to, all health,*  
30    *safety, building, and labor laws or regulations* applicable to the  
31    operation of the franchise;

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

35    (g) The franchisee repeatedly fails to comply with one or more  
36    requirements of the franchise, whether or not corrected after notice;

37    (h) The franchised business or business premises of the franchise  
38    are seized, taken over, or foreclosed by a government official in  
39    the exercise of his or her duties, or seized, taken over, or foreclosed  
40    by a creditor, lienholder or lessor, provided that a final judgment

1 against the franchisee remains unsatisfied for 30 days (unless a  
2 supersedeas or other appeal bond has been filed); or a levy of  
3 execution has been made upon the license granted by the franchise  
4 agreement or upon any property used in the franchised business,  
5 and it is not discharged within five days of such levy;

6 (i) The franchisee is convicted of a felony or any other criminal  
7 misconduct which is relevant to the operation of the franchise;

8 (j) The franchisee fails to pay any franchise fees or other  
9 amounts due to the franchisor or its affiliate within five days after  
10 receiving written notice that such fees are overdue; or

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

14 *SEC. 3. Section 20022 is added to the Business and Professions*  
15 *Code, to read:*

16 *20022. While not transferring any equity in the franchisor's*  
17 *intellectual property to the franchisee, a franchisee shall have the*  
18 *opportunity to monetize any equity the franchisee may have*  
19 *developed in the franchised business prior to the termination of*  
20 *the franchise agreement.*

21 *SEC. 4. Section 20025 of the Business and Professions Code*  
22 *is repealed.*

23 ~~20025. No franchisor may fail to renew a franchise unless such~~  
24 ~~franchisor provides the franchisee at least 180 days prior written~~  
25 ~~notice of its intention not to renew; and~~

26 ~~(a) During the 180 days prior to expiration of the franchise the~~  
27 ~~franchisor permits the franchisee to sell his business to a purchaser~~  
28 ~~meeting the franchisor's then current requirements for granting~~  
29 ~~new franchises, or if the franchisor is not granting a significant~~  
30 ~~number of new franchises, the then current requirements for~~  
31 ~~granting renewal franchises; or~~

32 ~~(b) (1) The refusal to renew is not for the purpose of converting~~  
33 ~~the franchisee's business premises to operation by employees or~~  
34 ~~agents of the franchisor for such franchisor's own account,~~  
35 ~~provided, that nothing in this paragraph shall prohibit a franchisor~~  
36 ~~from exercising a right of first refusal to purchase the franchisee's~~  
37 ~~business; and~~

38 ~~(2) Upon expiration of the franchise, the franchisor agrees not~~  
39 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~  
40 ~~to compete with the franchisor or franchisees of the franchisor; or~~

1 ~~(e) Termination would be permitted pursuant to Section 20020~~  
2 ~~or 20021; or~~  
3 ~~(d) The franchisee and the franchisor agree not to renew the~~  
4 ~~franchise; or~~  
5 ~~(e) The franchisor withdraws from distributing its products or~~  
6 ~~services through franchises in the geographic market served by~~  
7 ~~the franchisee, provided that:~~  
8 ~~(1) Upon expiration of the franchise, the franchisor agrees not~~  
9 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~  
10 ~~to compete with the franchisor or franchisees of the franchisor;~~  
11 ~~and~~  
12 ~~(2) The failure to renew is not for the purpose of converting the~~  
13 ~~business conducted by the franchisee pursuant to the franchise~~  
14 ~~agreement to operation by employees or agents of the franchisor~~  
15 ~~for such franchisor's own account; and~~  
16 ~~(3) Where the franchisor determines to sell, transfer, or assign~~  
17 ~~its interest in a marketing premises occupied by a franchisee whose~~  
18 ~~franchise agreement is not renewed pursuant to this paragraph:~~  
19 ~~(A) The franchisor, during the 180-day period after giving notice~~  
20 ~~offers such franchisee a right of first refusal of at least 30 days'~~  
21 ~~duration of a bona fide offer, made by another to purchase such~~  
22 ~~franchisor's interest in such premises; or~~  
23 ~~(B) In the case of the sale, transfer, or assignment to another~~  
24 ~~person of the franchisor's interest in one or more other controlled~~  
25 ~~marketing premises, such other person in good faith offers the~~  
26 ~~franchisee a franchise on substantially the same terms and~~  
27 ~~conditions currently being offered by such other person to other~~  
28 ~~franchisees; or~~  
29 ~~(f) The franchisor and the franchisee fail to agree to changes or~~  
30 ~~additions to the terms and conditions of the franchise agreement,~~  
31 ~~if such changes or additions would result in renewal of the~~  
32 ~~franchise agreement on substantially the same terms and conditions~~  
33 ~~on which the franchisor is then customarily granting renewal~~  
34 ~~franchises, or if the franchisor is not then granting a significant~~  
35 ~~number of renewal franchises, the terms and conditions on which~~  
36 ~~the franchisor is then customarily granting original franchises. The~~  
37 ~~franchisor may give the franchisee written notice of a date which~~  
38 ~~is at least 30 days from the date of such notice, on or before which~~  
39 ~~a proposed written agreement of the terms and conditions of the~~  
40 ~~renewal franchise shall be accepted in writing by the franchisee.~~

