

ASSEMBLY BILL

No. 2305

**Introduced by Assembly Member Huffman
(Coauthor: Assembly Member Ammiano)**

February 24, 2012

An act to amend Sections 20020, 20021, 20025, 20027, 20030, 20035, 20040, and 20040.5 of, to amend the heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of, to add Sections 20000.5, 20028, 20038, 20039, and 20044 to, to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of, to repeal Section 20026 of, and to repeal and add Section 20036 of, the Business and Professions Code, and to amend Sections 31001, 31012, 31220, 31300, 31302, 31302.5, 31303, 31306, and 31512 of, to add Section 31110.5 to, to repeal Sections 31301 and 31304 of, and to repeal and add Section 31201 of, the Corporations Code, relating to franchises.

LEGISLATIVE COUNSEL’S DIGEST

AB 2305, as introduced, Huffman. Franchises.

(1) Existing law provides for the regulation of franchises and establishes certain duties, obligations, and remedies for parties to a franchise agreement. The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises, among other things. The Franchise Investment Law sets forth various powers of the Commissioner of Corporations relative to the registration of an offer or sale of a franchise, unless exempted, and prohibits certain fraudulent and unfair practices.

This bill would revise both the California Franchise Relations Act and the Franchise Investment Law.

(A) With respect to the California Franchise Relations Act, existing law generally prohibits a franchisor from terminating a franchise prior to expiration of its term except for good cause, which is defined to include the failure of a franchisee to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity, which need not exceed 30 days, to cure the failure.

This bill would provide that good cause in a termination case consists of a substantial and material breach of the franchise agreement after the franchisee is given written notice and 60 days to cure the failure. The bill would also require the termination to be in accordance with the current terms and standards equally applicable to all franchisees, with limited exceptions.

Existing law provides that immediate termination of a franchise is deemed reasonable without an opportunity to cure upon the occurrence of certain events. One of those events is the failure by the franchisee to pay franchise fees or other amounts due with 5 days of receiving written notice that these amounts are overdue.

This bill would exempt situations where the franchisee establishes that the event was caused in substantial manner by conduct of the franchisor. The bill would require certain noncompliance by the franchisee allowing immediate termination to be substantial and material. The bill would provide 60 rather than 5 days for the franchisee to pay overdue amounts.

Existing law requires at least 180 days written notice to the franchisee of the franchisor's intention not to renew the franchise. Existing law imposes certain requirements on the franchisor in that regard relative to the franchisee's interests.

This bill would delete these provisions and instead require a franchisor to renew a franchise unless the franchisee has substantially and materially breached the franchise agreement, and would require the renewal to be under the same terms as the existing agreement, or if the franchisee elects, under the franchise terms then being offered to new franchisees. The bill would continue to require 180 days' written notice if the franchisor has grounds not to renew the franchise. The bill would also prohibit a franchisor, upon termination or expiration of a franchise, from enforcing against the franchisee any covenant not to compete.

Existing law provides that a franchisor, for a reasonable time after the death of the franchisee, may not deny the surviving spouse, heirs, or estate of the franchisee the opportunity to participate in the ownership

of the franchise under the then-current qualifications and standards applicable to franchisees.

This bill would require the qualifications and standards to be reasonable.

Existing law requires a franchisor that terminates or fails to renew a franchise other than as permitted under the act to offer to repurchase the franchisee's resalable current inventory, as specified.

This bill would instead require the franchisor to reinstate the franchisee and to pay all associated damages, or to pay to the franchisee the fair market value of the franchise or franchise assets.

Existing law allows a franchisor and franchisee to agree to binding arbitration of claims arising under the act.

This bill would require the arbitration procedures and costs to allow franchisees the opportunity to vindicate their rights under the act.

This bill would also add new provisions to the California Franchise Relations Act. The bill would require the parties to a franchise agreement to deal with each other in good faith. The bill would provide that certain acts and practices by a franchisor or subfranchisor are unfair or deceptive acts or practices or an unfair method of competition. The bill would provide certain rights to a franchisee if the franchisor develops a new location or grants a new franchise in essentially the same market in unreasonable proximity to an existing franchise. The bill would provide that franchisors owe a duty of competence to franchisees. The bill would provide that a condition, stipulation, or provision in a franchise agreement requiring the application of the law of another state is void. The bill would provide additional remedies for violations of provisions governing actions of franchisors relative to termination, nonrenewal, and transfer of franchises, including specified damages in certain cases, injunctive relief, and an award of attorney's fees and costs to a franchisee prevailing in an action.

