

AMENDED IN SENATE JUNE 15, 2015

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

Introduced by Assembly Members Holden, Atkins, Dodd, 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 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 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, with certain exceptions, require the franchisor, upon a lawful termination or nonrenewal of a franchisee, to compensate the franchisee at the value of price paid minus depreciation of all inventory, supplies, equipment, and furnishings purchased by the franchisee from the franchisor, as specified.

~~This bill would require, if 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, violates these provisions, require the finder of fact in awarding damages to, at the election of the franchisee, either reinstate the franchisee and pay specified damages~~

or at the election of the franchisee, or if reinstatement is impossible or impracticable, require the franchisor to pay the franchisee the fair market value of the franchise and franchise assets and any other damages, as provided.

~~This bill would also require that a franchisee 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 the franchise
7 agreement after being given notice at least 60 days in advance
8 ~~thereof of the termination~~ and a reasonable opportunity, which in
9 no event shall be less than 60 days from the date of the notice of
10 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

1 is required to operate the business under the terms of the franchise,
2 or any shorter period after which it is not unreasonable under the
3 facts and circumstances for the franchisor to conclude that the
4 franchisee does not intend to continue to operate the franchise,
5 unless such failure to operate is due to fire, flood, earthquake, or
6 other similar causes beyond the franchisee's control;

7 (c) The franchisor and franchisee agree in writing to terminate
8 the franchise;

9 (d) The franchisee makes any material misrepresentations
10 relating to the acquisition of the franchise business or the franchisee
11 engages in conduct which reflects materially and unfavorably upon
12 the operation and reputation of the franchise business or system;

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

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

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

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

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

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

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

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

3 ~~20022. (a) While not transferring any equity in the franchisor's~~
4 ~~intellectual property to the franchisee, a franchisee shall have the~~
5 ~~opportunity to monetize any equity the franchisee may have~~
6 ~~developed in the franchised business prior to the termination or~~
7 ~~nonrenewal of the franchise agreement.~~

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

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

21 ~~(c) This section does not apply to a franchisee terminated~~
22 ~~pursuant to Section 20021.~~

23 *20022. (a) Upon a lawful termination or nonrenewal of a*
24 *franchisee, the franchisor shall compensate the franchisee, at the*
25 *value of price paid minus depreciation, of all inventory, supplies,*
26 *equipment, and furnishings purchased by the franchisee from the*
27 *franchisor or its approved suppliers and sources under the terms*
28 *of the franchise agreement or any ancillary or collateral*
29 *agreement.*

30 *(b) This section shall not require the franchisor to purchase*
31 *any personalized items, inventory, supplies, equipment, or*
32 *furnishings not reasonably required to conduct the operation of*
33 *the franchise business in accordance with the franchise agreement*
34 *or any ancillary or collateral agreement.*

35 *(c) This section shall not apply when the franchisee declines a*
36 *bona fide offer of renewal from the franchisor.*

37 *(d) This section shall not apply if the franchisee retains control*
38 *of the premises of the franchise business.*

39 *(e) This section shall not apply to any termination or nonrenewal*
40 *of a franchisee due to publicly announced and nondiscriminatory*

1 *decision by the franchisor to completely withdraw from all*
 2 *franchise activity within the relevant geographic market area in*
 3 *which the franchise is located. For the purpose of this section*
 4 *“relevant geographic market area” shall have the same meaning*
 5 *as Section 20999.*

6 *(f) Upon the termination of a franchisee, a franchisor may offset*
 7 *against amounts owed to a franchisee under this section any*
 8 *amounts owed by such franchisee to the franchisor.*

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

11 20028. (a) It is unlawful for a ~~franchise agreement~~ *franchisor*
 12 *to prevent a franchisee from selling or transferring a franchise or*
 13 *a part of an interest of a franchise to another person, provided that*
 14 *the person is qualified under the franchisor’s then-existing and*
 15 *reasonable standards for the approval of new or renewing*
 16 *franchisees.*

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

23 (c) *Nothing in this section shall prohibit a franchisor from*
 24 *exercising the contractual right of first refusal to purchase a*
 25 *franchise after receipt of a bona fide offer to purchase the franchise*
 26 *by a proposed purchaser of the franchise. A franchisor exercising*
 27 *the contractual right of first refusal shall offer the franchisee*
 28 *payment equal to or greater than the value offered in the bona fide*
 29 *offer.*

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

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

- 39 (1) The proposed transferee’s name and address.

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

3 (3) The proposed transferee's application for approval to become
4 the successor franchisee. The application shall include all ~~forms~~
5 *forms, financial disclosures*, and related information generally
6 utilized by the franchisor in reviewing prospective new franchisees,
7 if those forms are readily made available to the existing franchisee.
8 *If the forms are not readily available, the franchisee shall request*
9 *and the franchisor shall deliver the forms to the franchisee by*
10 *business courier or receipted mail within 15 calendar days. As*
11 *soon as 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 or*
14 *documentation necessary to complete the transfer application.*

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

29 (2) In any action in which the franchisor's disapproval of a sale,
30 ~~assignment~~ *assignment*, or transfer pursuant to this subdivision is
31 an issue, the reasonability of the franchisor's decision shall be a
32 question of fact requiring consideration of all existing
33 circumstances. For purposes of this paragraph, the finder of fact
34 may be an arbitrator specified in the franchise agreement and who
35 satisfies the requirements of Section 20040.

36 (3) *Nothing in this subdivision requires a franchisor to exercise*
37 *a contractual right of first refusal.*

38 (c) *Nothing in this section shall prohibit a franchisor from*
39 *exercising the contractual right of first refusal to purchase a*
40 *franchise after receipt of a bona fide offer to purchase the franchise*

1 *by a proposed purchaser of the franchise. Any franchisor exercising*
2 *the contractual right of first refusal shall offer the franchisee*
3 *payment equal to or greater than the value offered in the bona fide*
4 *offer.*

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

8

9

Article 6. Remedies

10

11 SEC. 7. Section 20035 of the Business and Professions Code
12 is repealed.

13 SEC. 8. Section 20035 is added to the Business and Professions
14 Code, to read:

15 20035. In the event a franchisor ~~terminates or fails to allow~~
16 ~~the renewal, sale, assignment, or transfer of a franchise other than~~
17 ~~in accordance with the provisions of this chapter,~~ *violates this*
18 *chapter, the finder of fact in awarding damages shall either require*
19 *the franchisor shall to reinstate the franchisee under the same terms*
20 *as the existing franchise agreement and shall pay all damages*
21 *caused thereby, or at the election of the franchisee shall franchisee,*
22 *or if reinstatement is impossible or impracticable, require the*
23 *franchisor to pay the franchisee the fair market value of the*
24 *franchise and franchise ~~assets.~~ assets, and any other damages*
25 *caused by the violation of this chapter. A court may grant*
26 *preliminary and permanent injunctions for a violation of this*
27 *chapter.*

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

30 20036. The franchisor may offset against any remedies made
31 pursuant to Section 20035 any sums owed the franchisor or its
32 subsidiaries by the franchisee pursuant to the franchise or any
33 ancillary agreement.