

AMENDED IN SENATE JUNE 23, 2015

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~~ *all or substantially all of the assets of the franchise business as defined, or a controlling interest in the franchise business* to another person, provided that the person is qualified under the franchisor's then-existing and reasonable standards for approval of new franchisees, *as specified*. The bill would prohibit a sale, transfer, or assignment ~~or if a franchise, or substantially all of the assets or a controlling interest in the franchise business,~~ 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 require the franchisee, prior to the sale, assignment, or transfer of all or substantially all of the assets of the franchise business, *as defined*, or a controlling interest in the franchise business, to another person, to notify the franchisor of the franchisee's ~~decision~~ *intent to sell, transfer, or assign the franchise, franchise or its assets or interest, as specified*, and would require the notice to be in writing and include specified information. The bill would 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.~~ *receipted mail*. 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, *fixtures*, and furnishings purchased ~~by the~~

~~franchisee from the franchisor, from the franchisor or paid for by the franchisee, as specified.~~

This bill would, if a franchisor violates these provisions, require the finder of fact in awarding damages to 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. *The bill would provide for injunctive relief in the event of a violation or threatened violation of these provisions.*

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 of
8 the termination and a reasonable opportunity, which in no event
9 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
25 is required to operate the business under the terms of the franchise,

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

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

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

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

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

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

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

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

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

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

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

1 20022. (a) Upon a lawful termination or nonrenewal of a
2 franchisee, the franchisor shall compensate the franchisee, at the
3 value of price paid minus depreciation, of all inventory, supplies,
4 equipment, *fixtures*, and furnishings purchased *or paid for* by the
5 franchisee from the franchisor or its approved suppliers and sources
6 under the terms of the franchise agreement or any ancillary or
7 collateral ~~agreement~~. *agreement, and, at the time of the notice of*
8 *termination or nonrenewal, are in possession of the franchisee or*
9 *used in the franchise business.*

10 (b) This section shall not require the franchisor to purchase any
11 personalized items, inventory, supplies, equipment, *fixtures*, or
12 furnishings not reasonably required to conduct the operation of
13 the franchise business in accordance with the franchise agreement
14 or any ancillary or collateral agreement.

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

17 (d) This section shall not apply if the franchisee retains control
18 of the ~~premises~~ *principal place* of the franchise business.

19 (e) This section shall not apply to any termination or nonrenewal
20 of a franchisee due to a publicly announced and nondiscriminatory
21 decision by the franchisor to completely withdraw from all
22 franchise activity within the relevant geographic market area in
23 which the franchise is located. For the purpose of this section
24 “relevant geographic market area” shall have the same meaning
25 as Section 20999.

26 (f) *This section shall not apply to any inventory, supplies,*
27 *equipment, fixtures, or furnishings that are sold by the franchisee*
28 *between the date of the notice of termination or nonrenewal, and*
29 *the cessation of operation of the franchise business, by the*
30 *franchisee, pursuant to the termination or nonrenewal.*

31 (f)

32 (g) Upon the termination of a franchisee, a franchisor may offset
33 against amounts owed to a franchisee under this section any
34 amounts owed by such franchisee to the franchisor.

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

37 20028. (a) It is unlawful for a franchisor to prevent a franchisee
38 from selling or transferring ~~a franchise or a part of an interest of~~
39 ~~a franchise to another person~~, *all or substantially all of the assets*
40 *of the franchise business, or a controlling interest in the franchise*

1 *business, to another person* provided that the person is qualified
2 under the franchisor's then-existing and reasonable ~~standards~~
3 *standards, as consistently applied to similarly situated franchisees*
4 *operating within the franchise brand*, for the approval of new or
5 renewing franchisees.

6 (b) Notwithstanding subdivision (a), a franchisee shall not have
7 the right to sell, transfer, or assign the ~~franchise, or any right~~
8 ~~thereunder~~, *franchise or substantially all of the assets of the*
9 *franchise business, or a controlling interest in the franchise*
10 *business*, without the written consent of the franchisor, except that
11 the consent shall not be withheld unless the buyer, transferee, or
12 assignor does not meet the standards for new or renewing
13 franchisees described in subdivision (a).

14 (c) Nothing in this section shall prohibit a franchisor from
15 exercising the contractual right of first refusal to purchase a
16 franchise after receipt of a bona fide offer to purchase the franchise
17 by a proposed purchaser of the franchise. A franchisor exercising
18 the contractual right of first refusal shall offer the franchisee
19 payment *at least equal to or greater than* the value offered in the
20 bona fide offer.