(B) With respect to the Franchise Investment Law, existing law makes it unlawful for a person to offer or sell a franchise by means of a communication that includes an untrue statement of a material fact or omits to state a material fact necessary in order for the statements made to not be misleading.

This bill would also make it unlawful for a person offering or selling a franchise to intentionally misrepresent certain matters, including the prospects or chances for success of a franchise, the known required total investment for a franchise, and efforts to sell or establish more franchises than a market or market area can sustain.

Existing law provides that any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of a franchise or who engages in other willful acts that operate as a fraud or deceit is guilty of a crime.

This bill would allow these matters to also be the subject of civil litigation, as specified.

Existing law imposes various duties on the Commissioner of Corporations with respect to franchise offers.

This bill would prohibit the commissioners from registering any franchise offer that restricts venue for resolution of dispute solely to a forum outside this state.

Existing law makes it unlawful for a franchisor to restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for lawful purposes. A plaintiff may seek injunctive relief and damages for a violation of this provision.

This bill would also make it unlawful for a franchisor to refuse to recognize and deal fairly and in good faith with an independent franchisee association.

Existing law provides that a person who offers or sells a franchise in violation of specified provisions of the Franchise Investment Law shall be liable for damages to the franchisee or subfranchisor, with certain exceptions. Existing law also provides rescission as a remedy for willful violations of these provisions.

This bill would extend civil liability for damages to any violation of the Franchise Investment Law. The bill, following purchase of a franchise, would allow a franchisee or subfranchisor to seek rescission, restitution, and ancillary damages without the requirement for the violation to be willful. The bill would extend liability for any violation of the Franchise Investment Law, on a joint and several basis, to various other parties associated with the franchisor. The bill would also provide for injunctive relief for any violation of the Franchise Investment Law.

Existing law imposes time limits of one, 2, or 4 years for the bringing of an action to enforce specific liabilities under the Franchise Investment Law. Existing law provides that if the franchisor delivers a written notice to the franchisee disclosing a violation of certain disclosure provisions, an action must be brought within 90 days.

This bill would require the written notice to include an offer of restitution of investment and ancillary damages and would extend the time for bringing an action to 180 days. The bill would allow 4 years

to bring other actions to enforce liabilities under the Franchise Investment Law.

Existing law provides that any condition, stipulation, or provision purporting to bind any person acquiring a franchise to waive compliance with the Franchise Investment Law is void.

This bill would provide that certain other provisions, if included in the offer or sale of a franchise and associated documents, are also void.

Existing law provides that a willful violation of any provision of the Franchise Investment Law is a crime, unless specifically excepted. Because the bill would change the definition of certain crimes, it would impose a state-mandated local program.

(2) The bill would make other related changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. This act shall be known, and may be cited, as
- 2 “The Level Playing Field for Small Businesses Act of 2012.”
- 3 SEC. 2. Section 20000.5 is added to the Business and
- 4 Professions Code, to read:
- 5 20000.5. The Legislature hereby finds and declares all of the
- 6 following:
- 7 (a) The widespread use of one-sided and nonnegotiable franchise
- 8 agreements has created numerous problems for franchisees in
- 9 California. Many franchisees lack knowledge and experience with
- 10 franchise agreements, knowledge of particular industries and their
- 11 franchisors’ system, and equality in bargaining power. In addition,
- 12 many franchisees invest their substantial assets, take loans
- 13 sometimes secured by their family homes, and enter into long-term
- 14 commercial leases and other obligations while looking to their
- 15 franchise businesses for their livelihoods.
- 16 (b) Unlike investments in securities, an investment in a franchise
- 17 may lead to substantial additional losses well beyond the initial
- 18 risk capital. Unlike employment, due to long-term contractual and

1 lease obligations, franchisees generally cannot resign and leave
2 without substantial liabilities.

3 (c) The inability of many franchisees to negotiate on an equal
4 footing extends not only to individual first-time franchisees, but
5 also to experienced multiunit and well-represented franchisees.
6 As a result of one-sided franchise agreements, California
7 franchisees have been the victims of economic opportunism of
8 franchisors. Many franchisees have lost their substantial
9 investments and sometimes more, including their homes, and others
10 have had to file for bankruptcy. California franchisees have also
11 been victimized by territorial encroachment, franchisor lack of
12 competence and negligence, unfair required purchases, and other
13 misconduct. The California Franchise Relations Act is designed
14 to protect franchisees and end abuses from those practices and
15 unfair contract provisions.

