

AMENDED IN ASSEMBLY MAY 4, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 525

Introduced by Assembly Members ~~Holden and Atkins~~ *Holden, Atkins, and Wilk*

February 23, 2015

An act to amend 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~~ *Section* 20035 of, the Business and Professions Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 525, as amended, Holden. 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 no less than 60 days or more~~. *from the date of the notice of noncompliance.*

~~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. *The bill would prohibit a sale, transfer, or assignment of a franchise without the franchisor's written consent but would prohibit that consent from being withheld unless the buyer, transferee, or assignor does not meet standards for 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~~ *require that* a franchisee ~~to~~ have the opportunity to monetize any equity the franchise may have developed in the franchise business prior to the termination *or nonrenewal* of the franchise agreement, as specified. *The bill would define equity for these purposes. The bill would prohibit application of these provisions to certain franchisees terminated without an opportunity to cure, including those who abandon their franchises.*

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. 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 be limited to the
6 failure of the franchisee to substantially comply with any lawful
7 requirement of the franchise agreement after being given notice
8 at least 60 days in advance thereof and a reasonable opportunity,
9 which in no event shall be less than ~~60 days,~~ *days from the date*
10 *of the notice of noncompliance,* to cure the failure.

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

13 20021. If during the period in which the franchise is in effect,
14 there occurs any of the following events which is relevant to the
15 franchise, immediate notice of termination without an opportunity
16 to cure, shall be deemed reasonable:

17 (a) The franchisee or the business to which the franchise relates
18 has been the subject of an order for relief in bankruptcy, judicially

1 determined to be insolvent, all or a substantial part of the assets
2 thereof are assigned to or for the benefit of any creditor, or the
3 franchisee admits his or her inability to pay his or her debts as they
4 come due;

5 (b) The franchisee abandons the franchise by failing to operate
6 the business for five consecutive days during which the franchisee
7 is required to operate the business under the terms of the franchise,
8 or any shorter period after which it is not unreasonable under the
9 facts and circumstances for the franchisor to conclude that the
10 franchisee does not intend to continue to operate the franchise,
11 unless such failure to operate is due to fire, flood, earthquake or
12 other similar causes beyond the franchisee's control;

13 (c) The franchisor and franchisee agree in writing to terminate
14 the franchise;

15 (d) The franchisee makes any material misrepresentations
16 relating to the acquisition of the franchise business or the franchisee
17 engages in conduct which reflects materially and unfavorably upon
18 the operation and reputation of the franchise business or system;

19 (e) The franchisee fails, for a period of 10 days after notification
20 of noncompliance, to comply with any federal, state or local law
21 or regulation, including, but not limited to, all health, safety,
22 building, and labor laws or regulations applicable to the operation
23 of the franchise;

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

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

29 (h) The franchised business or business premises of the franchise
30 are seized, taken over, or foreclosed by a government official in
31 the exercise of his or her duties, or seized, taken over, or foreclosed
32 by a creditor, lienholder or lessor, provided that a final judgment
33 against the franchisee remains unsatisfied for 30 days (unless a
34 supersedeas or other appeal bond has been filed); or a levy of
35 execution has been made upon the license granted by the franchise
36 agreement or upon any property used in the franchised business,
37 and it is not discharged within five days of such levy;

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

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

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

7 SEC. 3. Section 20022 is added to the Business and Professions
8 Code, to read:

9 20022. (a) While not transferring any equity in the franchisor's
10 intellectual property to the franchisee, a franchisee shall have the
11 opportunity to monetize any equity the franchisee may have
12 developed in the franchised business prior to the termination or
13 nonrenewal of the franchise agreement.

14 (b) (1) *Except as provided in paragraph (2), for the purpose*
15 *of this section, "equity" means the fair market value, on the date*
16 *of the notice of termination or nonrenewal, of the franchise and*
17 *franchise assets, and of all investments in the franchise made by*
18 *the franchisee, including, but not limited to, purchases of real*
19 *property, improvements to real property, equipment, inventory,*
20 *advertising, and real estate, as determined by a mutually*
21 *agreed-upon appraiser of business value. Equity does not mean*
22 *any initial franchise fees paid by franchisee.*

23 (2) *Notwithstanding paragraph (1), if the franchisee sells,*
24 *transfers, or assigns a franchise asset before a valuation is made,*
25 *the price associated with that sale, transfer, or assignment shall*
26 *be deemed the monetized value of the equity of that franchise asset.*

27 (c) *This section does not apply to a franchisee terminated*
28 *pursuant to Section 20021.*

29 ~~SEC. 4. Section 20025 of the Business and Professions Code~~
30 ~~is repealed.~~

31 ~~SEC. 5. Section 20025 is added to the Business and Professions~~
32 ~~Code, to read:~~

33 20025. (a) ~~No franchisor may fail to renew a franchise unless~~
34 ~~the franchisee has failed to substantially comply with the franchise~~
35 ~~agreement.~~

36 (b) ~~If the franchisee is in substantial compliance with the~~
37 ~~franchise agreement at the time of the expiration of the franchise~~
38 ~~agreement, the franchisee may renew for the same duration as~~
39 ~~provided in the expiring franchise agreement. The renewal shall~~

1 be under the franchise agreement terms that are being offered to
2 new franchisees.