1 ~~Such notice, when given not less than 180 days before the end of~~  
2 ~~the franchise term, may state that in the event of failure of such~~  
3 ~~acceptance by the franchisee, the notice shall be deemed a notice~~  
4 ~~of intention not to renew at the end of the franchise term.~~

5 *SEC. 5. Section 20025 is added to the Business and Professions*  
6 *Code, to read:*

7 *20025. (a) No franchisor may fail to renew a franchise unless*  
8 *the franchisee has failed to substantially comply with the franchise*  
9 *agreement.*

10 *(b) If the franchisee is in substantial compliance with the*  
11 *franchise agreement at the time of the expiration of the franchise*  
12 *agreement, the franchisee may renew for the same duration as*  
13 *provided in the expiring franchise agreement. The renewal shall*  
14 *be under the franchise agreement terms that are being offered to*  
15 *new franchisees.*

16 *(c) If the franchisor has grounds not to renew a franchise under*  
17 *this chapter, then the franchisor shall provide written notice of its*  
18 *intention not to renew, as set forth in this chapter, at least 180*  
19 *days prior to the termination of the existing franchise agreement.*

20 *(d) Upon termination or expiration of the franchise, the*  
21 *franchisor shall not seek to enforce against the franchisee any*  
22 *covenant not to compete.*

23 *SEC. 6. Section 20028 is added to the Business and Professions*  
24 *Code, to read:*

25 *20028. (a) It is unlawful for a franchise agreement to prevent*  
26 *a franchisee from selling or transferring a franchise or a part of*  
27 *an interest of a franchise to another person, provided that the*  
28 *person is qualified under the franchisor's then-existing and*  
29 *reasonable standards for approval of new franchisees.*

30 *(b) Notwithstanding subdivision (a), a franchisee shall not have*  
31 *the right to sell, transfer, or assign the franchise, or any right*  
32 *thereunder, without the written consent of the franchisor, except*  
33 *that the consent shall not be unreasonably withheld.*

34 *SEC. 7. Section 20029 is added to the Business and Professions*  
35 *Code, to read:*

36 *20029. (a) The franchise agreement shall require the*  
37 *franchisee, prior to the sale, assignment, or transfer of all or*  
38 *substantially all of the assets of the franchise business, or a*  
39 *controlling interest in the franchise business, to another person,*  
40 *to notify the franchisor, of the franchisee's decision to sell, transfer*

1 or assign the franchise. The notice shall be in writing and include  
 2 all of the following:

- 3 (1) The proposed transferee's name and address.
- 4 (2) A copy of all agreements related to the sale, assignment, or  
 5 transfer of the franchised business or its assets.
- 6 (3) The proposed transferee's application for approval to  
 7 become the successor franchisee. The application shall include  
 8 all forms and related information generally utilized by the  
 9 franchisor in reviewing prospective new franchisees, if those forms  
 10 are readily made available to the existing franchisee. As soon as  
 11 practicable after the receipt of the proposed transferee's  
 12 application, the franchisor shall notify, in writing, the franchisee  
 13 and the proposed transferee of any additional information  
 14 necessary to complete the transfer application.