16 SEC. 3. Article 2.5 (commencing with Section 20016) is added
17 to Chapter 5.5 of Division 8 of the Business and Professions Code,
18 to read:

19
20 Article 2.5. Relationships Between Franchisor or Subfranchisor
21 and Franchisees
22

23 20016. Without limiting the other provisions of this chapter,
24 the following specific rights and prohibitions shall govern the
25 relations between the franchisor or subfranchisor and its
26 franchisees:

27 (a) (1) The parties shall deal with each other in good faith in
28 the performance and enforcement of the franchise agreement.

29 (2) “Good faith” for purposes of this subdivision means honesty
30 in fact and the observance of reasonable commercial standards of
31 fair dealing in the trade.

32 (b) For the purposes of this chapter and without limiting its
33 general application, it shall be an unfair or deceptive act or practice
34 or an unfair method of competition for a franchisor or subfranchisor
35 to do any of the following:

36 (1) Restrict the right of a franchisee to join or participate in an
37 association of franchisees to the extent the restriction is prohibited
38 by Section 20016.4 or Section 31220 of the Corporations Code.

39 (2) Require a franchisee to purchase or lease goods or services
40 in a manner prohibited by Section 20016.3.

1 (3) Discriminate between franchisees in the charges offered or
2 made for royalties, goods, services, equipment, rentals, advertising
3 services, or in any other business dealings, unless and to the extent
4 that any classification of or discrimination between franchisees is
5 any of the following:

6 (A) Based on franchises granted at materially different times,
7 and the discrimination is reasonably related to differences in time.

8 (B) Related to one or more programs for making franchises
9 available to persons with insufficient capital, training, business
10 experience, or education, or who lack other qualifications.

11 (C) Related to local or regional experimentation with, or
12 variations in, product or service lines or business formats or
13 designs.

14 (D) Related to efforts by one or more franchisees to cure
15 deficiencies in the operation of franchise businesses or defaults in
16 franchise agreements.

17 (E) Based on other reasonable distinctions considering the
18 purposes of this chapter and is not arbitrary.

19 (4) Obtain money, goods, services, anything of value, or any
20 other benefit from any other person with whom the franchisee does
21 business on account of that business unless the franchisor advises
22 the franchisee in advance of the franchisor's intention to receive
23 that benefit.

24 (5) Establish a similar business or grant a franchise for the
25 establishment of a similar business at a location within a
26 geographical area specifically designated as the exclusive territory
27 in a franchise previously granted to another franchisee in a
28 currently effective agreement, except under the circumstances or
29 conditions prescribed in the agreement. The fact that other
30 franchisees or the franchisor may solicit business or sell goods or
31 services to people residing in that geographical territory shall not
32 constitute the establishment of a similar business within the
33 exclusive territory.

34 (6) Require a franchisee at the time of entering into a franchise
35 to assent to a release, assignment, novation, or waiver that would
36 relieve any person from liability imposed by this chapter. Any
37 condition, stipulation, or provision purporting to bind any person
38 acquiring any franchise to waive compliance with any provision
39 of this chapter shall be void. This paragraph shall not bar or affect

1 the settlement of disputes, claims, or civil suits arising or brought
2 under this chapter.

3 (7) Impose on a franchisee by contract, rule, or regulation,
4 whether written or oral, any unreasonable and arbitrary standard
5 of conduct.

6 (8) Terminate a franchise in violation of Article 3 (commencing
7 with Section 20020), refuse to renew a franchise in violation of
8 Article 4 (commencing with Section 20025), or refuse to permit
9 a transfer of a franchise in violation of Article 4.4 (commencing
10 with Section 20027).

11 (c) The provisions of this chapter shall apply to all written or
12 oral arrangements with the franchisee including, but not limited
13 to, the franchise offering, the franchise agreement, sales of goods
14 or services, leases and mortgages of real or personal property,
15 promises to pay, security interest, pledges, insurance contracts,
16 advertising contracts, construction or installation contracts,
17 servicing contracts, and all other arrangements in which the
18 franchisor or subfranchisor has any direct or indirect interest.

19 (d) In any proceedings, damages may be based on reasonable
20 approximations but not on speculation.

