

AMENDED IN SENATE AUGUST 24, 2015

AMENDED IN SENATE AUGUST 17, 2015

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

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

February 23, 2015

An act to amend Sections 20020, 20021, 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 *lawful requirements of the franchise agreement imposed on the franchisee* 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 *a franchise*, all or substantially all of the assets of the franchise ~~business~~ *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 *or renewing* franchisees, ~~as specified.~~ *specified, and the parties comply with specified transfer provisions.* The bill would prohibit a sale, transfer, or assignment ~~if~~ *of* a franchise, all or substantially all of the assets *of a franchise business*, 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.~~ *or renewing franchisees or the parties fail to meet specified transfer provisions.*

This bill would require the franchisee, prior to the sale, assignment, or transfer of *a franchise*, all or substantially all of the assets of ~~the~~ *a* 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 *proposed* sale, assignment, or transfer of the franchise, and would require the notice to be in writing and be delivered by courier to the franchisee or sent by receipted mail. *The bill would require the franchisor to communicate the franchisor's standards for approval of new or renewing franchisees, as specified.* 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 repeal those provisions and would, with certain exceptions, require the franchisor, upon a lawful termination or nonrenewal of a franchise, to ~~compensate~~ *purchase from* the franchisee at the value of price paid, minus depreciation, ~~for~~ all inventory, supplies, equipment, fixtures, and furnishings purchased or paid for under the franchise agreement, as specified. *The bill would not require a franchisor to purchase assets to which the franchisee cannot or does not provide clear title and possession.*

~~This bill would prescribe specified remedies that may be elected by~~ *entitle a franchisee to receive from the franchisor the fair market value of the franchise business and assets, as well as resulting damages,* if a franchisor terminates or fails to renew a franchise in violation of the act. ~~The bill would entitle a franchisee to be reinstated under the same terms as the existing franchise agreement, in addition to an award for damages or, at the request of the franchisee, if reinstatement is impossible or impracticable, as determined by the trier of fact, would 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~~ *Except as provided in Section*
- 6 *20021, good* cause shall be limited to the failure of the franchisee

1 to substantially comply with the *lawful requirements imposed upon*
2 *the franchisee by the* franchise agreement after being given notice
3 at least 60 days in advance of the termination and a reasonable
4 opportunity, which in no event shall be less than 60 days from the
5 date of the notice of noncompliance, to cure the failure. The period
6 to exercise the right to cure shall not exceed 75 days unless there
7 is a separate agreement between the franchisor and franchisee to
8 extend the time.

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

11 20021. If during the period in which the franchise is in effect,
12 there occurs any of the following events which is relevant to the
13 franchise, immediate notice of termination without an opportunity
14 to cure, shall be deemed reasonable:

15 (a) The franchisee or the business to which the franchise relates
16 has been the subject of an order for relief in bankruptcy, judicially
17 determined to be insolvent, all or a substantial part of the assets
18 thereof are assigned to or for the benefit of any creditor, or the
19 franchisee admits his or her inability to pay his or her debts as they
20 come due;

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

29 (c) The franchisor and franchisee agree in writing to terminate
30 the franchise;

31 (d) The franchisee makes any material misrepresentations
32 relating to the acquisition of the franchise business or the franchisee
33 engages in conduct which reflects materially and unfavorably upon
34 the operation and reputation of the franchise business or system;

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

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

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

6 (h) The franchised business or business premises of the franchise
7 are seized, taken over, or foreclosed by a government official in
8 the exercise of his or her duties, or seized, taken over, or foreclosed
9 by a creditor, lienholder, or lessor, provided that a final judgment
10 against the franchisee remains unsatisfied for 30 days (unless a
11 supersedeas or other appeal bond has been filed); or a levy of
12 execution has been made upon the license granted by the franchise
13 agreement or upon any property used in the franchised business,
14 and it is not discharged within five days of such levy;

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

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

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

23 (l) *If the franchise expressly permits termination under such*
24 *circumstances, there is a lawful termination or nonrenewal of a*
25 *separate motor fuel franchise governed by provisions of the*
26 *Petroleum Marketing Practices Act (15 U.S.C. Secs. 2801 to 2807,*
27 *inclusive) that is operated by the franchisee or affiliate of the*
28 *franchisee located at the same business premises if both franchises*
29 *are granted by the same franchisor or an affiliate of the franchisor.*
30 *“Affiliate” shall have the same meaning as set forth in subdivision*
31 *(k) of Section 31005.5 of the Corporations Code.*

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

34 20022. (a) ~~Upon~~ *Except as provided in this section, upon a*
35 *lawful termination or nonrenewal of a franchisee, the franchisor*
36 *shall compensate purchase from the franchisee, at the value of*
37 *price paid, minus depreciation, for all inventory, supplies,*
38 *equipment, fixtures, and furnishings purchased or paid for under*
39 *the terms of the franchise agreement or any ancillary or collateral*
40 *agreement by the franchisee to the franchisor or its approved*