3 (e) ~~If the franchisor has grounds not to renew a franchise under~~
4 ~~this chapter, then the franchisor shall provide written notice of its~~
5 ~~intention not to renew, as set forth in this chapter, at least 180 days~~
6 ~~prior to the termination of the existing franchise agreement.~~

7 (d) ~~Upon termination or expiration of the franchise, the~~
8 ~~franchisor shall not seek to enforce against the franchisee any~~
9 ~~covenant not to compete.~~

10 ~~SEC. 6.~~

11 *SEC. 4.* Section 20028 is added to the Business and Professions
12 Code, to read:

13 20028. (a) It is unlawful for a franchise agreement to prevent
14 a franchisee from selling or transferring a franchise or a part of an
15 interest of a franchise to another person, provided that the person
16 is qualified under the franchisor’s then-existing and reasonable
17 standards for approval of new franchisees.

18 (b) Notwithstanding subdivision (a), a franchisee shall not have
19 the right to sell, transfer, or assign the franchise, or any right
20 thereunder, without the written consent of the franchisor, except
21 that the consent shall not be ~~unreasonably withheld.~~ *withheld unless*
22 *the buyer, transferee, or assignor does not meet the standards for*
23 *new franchisees described in subdivision (a).*

24 ~~SEC. 7.~~

25 *SEC. 5.* Section 20029 is added to the Business and Professions
26 Code, to read:

27 20029. (a) The franchise agreement shall require the franchisee,
28 prior to the sale, assignment, or transfer of all or substantially all
29 of the assets of the franchise business, or a controlling interest in
30 the franchise business, to another person, to notify the franchisor,
31 of the franchisee’s decision to sell, transfer or assign the franchise.
32 The notice shall be in writing and include all of the following:

- 33 (1) The proposed transferee’s name and address.
- 34 (2) A copy of all agreements related to the sale, assignment, or
35 transfer of the franchised business or its assets.
- 36 (3) The proposed transferee’s application for approval to become
37 the successor franchisee. The application shall include all forms
38 and related information generally utilized by the franchisor in
39 reviewing prospective new franchisees, if those forms are readily
40 made available to the existing franchisee. As soon as practicable

1 after the receipt of the proposed transferee's application, the
2 franchisor shall notify, in writing, the franchisee and the proposed
3 transferee of any additional information necessary to complete the
4 transfer application.

5 (b) (1) The franchise agreement shall require the franchisor,
6 within 60 days after the receipt of all of the necessary information
7 required pursuant to subdivision (a), or as specified by written
8 agreement between the franchisor and the franchisee, to notify the
9 franchisee of the approval or disapproval of the sale, assignment,
10 or transfer of the franchise. The notice shall be in writing and be
11 personally served on the franchisee or sent by certified mail, return
12 receipt requested. A proposed sale, assignment or transfer shall be
13 deemed approved, unless disapproved by the franchisor in the
14 manner provided by this subdivision. If the proposed sale,
15 assignment, or transfer is disapproved, the franchisor shall include
16 in the notice of disapproval a statement setting forth the reasons
17 for the disapproval.

18 (2) In any action in which the franchisor's disapproval of a sale,
19 assignment or transfer pursuant to this subdivision is an issue, the
20 reasonability of the franchisor's decision shall be a question of
21 fact requiring consideration of all existing circumstances. *For*
22 *purposes of this paragraph, the finder of fact may be an arbitrator*
23 *specified in the franchise agreement and who satisfies the*
24 *requirements of Section 20040.*

25 ~~SEC. 8.~~

26 *SEC. 6.* The heading of Article 6 (commencing with Section
27 20035) of Chapter 5.5 of Division 8 of the Business and Professions
28 Code is amended to read:

29

30

Article 6. Remedies

31

32 ~~SEC. 9.~~

33 *SEC. 7.* Section 20035 of the Business and Professions Code
34 is repealed.

35 ~~SEC. 10.~~

36 *SEC. 8.* Section 20035 is added to the Business and Professions
37 Code, to read:

38 20035. In the event a franchisor terminates or fails to allow
39 the renewal, sale, assignment, or transfer of a franchise other than
40 in accordance with the provisions of this chapter, the franchisor

1 shall reinstate the franchisee under the same terms as the existing
2 franchise agreement and shall pay all damages caused thereby, or
3 at the election of the franchisee shall pay the franchisee the fair
4 market value of the franchise and franchise assets. A court may
5 grant preliminary and permanent injunctions for a violation of this
6 chapter.

7 ~~SEC. 11.~~

8 *SEC. 9.* Section 20036 of the Business and Professions Code
9 is amended to read:

10 20036. The franchisor may offset against any remedies made
11 pursuant to Section 20035 any sums owed the franchisor or its
12 subsidiaries by the franchisee pursuant to the franchise or any
13 ancillary agreement.