21 20016.1. (a) The commission of any unfair or deceptive act
22 or practice or unfair method of competition prohibited by Section
23 20016 shall constitute an unfair or deceptive act or practice
24 pursuant to Chapter 5 (commencing with Section 17200) of Part
25 2 of Division 7.

26 (b) Any person who sells or offers to sell a franchise in violation
27 of this chapter shall be liable to the franchisee or subfranchisor,
28 who may sue for damages caused thereby or for rescission or other
29 relief as the court may deem appropriate. Rescission shall not be
30 available to the plaintiff if the defendant proves that the plaintiff
31 knew the facts concerning the untruth or omission or that the
32 defendant exercised reasonable care and did not know, or, if the
33 defendant had exercised reasonable care, would not have known,
34 of the untruth or omission.

35 (c) The suit authorized under subdivision (b) may be brought
36 to recover the actual damages sustained by the plaintiff together
37 with the cost of the suit, including reasonable attorney's fees, and
38 the court may in its discretion increase the award of damages to
39 an amount not to exceed three times the actual damages sustained.

1 (d) Any person who becomes liable to make payments under
2 this section may recover contributions from any persons who, if
3 sued separately, would have been liable to make the same payment.

4 (e) A final judgment, order, or decree rendered against a person
5 under antitrust laws or this chapter shall be regarded as evidence
6 against that person in an action brought by any party against that
7 person under subdivision (a) or (b) as to all matters with respect
8 to which the judgment, order, or decree would be an estoppel
9 between the parties.

10 20016.2. (a) If a franchisor develops, or grants to a franchisee
11 the right to develop, a new outlet or location that sells essentially
12 the same goods or services under the same trademark, service
13 mark, trade name, logotype, or other commercial symbol as an
14 existing franchisee and the new outlet or location is in unreasonable
15 proximity to the existing franchisee's outlet or location and has
16 an adverse effect on the gross sales of the existing franchisee's
17 outlet or location, the existing adversely affected franchisee has a
18 cause of action for monetary damages in an amount calculated
19 pursuant to subdivision (b), unless any of the following apply:

20 (1) The franchisor has first offered the new outlet or location
21 to the existing franchisee on the same basic terms and conditions
22 available to the other potential franchisee and the existing
23 franchisee meets the reasonable current qualifications of the
24 franchisor including any financial requirements, or, if the new
25 outlet or location is to be owned by the franchisor, on the terms
26 and conditions that would ordinarily be offered to a franchisee for
27 a similarly situated outlet or location.

28 (2) The adverse impact on the existing franchisee's annual gross
29 sales, based on a comparison to the annual gross sales from the
30 existing outlet or location during the 12-month period immediately
31 preceding the opening of the new outlet or location, is determined
32 to have been less than 6 percent during the first 12 months of
33 operation of the new outlet or location.

34 (3) The existing franchisee, at the time the franchisor develops,
35 or grants to a franchisee the right to develop, a new outlet or
36 location, is not in compliance with the franchisor's then current
37 reasonable criteria for eligibility for a new franchise, not including
38 any financial requirements.

1 (4) The existing franchisee has been granted reasonable
2 territorial rights and the new outlet or location does not violate
3 those territorial rights.

4 (b) In establishing damages under a cause of action brought
5 pursuant to this section, the franchisee has the burden of proving
6 the amount of lost profits attributable to the compensable sales.
7 For purposes of this subdivision, “compensable sales” means the
8 annual gross sales from the existing outlet or location.
9 Compensable sales shall exclude any amount attributable to factors
10 other than the opening and operation of the new outlet or location.

11 (c) Any cause of action brought under this section shall be filed
12 within two years of the opening of the new outlet or location.

13 20016.3. (a) A franchisor shall not require that a franchisee
14 purchase goods, supplies, inventories, or services exclusively from
15 the franchisor or from a source or sources of supply specifically
16 designated by the franchisor where those goods, supplies,
17 inventories, or services of comparable quality are available from
18 sources other than those designated by the franchisor, unless
19 necessary for a lawful purpose that is justified on business grounds.

20 (b) The publication by the franchisor of a list of approved
21 suppliers of goods, supplies, inventories, or services, or the
22 requirement that goods, supplies, inventories, or services comply
23 with specifications and standards prescribed by the franchisor,
24 does not constitute designation of a source under subdivision (a).
25 Additionally, the reasonable right of a franchisor to disapprove a
26 supplier does not constitute a designation of source under
27 subdivision (a).