1 suppliers and sources, ~~that,~~ *that are*, at the time of the notice of
2 termination or nonrenewal, ~~are~~ *are in the possession of the franchisee*
3 or used *by the franchisee* in the franchise business. *The franchisor*
4 *shall have the right to receive clear title to and possession of all*
5 *items purchased from the franchisee under this section.*

6 (b) This section shall not require the franchisor to purchase any
7 personalized items, inventory, supplies, equipment, fixtures, or
8 furnishings not reasonably required to conduct the operation of
9 the franchise business in accordance with the franchise agreement
10 or any ancillary or collateral ~~agreement.~~ *agreement or to which*
11 *the franchisee, at the cessation of operation of the franchise*
12 *business by the franchisee, cannot lawfully, or does not, grant the*
13 *franchisor clear title and possession upon the franchisor's payment*
14 *to the franchisee for the inventory, supplies, equipment, fixtures,*
15 *or furnishings.*

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

18 (d) This section shall not apply if the *franchisor does not prevent*
19 *the franchisee* ~~retains~~ *from retaining* control of the principal place
20 of the franchise business.

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

28 (f) *This section shall not apply if the franchisor and franchisee*
29 *mutually agree in writing to terminate or not renew the franchise.*

30 ~~(f)~~

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

36 ~~(g)~~

37 (h) Upon the termination *or nonrenewal* of a franchise, a
38 franchisor may offset against *the* amounts owed to a franchisee
39 under this section any amounts owed by ~~such~~ *the* franchisee to the
40 franchisor.

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

3 20028. (a) It is unlawful for a franchisor to prevent a franchisee
4 from selling or transferring *a franchise*, all or substantially all of
5 the assets of the franchise business, or a controlling or
6 noncontrolling interest in the franchise business, to another person
7 provided that the person is qualified under the franchisor's
8 ~~then-existing and reasonable standards, as standards for the~~
9 ~~approval of new or renewing franchisees, these standards to be~~
10 ~~made available to the franchisee, as provided in Section 20029,~~
11 ~~and to be consistently applied to similarly situated franchisees~~
12 ~~operating within the franchise brand, for the approval of new or~~
13 ~~renewing franchisees. brand, and the franchisee and the buyer,~~
14 ~~transferee, or assignee comply with the transfer conditions~~
15 ~~specified in the franchise agreement.~~

16 (b) Notwithstanding subdivision (a), a franchisee shall not have
17 the right to sell, transfer, or assign the ~~franchise franchise~~, all or
18 substantially all of the assets of the franchise business, or a
19 controlling or noncontrolling interest in the franchise business,
20 without the written consent of the franchisor, except that the
21 consent shall not be withheld unless the buyer, transferee, or
22 ~~assignor~~ *assignee* does not meet the standards for new or renewing
23 franchisees described in subdivision ~~(a): (a) or the franchisee and~~
24 ~~the buyer, transferee, or assignee do not comply with the transfer~~
25 ~~conditions specified in the franchise agreement.~~

26 (c) ~~Nothing in this section shall~~ *This section does not prohibit*
27 a franchisor from exercising the contractual right of first refusal
28 to purchase a ~~franchise franchise~~, all or substantially all of the
29 ~~assets of a franchise business, or a controlling or noncontrolling~~
30 ~~interest in a franchise business~~ after receipt of a bona fide offer
31 ~~from a proposed purchaser to purchase the franchise by a proposed~~
32 ~~purchaser of the franchise: franchise, assets, or interest.~~ A
33 franchisor exercising the contractual right of first refusal shall offer
34 the ~~franchisee seller~~ payment at least equal to the value offered in
35 the bona fide offer.

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

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

1 20029. (a) The franchisee shall, prior to the sale, assignment,
2 or transfer of *a franchise*, all or substantially all of the assets of
3 ~~the a franchise business~~, or a controlling or noncontrolling interest
4 in the franchise business, to another person, notify the franchisor,
5 of the franchisee's intent to sell, transfer, or assign the ~~franchise~~
6 *franchise*, all or substantially all of the assets of the franchise
7 business, or ~~a the~~ controlling or noncontrolling interest in the
8 franchise business. The notice shall be in writing, delivered to the
9 franchisor by business courier or by receipted mail and include all
10 of the following:

11 (1) The proposed transferee's name and address.
12 (2) A copy of all agreements related to the sale, assignment, or
13 transfer of the ~~franchised business or its assets~~. *franchise, the assets*
14 *of the franchise business, or the interest in the franchise business.*
15 (3) The proposed transferee's application for approval to become
16 the successor franchisee. The application shall include all forms,
17 financial disclosures, and related information generally utilized
18 by the franchisor in reviewing prospective new franchisees, if those
19 forms are readily made available to the existing franchisee. If the
20 forms are not readily available, the franchisee shall request and
21 the franchisor shall deliver the forms to the franchisee by business
22 courier or receipted mail within 15 calendar days. As soon as
23 practicable after the receipt of the proposed transferee's application,
24 the franchisor shall notify, in writing, the franchisee and the
25 proposed transferee of any additional information or documentation
26 necessary to complete the transfer application. *If the franchisor's*
27 *then-existing standards for the approval of new or renewing*
28 *franchisees are not readily available to the franchisee when the*
29 *franchisee notifies the franchisor of the franchisee's intent to sell,*
30 *transfer, or assign the franchise, the assets of the franchise*
31 *business, or the controlling or noncontrolling interest in the*
32 *franchise business, the franchisor shall communicate the standards*
33 *to the franchisee within 15 calendar days.*

34 (b) (1) The franchisor shall, within 60 days after the receipt of
35 all of the necessary information and documentation required
36 pursuant to subdivision (a), or as specified by written agreement
37 between the franchisor and the franchisee, notify the franchisee
38 of the approval or disapproval of the proposed sale, assignment,
39 or ~~transfer of the franchise~~. *transfer*. The notice shall be in writing
40 and shall be delivered to the franchisee by business courier or

1 received mail. A proposed sale, assignment, or transfer shall be
 2 deemed approved, unless disapproved by the franchisor in the
 3 manner provided by this subdivision. If the proposed sale,
 4 assignment, or transfer is disapproved, the franchisor shall include
 5 in the notice of disapproval a statement setting forth the reasons
 6 for the disapproval.

7 (2) In any action in which the franchisor’s disapproval of a sale,
 8 assignment, or transfer pursuant to this subdivision is an issue, the
 9 reasonableness of the franchisor’s decision shall be a question of
 10 fact requiring consideration of all existing circumstances. For
 11 purposes of this paragraph, the finder of fact may be an arbitrator
 12 specified in the franchise agreement and who satisfies the
 13 requirements of Section 20040. Nothing in this paragraph shall
 14 prohibit summary judgment when the reasonableness of transfer
 15 approval or disapproval can be decided as a matter of law.

16 (3) ~~Nothing in this subdivision requires~~ *This section does not*
 17 *require* a franchisor to exercise a contractual right of first refusal.

18 (c) ~~Nothing in this section shall~~ *This section does not* prohibit
 19 a franchisor from exercising the contractual right of first refusal
 20 to purchase a ~~franchise~~ *franchise, all or substantially all of the*
 21 *assets of a franchise business, or a controlling or noncontrolling*
 22 *interest in a franchise business* after receipt of a bona fide offer
 23 ~~to purchase the franchise by~~ *from* a proposed purchaser ~~of the~~
 24 ~~franchise.~~ *to purchase the franchise, assets, or interest.* Any
 25 franchisor exercising the contractual right of first refusal shall offer
 26 the ~~franchisee~~ *seller* payment at least equal to the value offered in
 27 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. 6. The heading of Article 6 (commencing with Section
 31 20035) of Chapter 5.5 of Division 8 of the Business and Professions
 32 Code is amended to read:

33

Article 6. Remedies

34

35

36 SEC. 7. Section 20035 of the Business and Professions Code
 37 is repealed.

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

1 20035. (a) In the event a franchisor terminates or fails to renew
 2 a franchisee, in violation of this chapter, the franchisee shall be
 3 entitled to ~~either of the following remedies: receive from the~~
 4 *franchisor the fair market value of the franchised business and*
 5 *franchise assets and any other damages caused by the violation*
 6 *of this chapter.*

7 ~~(1) Reinstatement of the franchisee under the same terms as the~~
 8 ~~existing franchise agreement, and the franchisor shall pay all~~
 9 ~~damages caused to the franchisee from the violation.~~

10 ~~(2) Upon request of the franchisee, or if the relief in paragraph~~
 11 ~~(1) is determined by the finder of fact to be impossible or~~
 12 ~~impracticable, then the franchisor shall pay the franchisee the fair~~
 13 ~~market value of the franchise and franchise assets and any other~~
 14 ~~damages caused by the violation of this chapter.~~

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

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

19 20036. The franchisor may offset against any remedies made
 20 pursuant to Section 20035 any prior recovery by the franchisee
 21 pursuant to Section 20022 and any sums owed the franchisor or
 22 its subsidiaries by the franchisee pursuant to the franchise or any
 23 ancillary agreement.

24 SEC. 10. Section 20041 of the Business and Professions Code
 25 is amended to read:

26 20041. (a) Except as provided in subdivision (b), the provisions
 27 of this chapter shall apply only to franchises granted or renewed
 28 on or after January 1, 1981, or to franchises of an indefinite
 29 duration that may be terminated by the franchisee or franchisor
 30 without cause.

31 (b) The amendments to this chapter made by the act adding this
 32 subdivision shall apply only to franchise agreements entered into
 33 or renewed on or after January 1, 2016, or to franchises of an
 34 indefinite duration that may be terminated by the franchisee or
 35 franchisor without cause.