21 (d) *For the purpose of this section "franchise business" shall*
22 *include a legal entity that is a party to a franchise agreement.*

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

25 20029. (a) The franchisee shall, prior to the sale, assignment,
26 or transfer of all or substantially all of the assets of the franchise
27 business, or a controlling interest in the franchise business, to
28 another person, notify the franchisor, of the franchisee's ~~decision~~
29 *intent* to sell, transfer, or assign the ~~franchise~~. *franchise or*
30 *substantially all of the assets of the franchise business, or a*
31 *controlling interest in the franchise business*. The notice shall be
32 ~~in writing~~ *writing, delivered to the franchisor by business courier*
33 *or by receipted mail* and include all of the following:

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

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

37 (3) The proposed transferee's application for approval to become
38 the successor franchisee. The application shall include all forms,
39 financial disclosures, and related information generally utilized
40 by the franchisor in reviewing prospective new franchisees, if those

1 forms are readily made available to the existing franchisee. If the
2 forms are not readily available, the franchisee shall request and
3 the franchisor shall deliver the forms to the franchisee by business
4 courier or receipted mail within 15 calendar days. As soon as
5 practicable after the receipt of the proposed transferee's application,
6 the franchisor shall notify, in writing, the franchisee and the
7 proposed transferee of any additional information or documentation
8 necessary to complete the transfer application.

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

24 (2) In any action in which the franchisor's disapproval of a sale,
25 assignment, or transfer pursuant to this subdivision is an issue, the
26 ~~reasonability~~ *reasonableness* of the franchisor's decision shall be
27 a question of fact requiring consideration of all existing
28 circumstances. For purposes of this paragraph, the finder of fact
29 may be an arbitrator specified in the franchise agreement and who
30 satisfies the requirements of Section 20040. *Nothing in this*
31 *paragraph shall prohibit summary judgment when the*
32 *reasonableness of transfer approval or disapproval can be decided*
33 *as a matter of law.*

34 (3) Nothing in this subdivision requires a franchisor to exercise
35 a contractual right of first refusal.

36 (c) Nothing in this section shall prohibit a franchisor from
37 exercising the contractual right of first refusal to purchase a
38 franchise after receipt of a bona fide offer to purchase the franchise
39 by a proposed purchaser of the franchise. Any franchisor exercising
40 the contractual right of first refusal shall offer the franchisee

1 payment *at least* equal to ~~or greater than~~ the value offered in the
2 bona fide offer.

3 *(d) For the purpose of this section “franchise business” shall*
4 *include a legal entity that is a party to a franchise agreement.*

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

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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 violates this chapter, the finder~~
16 ~~of fact in awarding damages shall either require the franchisor to~~
17 ~~reinstate the franchisee under the same terms as the existing~~
18 ~~franchise agreement and pay all damages caused thereby, or at the~~
19 ~~election of the franchisee, or if reinstatement is impossible or~~
20 ~~impracticable, require the franchisor to pay the franchisee the fair~~
21 ~~market value of the franchise and franchise assets, and any other~~
22 ~~damages caused by the violation of this chapter. A court may grant~~
23 ~~preliminary and permanent injunctions for a violation of this~~
24 ~~chapter.~~

25 *20035. (a) In the event a franchisor terminates or fails to*
26 *renew a franchisee, in violation of this chapter, the franchisee*
27 *shall be entitled to either of the following remedies:*

28 *(1) Reinstatement of the franchisee under the same terms as the*
29 *existing franchise agreement, and the franchisor shall pay all*
30 *damages caused to the franchisee from the violation.*

31 *(2) Upon request of the franchisee, or if the relief in paragraph*
32 *(1) is determined by the finder of fact to be impossible or*
33 *impracticable, then the franchisor shall pay the franchisee the fair*
34 *market value of the franchise and franchise assets and any other*
35 *damages caused by the violation of this chapter.*

36 *(b) A court may grant preliminary and permanent injunctions*
37 *for a violation or threatened violation of this chapter.*

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

1 20036. The franchisor may offset against any remedies made
2 pursuant to Section 20035 any *prior recovery by the franchisee*
3 *pursuant to Section 20022 and any* sums owed the franchisor or
4 its subsidiaries by the franchisee pursuant to the franchise or any
5 ancillary agreement.

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