28 (c) This section does not apply to the principal goods, supplies,
29 inventories, or services manufactured by the franchisor, or any
30 goods, supplies, inventories, or services entitled to protection as
31 a trade secret.

32 20016.4. A franchisor shall not restrict a franchisee from
33 associating with other franchisees or from participating in a trade
34 association, and shall not retaliate against a franchisee for engaging
35 in these activities.

36 20016.5. The duty of good faith is imposed in situations
37 including, but not limited to, where the franchisor opens a new
38 outlet or location that has an adverse impact on an existing
39 franchisee. A determination of whether the duty of good faith with
40 respect to a new outlet or location has been met shall be made

1 pursuant to the provisions, standards, and procedures in Section
2 20016.2. “Good faith” for purposes of this section shall have the
3 same meaning as defined in paragraph (2) of subdivision (a) of
4 Section 20016.

5 20016.6. Franchisors shall owe a duty of competence to
6 franchisees operating in the state regarding all goods, services,
7 programs, advertising, and operating manuals required to be used
8 or provided to franchisees for their use.

9 SEC. 4. Section 20020 of the Business and Professions Code
10 is amended to read:

11 20020. Except as otherwise provided by this chapter, no
12 franchisor may terminate a franchise prior to the expiration of its
13 term, except for good cause, *and in accordance with the current*
14 *terms and standards established by the franchisor then equally*
15 *applicable to all franchisees, except with respect to any*
16 *classification of, or discrimination between, franchisees that is*
17 *reasonable, is based on proper and justifiable distinctions*
18 *considering the purposes of this chapter, and is not arbitrary. In*
19 *any proceeding under this section, the franchisor shall have the*
20 *burden of proving that a classification or discrimination meets the*
21 *requirements of this section. Good cause in a termination case*
22 *shall include, but not be limited to, the failure of the franchisee to*
23 *comply with any consist of a substantial and material breach of*
24 *any lawful requirement of the franchise agreement after being*
25 *given written notice thereof and a reasonable opportunity, which*
26 *in no event need be more than 30 60 days, to cure the failure.*

27 SEC. 5. Section 20021 of the Business and Professions Code
28 is amended to read:

29 20021. If during the period in which the franchise is in effect,
30 there occurs any of the following events which is relevant to the
31 franchise, immediate notice of termination without an opportunity
32 to cure; shall be deemed reasonable *unless the franchisee*
33 *establishes that the event was caused in substantial manner by*
34 *conduct of the franchisor:*

35 (a) The franchisee or the business to which the franchise relates
36 has been the subject of an order for relief in bankruptcy, judicially
37 determined to be insolvent, all or a substantial part of the assets
38 thereof are assigned to or for the benefit of any creditor, or the
39 franchisee admits his or her inability to pay his or her debts as they
40 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 *substantially* with any federal, state, or local law or regulation applicable *and material* to the operation of the franchise;

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

(g) The franchisee repeatedly fails to comply with one or more *substantial and material* 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 *and material* 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~~ 60 days after receiving written notice that ~~such~~ *the* fees are overdue; or

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

4 SEC. 6. Section 20025 of the Business and Professions Code
5 is amended to read:

6 20025. (a) No franchisor may fail to renew a franchise unless
7 ~~such franchisor provides the franchisee at least 180 days prior~~
8 ~~written notice of its intention not to renew; and has substantially~~
9 ~~and materially breached the franchise agreement. If the franchisee~~
10 ~~has not substantially and materially breached the franchise~~
11 ~~agreement at time of renewal, the franchisee may renew for the~~
12 ~~same term as the previous term. The renewal shall be under the~~
13 ~~same terms as the existing franchise agreement, or at the election~~
14 ~~of the franchisee, under the franchise agreement terms then being~~
15 ~~offered new franchisees. If the franchisor has grounds not to renew~~
16 ~~a franchise under this chapter, then the franchisor shall provide~~
17 ~~at least 180 days' prior written notice of its intention to not renew~~
18 ~~as set forth in this chapter.~~

19 ~~(a) During the 180 days prior to expiration of the franchise the~~
20 ~~franchisor permits the franchisee to sell his business to a purchaser~~
21 ~~meeting the franchisor's then current requirements for granting~~
22 ~~new franchises, or if the franchisor is not granting a significant~~
23 ~~number of new franchises, the then current requirements for~~
24 ~~granting renewal franchises; or~~

