

AMENDED IN SENATE JULY 2, 2015  
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**

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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~~ 20036, and 20041 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 *would require that the period for a reasonable opportunity to cure the failure be no less than 60 days from the date of the notice of noncompliance. The bill would prohibit the period for curing the failure from exceeding 75 days, except as specified.*

This bill would make it unlawful for a franchise agreement to prevent a franchisee from selling or transferring all or substantially all of the assets of the franchise business as defined, or a controlling *or noncontrolling* 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 if a franchise, or substantially all of the assets or a controlling *or noncontrolling* 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 *or noncontrolling* interest in the franchise business, to another person, to notify the franchisor of the franchisee's intent to sell, transfer, or assign the 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 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 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. *The bill would limit its application to a franchise agreement entered into or renewed on or after January 1, 2016, or to franchises of an indefinite duration that may be terminated without cause.*

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. *The period to exercise the right*  
11 *to cure shall not exceed 75 days unless there is a separate*  
12 *agreement between the franchisor and franchisee to extend the*  
13 *time.*

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

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

20 (a) The franchisee or the business to which the franchise relates  
21 has been the subject of an order for relief in bankruptcy, judicially  
22 determined to be insolvent, all or a substantial part of the assets

1 thereof are assigned to or for the benefit of any creditor, or the  
2 franchisee admits his or her inability to pay his or her debts as they  
3 come due;

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

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

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

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

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

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

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

37 (i) The franchisee is convicted of a felony or any other criminal  
38 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) Upon a lawful termination or nonrenewal of a  
10 franchisee, the franchisor shall compensate the franchisee, at the  
11 value of price paid minus depreciation, of all inventory, supplies,  
12 equipment, fixtures, and furnishings purchased or paid for by the  
13 franchisee from the franchisor or its approved suppliers and sources  
14 under the terms of the franchise agreement or any ancillary or  
15 collateral agreement, and, at the time of the notice of termination  
16 or nonrenewal, are in possession of the franchisee or used in the  
17 franchise business.

18 (b) This section shall not require the franchisor to purchase any  
19 personalized items, inventory, supplies, equipment, fixtures, or  
20 furnishings not reasonably required to conduct the operation of  
21 the franchise business in accordance with the franchise agreement  
22 or any ancillary or collateral agreement.

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

25 (d) This section shall not apply if the franchisee retains control  
26 of the principal place of the franchise business.

27 (e) This section shall not apply to any termination or nonrenewal  
28 of a franchisee due to a publicly announced and nondiscriminatory  
29 decision by the franchisor to completely withdraw from all  
30 franchise activity within the relevant geographic market area in  
31 which the franchise is located. For the purpose of this section  
32 “relevant geographic market area” shall have the same meaning  
33 as *in* Section 20999.

34 (f) This section shall not apply to any inventory, supplies,  
35 equipment, fixtures, or furnishings that are sold by the franchisee  
36 between the date of the notice of termination or nonrenewal, and  
37 the cessation of operation of the franchise business, by the  
38 franchisee, pursuant to the termination or nonrenewal.

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

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

6 20028. (a) It is unlawful for a franchisor to prevent a franchisee  
7 from selling or transferring all or substantially all of the assets of  
8 the franchise business, or a controlling *or noncontrolling* interest  
9 in the franchise business, to another person provided that the person  
10 is qualified under the franchisor’s then-existing and reasonable  
11 standards, as consistently applied to similarly situated franchisees  
12 operating within the franchise brand, for the approval of new or  
13 renewing franchisees.

14 (b) Notwithstanding subdivision (a), a franchisee shall not have  
15 the right to sell, transfer, or assign the franchise or substantially  
16 all of the assets of the franchise business, or a controlling *or*  
17 *noncontrolling* interest in the franchise business, without the  
18 written consent of the franchisor, except that the consent shall not  
19 be withheld unless the buyer, transferee, or assignor does not meet  
20 the standards for new or renewing franchisees described in  
21 subdivision (a).

