

Assembly Bill No. 525

Passed the Assembly August 31, 2015

Chief Clerk of the Assembly

Passed the Senate August 27, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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. The bill also would allow immediate termination of a specified separate motor vehicle franchise under specified circumstances.

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, 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, and the parties comply with specified transfer provisions. The bill would prohibit

a sale, transfer, or assignment 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 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 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 franchisee, to purchase from the franchisee at the value of price paid, minus depreciation, 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 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 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.

The people of the State of California do enact as follows:

SECTION 1. Section 20020 of the Business and Professions Code is amended to read:

20020. Except as otherwise provided by this chapter, no franchisor may terminate a franchise prior to the expiration of its term, except for good cause. Except as provided in Section 20021, good cause shall be limited to the failure of the franchisee to substantially comply with the lawful requirements imposed upon the franchisee by the franchise agreement after being given notice at least 60 days in advance of the termination and a reasonable opportunity, which in no event shall be less than 60 days from the date of the notice of noncompliance, to cure the failure. The period to exercise the right to cure shall not exceed 75 days unless there is a separate agreement between the franchisor and franchisee to extend the time.

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

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

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

(b) The franchisee abandons the franchise by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise,

unless such failure to operate is due to fire, flood, earthquake, or other similar causes beyond the franchisee's control;

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

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

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

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

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

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

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

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

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

(l) If the franchise expressly permits termination under such circumstances, there is a lawful termination or nonrenewal of a separate motor fuel franchise governed by provisions of the Petroleum Marketing Practices Act (15 U.S.C. Secs. 2801 to 2807, inclusive) that is operated by the franchisee or affiliate of the

franchisee located at the same business premises if both franchises are granted by the same franchisor or an affiliate of the franchisor. “Affiliate” shall have the same meaning as set forth in subdivision (k) of Section 31005.5 of the Corporations Code.

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

20022. (a) Except as provided in this section, upon a lawful termination or nonrenewal of a franchisee, the franchisor shall purchase from the franchisee, at the value of price paid, minus depreciation, all inventory, supplies, equipment, fixtures, and furnishings purchased or paid for under the terms of the franchise agreement or any ancillary or collateral agreement by the franchisee to the franchisor or its approved suppliers and sources, that are, at the time of the notice of termination or nonrenewal, in the possession of the franchisee or used by the franchisee in the franchise business. The franchisor shall have the right to receive clear title to and possession of all items purchased from the franchisee under this section.

(b) This section shall not require the franchisor to purchase any personalized items, inventory, supplies, equipment, fixtures, or furnishings not reasonably required to conduct the operation of the franchise business in accordance with the franchise agreement or any ancillary or collateral agreement or to which the franchisee, at the cessation of operation of the franchise business by the franchisee, cannot lawfully, or does not, grant the franchisor clear title and possession upon the franchisor’s payment to the franchisee for the inventory, supplies, equipment, fixtures, or furnishings.

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

(d) This section shall not apply if the franchisor does not prevent the franchisee from retaining control of the principal place of the franchise business.

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

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

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

(h) Upon the termination or nonrenewal of a franchise, a franchisor may offset against the amounts owed to a franchisee under this section any amounts owed by the franchisee to the franchisor.

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

20028. (a) It is unlawful for a franchisor to prevent a franchisee from selling or transferring a franchise, all or substantially all of the assets of the franchise business, 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 standards for the approval of new or renewing franchisees, these standards to be made available to the franchisee, as provided in Section 20029, and to be consistently applied to similarly situated franchisees operating within the franchise brand, and the franchisee and the buyer, transferee, or assignee comply with the transfer conditions specified in the franchise agreement.

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

(c) This section does not prohibit a franchisor from exercising the contractual right of first refusal to purchase a franchise, all or substantially all of the assets of a franchise business, or a controlling or noncontrolling interest in a franchise business after receipt of a bona fide offer from a proposed purchaser to purchase the franchise, assets, or interest. A franchisor exercising the

contractual right of first refusal shall offer the seller payment at least equal to the value offered in the bona fide offer.

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

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

20029. (a) The franchisee shall, prior to the sale, assignment, or transfer of a franchise, all or substantially all of the assets of a franchise business, or a controlling or noncontrolling interest in the franchise business, to another person, notify the franchisor, of the franchisee’s intent to sell, transfer, or assign the franchise, all or substantially all of the assets of the franchise business, or the controlling or noncontrolling interest in the franchise business. The notice shall be in writing, delivered to the franchisor by business courier or by receipted mail and include all of the following:

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

(2) A copy of all agreements related to the sale, assignment, or transfer of the franchise, the assets of the franchise business, or the interest in the franchise business.

(3) The proposed transferee’s application for approval to become the successor franchisee. The application shall include all forms, financial disclosures, and related information generally utilized by the franchisor in reviewing prospective new franchisees, if those forms are readily made available to the existing franchisee. If the forms are not readily available, the franchisee shall request and the franchisor shall deliver the forms to the franchisee by business courier or receipted mail within 15 calendar days. As soon as practicable after the receipt of the proposed transferee’s application, the franchisor shall notify, in writing, the franchisee and the proposed transferee of any additional information or documentation necessary to complete the transfer application. If the franchisor’s then-existing standards for the approval of new or renewing franchisees are not readily available to the franchisee when the franchisee notifies the franchisor of the franchisee’s intent to sell, transfer, or assign the franchise, the assets of the franchise business, or the controlling or noncontrolling interest in the franchise business, the franchisor shall communicate the standards to the franchisee within 15 calendar days.

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

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

(3) This section does not require a franchisor to exercise a contractual right of first refusal.

(c) This section does not prohibit a franchisor from exercising the contractual right of first refusal to purchase a franchise, all or substantially all of the assets of a franchise business, or a controlling or noncontrolling interest in a franchise business after receipt of a bona fide offer from a proposed purchaser to purchase the franchise, assets, or interest. Any franchisor exercising the contractual right of first refusal shall offer the seller payment at least equal to the value offered in the bona fide offer.

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

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

Article 6. Remedies

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

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

20035. (a) In the event a franchisor terminates or fails to renew a franchisee, in violation of this chapter, the franchisee shall be entitled to receive from the franchisor the fair market value of the franchised business and franchise assets and any other damages caused by the violation of this chapter.

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

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

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

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

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

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

Approved _____, 2015

Governor