15 (b) (1) The franchise agreement shall require the franchisor,  
 16 within 60 days after the receipt of all of the necessary information  
 17 required pursuant to subdivision (a), or as specified by written  
 18 agreement between the franchisor and the franchisee, to notify the  
 19 franchisee of the approval or disapproval of the sale, assignment,  
 20 or transfer of the franchise. The notice shall be in writing and be  
 21 personally served on the franchisee or sent by certified mail, return  
 22 receipt requested. A proposed sale, assignment or transfer shall  
 23 be deemed approved, unless disapproved by the franchisor in the  
 24 manner provided by this subdivision. If the proposed sale,  
 25 assignment, or transfer is disapproved, the franchisor shall include  
 26 in the notice of disapproval a statement setting forth the reasons  
 27 for the disapproval.

28 (2) In any action in which the franchisor's disapproval of a  
 29 sale, assignment or transfer pursuant to this subdivision is an  
 30 issue, the reasonability of the franchisor's decision shall be a  
 31 question of fact requiring consideration of all existing  
 32 circumstances.

33 SEC. 8. The heading of Article 6 (commencing with Section  
 34 20035) of Chapter 5.5 of Division 8 of the Business and Professions  
 35 Code is amended to read:

36  
 37 Article 6. ~~Offers to Repurchase Inventory Remedies~~

38  
 39 SEC. 9. Section 20035 of the Business and Professions Code  
 40 is repealed.

1     ~~20035. In the event a franchisor terminates or fails to renew a~~  
2 ~~franchise other than in accordance with the provisions of this~~  
3 ~~chapter, the franchisor shall offer to repurchase from the franchisee~~  
4 ~~the franchisee's resalable current inventory meeting the franchisor's~~  
5 ~~present standards that is required by the franchise agreement or~~  
6 ~~commercial practice and held for use or sale in the franchised~~  
7 ~~business at the lower of the fair wholesale market value or the~~  
8 ~~price paid by the franchisee. The franchisor shall not be liable for~~  
9 ~~offering to purchase personalized items which have no value to~~  
10 ~~the franchisor in the business which it franchises.~~

11     ~~SEC. 10. Section 20035 is added to the Business and~~  
12 ~~Professions Code, to read:~~

13     ~~20035. In the event a franchisor terminates or fails to allow~~  
14 ~~the renewal, sale, assignment, or transfer of a franchise other than~~  
15 ~~in accordance with the provisions of this chapter, the franchisor~~  
16 ~~shall reinstate the franchisee under the same terms as the existing~~  
17 ~~franchise agreement and shall pay all damages caused thereby,~~  
18 ~~or at the election of the franchisee shall pay the franchisee the fair~~  
19 ~~market value of the franchise and franchise assets. A court may~~  
20 ~~grant preliminary and permanent injunctions for a violation of~~  
21 ~~this chapter.~~

22     ~~SEC. 11. Section 20036 of the Business and Professions Code~~  
23 ~~is amended to read:~~

24     ~~20036. The franchisor may offset against any repurchase offer~~  
25 ~~remedies made pursuant to Section 20035 any sums owed the~~  
26 ~~franchisor or its subsidiaries by the franchisee pursuant to the~~  
27 ~~franchise or any ancillary agreement.~~

28     ~~SECTION 1. Section 7563 of the Business and Professions~~  
29 ~~Code is amended to read:~~

30     ~~7563. The director, in lieu of suspending or revoking a license~~  
31 ~~issued under this chapter for violations of Sections 7561.1, 7561.3,~~  
32 ~~and 7561.4, may impose a civil penalty not to exceed one thousand~~  
33 ~~dollars (\$1,000) upon a licensee, if the director determines that~~  
34 ~~this action better serves the purposes of this chapter.~~

35     ~~SEC. 2. This act is an urgency statute necessary for the~~  
36 ~~immediate preservation of the public peace, health, or safety within~~  
37 ~~the meaning of Article IV of the Constitution and shall go into~~  
38 ~~immediate effect. The facts constituting the necessity are:~~

39     ~~In order to enable the Director of Consumer Affairs to provide~~  
40 ~~increased protection to consumers from unscrupulous private~~

- 1 ~~investigators at the earliest possible time it is necessary that this~~
- 2 ~~act take effect immediately.~~

O