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

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

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

32 20029. (a) The franchisee shall, prior to the sale, assignment,  
33 or transfer of all or substantially all of the assets of the franchise  
34 business, or a controlling *or noncontrolling* interest in the franchise  
35 business, to another person, notify the franchisor, of the  
36 franchisee’s intent to sell, transfer, or assign the franchise or  
37 substantially all of the assets of the franchise business, or a  
38 controlling *or noncontrolling* interest in the franchise business.  
39 The notice shall be in writing, delivered to the franchisor by

1 business courier or by receipted mail and include all of the  
2 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 become  
7 the successor franchisee. The application shall include all forms,  
8 financial disclosures, and related information generally utilized  
9 by the franchisor in reviewing prospective new franchisees, if those  
10 forms are readily made available to the existing franchisee. If the  
11 forms are not readily available, the franchisee shall request and  
12 the franchisor shall deliver the forms to the franchisee by business  
13 courier or receipted mail within 15 calendar days. As soon as  
14 practicable after the receipt of the proposed transferee's application,  
15 the franchisor shall notify, in writing, the franchisee and the  
16 proposed transferee of any additional information or documentation  
17 necessary to complete the transfer application.

18 (b) (1) The franchisor shall, within 60 days after the receipt of  
19 all of the necessary information and documentation required  
20 pursuant to subdivision (a), or as specified by written agreement  
21 between the franchisor and the franchisee, notify the franchisee  
22 of the approval or disapproval of the sale, assignment, or transfer  
23 of the franchise. The notice shall be in writing and shall be  
24 delivered to the franchisor by business courier or receipted mail  
25 within 15 calendar days. A proposed sale, assignment, or transfer  
26 shall be deemed approved, unless disapproved by the franchisor  
27 in the manner provided by this subdivision. If the proposed sale,  
28 assignment, or transfer is disapproved, the franchisor shall include  
29 in the notice of disapproval a statement setting forth the reasons  
30 for the disapproval.

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

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

3 (c) Nothing in this section shall prohibit a franchisor from  
4 exercising the contractual right of first refusal to purchase a  
5 franchise after receipt of a bona fide offer to purchase the franchise  
6 by a proposed purchaser of the franchise. Any franchisor exercising  
7 the contractual right of first refusal shall offer the franchisee  
8 payment at least equal to the value offered in the bona fide offer.

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

11 SEC. 6. The heading of Article 6 (commencing with Section  
12 20035) of Chapter 5.5 of Division 8 of the Business and Professions  
13 Code is amended to read:

14

15 Article 6. Remedies

16

17 SEC. 7. Section 20035 of the Business and Professions Code  
18 is repealed.

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

21 20035. (a) In the event a franchisor terminates or fails to renew  
22 a franchisee, in violation of this chapter, the franchisee shall be  
23 entitled to either of the following remedies:

24 (1) Reinstatement of the franchisee under the same terms as the  
25 existing franchise agreement, and the franchisor shall pay all  
26 damages caused to the franchisee from the violation.

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

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

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

36 20036. The franchisor may offset against any remedies made  
37 pursuant to Section 20035 any prior recovery by the franchisee  
38 pursuant to Section 20022 and any sums owed the franchisor or  
39 its subsidiaries by the franchisee pursuant to the franchise or any  
40 ancillary agreement.

1     *SEC. 10. Section 20041 of the Business and Professions Code*  
2     *is amended to read:*

3     20041. ~~The~~ *(a) Except as provided in subdivision (b), the*  
4     *provisions of this chapter shall apply only to franchises granted*  
5     *or renewed on or after January 1, ~~1981~~ 1981, or to franchises of*  
6     *an indefinite duration—~~which~~ that may be terminated by the*  
7     *franchisee or franchisor without cause.*

8     *(b) The amendments to this chapter made by the act adding this*  
9     *subdivision shall apply only to franchise agreements entered into*  
10    *or renewed on or after January 1, 2016, or to franchises of an*  
11    *indefinite duration that may be terminated by the franchisee or*  
12    *franchisor without cause.*