

AMENDED IN ASSEMBLY MAY 7, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 525**

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

February 23, 2015

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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 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 the failure of the franchisee to *substantially* 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 no less than 60 days from the date of the notice of noncompliance.

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 require that a franchisee have the opportunity to monetize any equity the franchisee 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 from the date of the  
10 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  
19 determined to be insolvent, all or a substantial part of the assets  
20 thereof are assigned to or for the benefit of any creditor, or the  
21 franchisee admits his or her inability to pay his or her debts as they  
22 come due;

23 (b) The franchisee abandons the franchise by failing to operate  
24 the business for five consecutive days during which the franchisee  
25 is required to operate the business under the terms of the franchise,  
26 or any shorter period after which it is not unreasonable under the  
27 facts and circumstances for the franchisor to conclude that the  
28 franchisee does not intend to continue to operate the franchise,  
29 unless such failure to operate is due to fire, flood, ~~earthquake~~  
30 *earthquake*, or other similar causes beyond the franchisee's control;

31 (c) The franchisor and franchisee agree in writing to terminate  
32 the franchise;

1 (d) The franchisee makes any material misrepresentations  
2 relating to the acquisition of the franchise business or the franchisee  
3 engages in conduct which reflects materially and unfavorably upon  
4 the operation and reputation of the franchise business or system;

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

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

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

15 (h) The franchised business or business premises of the franchise  
16 are seized, taken over, or foreclosed by a government official in  
17 the exercise of his or her duties, or seized, taken over, or foreclosed  
18 by a creditor, ~~lienholder~~ *lienholder*, or lessor, provided that a final  
19 judgment against the franchisee remains unsatisfied for 30 days  
20 (unless a supersedeas or other appeal bond has been filed); or a  
21 levy of execution has been made upon the license granted by the  
22 franchise agreement or upon any property used in the franchised  
23 business, and it is not discharged within five days of such levy;

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

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

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

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

34 20022. (a) While not transferring any equity in the franchisor’s  
35 intellectual property to the franchisee, a franchisee shall have the  
36 opportunity to monetize any equity the franchisee may have  
37 developed in the franchised business prior to the termination or  
38 nonrenewal of the franchise agreement.

39 (b) (1) Except as provided in paragraph (2), for the purpose of  
40 this section, “equity” means the fair market value, on the date of

1 the notice of termination or nonrenewal, of the franchise and  
2 franchise assets, and of all investments in the franchise made by  
3 the franchisee, including, but not limited to, purchases of real  
4 property, improvements to real property, equipment, inventory,  
5 advertising, and real estate, as determined by a mutually  
6 agreed-upon appraiser of business value. Equity does not mean  
7 any initial franchise fees paid by franchisee.

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

12 (c) This section does not apply to a franchisee terminated  
13 pursuant to Section 20021.

14 SEC. 4. Section 20028 is added to the Business and Professions  
15 Code, to read:

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

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

27 SEC. 5. Section 20029 is added to the Business and Professions  
28 Code, to read:

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

36 (1) The proposed transferee's name and address.

37 (2) A copy of all agreements related to the sale, assignment, or  
38 transfer of the franchised business or its assets.

39 (3) The proposed transferee's application for approval to become  
40 the successor franchisee. The application shall include all forms

1 and related information generally utilized by the franchisor in  
 2 reviewing prospective new franchisees, if those forms are readily  
 3 made available to the existing franchisee. As soon as practicable  
 4 after the receipt of the proposed transferee’s application, the  
 5 franchisor shall notify, in writing, the franchisee and the proposed  
 6 transferee of any additional information necessary to complete the  
 7 transfer application.

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

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

28 SEC. 6. The heading of Article 6 (commencing with Section  
 29 20035) of Chapter 5.5 of Division 8 of the Business and Professions  
 30 Code is amended to read:

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Article 6. Remedies

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

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

9 20036. The franchisor may offset against any remedies made  
10 pursuant to Section 20035 any sums owed the franchisor or its  
11 subsidiaries by the franchisee pursuant to the franchise or any  
12 ancillary agreement.

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