25 ~~(b) (1) The refusal to renew is not for the purpose of converting~~
26 ~~the franchisee's business premises to operation by employees or~~
27 ~~agents of the franchisor for such franchisor's own account,~~
28 ~~provided, that nothing in this paragraph shall prohibit a franchisor~~
29 ~~from exercising a right of first refusal to purchase the franchisee's~~
30 ~~business; and~~

31 ~~(2) Upon expiration of the franchise, the franchisor agrees not~~
32 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~
33 ~~to compete with the franchisor or franchisees of the franchisor; or~~

34 ~~(c) Termination would be permitted pursuant to Section 20020~~
35 ~~or 20021; or~~

36 ~~(d) The franchisee and the franchisor agree not to renew the~~
37 ~~franchise; or~~

38 ~~(e) The franchisor withdraws from distributing its products or~~
39 ~~services through franchises in the geographic market served by~~
40 ~~the franchisee, provided that:~~

1 ~~(1) Upon expiration of the franchise, the franchisor agrees not~~
2 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~
3 ~~to compete with the franchisor or franchisees of the franchisor;~~
4 ~~and~~

5 ~~(2) The failure to renew is not for the purpose of converting the~~
6 ~~business conducted by the franchisee pursuant to the franchise~~
7 ~~agreement to operation by employees or agents of the franchisor~~
8 ~~for such franchisor's own account; and~~

9 ~~(3) Where the franchisor determines to sell, transfer, or assign~~
10 ~~its interest in a marketing premises occupied by a franchisee whose~~
11 ~~franchise agreement is not renewed pursuant to this paragraph:~~

12 ~~(A) The franchisor, during the 180-day period after giving notice~~
13 ~~offers such franchisee a right of first refusal of at least 30 days'~~
14 ~~duration of a bona fide offer, made by another to purchase such~~
15 ~~franchisor's interest in such premises; or~~

16 ~~(B) In the case of the sale, transfer, or assignment to another~~
17 ~~person of the franchisor's interest in one or more other controlled~~
18 ~~marketing premises, such other person in good faith offers the~~
19 ~~franchisee a franchise on substantially the same terms and~~
20 ~~conditions currently being offered by such other person to other~~
21 ~~franchisees; or~~

22 ~~(f) The franchisor and the franchisee fail to agree to changes or~~
23 ~~additions to the terms and conditions of the franchise agreement,~~
24 ~~if such changes or additions would result in renewal of the~~
25 ~~franchise agreement on substantially the same terms and conditions~~
26 ~~on which the franchisor is then customarily granting renewal~~
27 ~~franchises, or if the franchisor is not then granting a significant~~
28 ~~number of renewal franchises, the terms and conditions on which~~
29 ~~the franchisor is then customarily granting original franchises. The~~
30 ~~franchisor may give the franchisee written notice of a date which~~
31 ~~is at least 30 days from the date of such notice, on or before which~~
32 ~~a proposed written agreement of the terms and conditions of the~~
33 ~~renewal franchise shall be accepted in writing by the franchisee.~~
34 ~~Such notice, when given not less than 180 days before the end of~~
35 ~~the franchise term, may state that in the event of failure of such~~
36 ~~acceptance by the franchisee, the notice shall be deemed a notice~~
37 ~~of intention not to renew at the end of the franchise term.~~

38 ~~(b) Upon the termination or expiration of the franchise, the~~
39 ~~franchisor shall not seek to enforce, against the franchisee, any~~
40 ~~covenant not to compete.~~

1 SEC. 7. Section 20026 of the Business and Professions Code
2 is repealed.

3 ~~20026. Nothing in Section 20025 shall prohibit a franchisor~~
4 ~~from offering or agreeing before expiration of the current franchise~~
5 ~~term to extend the term of the franchise for a limited period in~~
6 ~~order to satisfy the time of notice of nonrenewal requirement of~~
7 ~~that section.~~

8 SEC. 8. Section 20027 of the Business and Professions Code
9 is amended to read:

10 20027. (a) No franchisor shall deny the surviving spouse, heirs,
11 or estate of a deceased franchisee or the majority shareholder of
12 the franchisee the opportunity to participate in the ownership of
13 the franchise under a valid franchise agreement for a reasonable
14 time after the death of the franchisee or majority shareholder of
15 the franchisee. During that time the surviving spouse, heirs, or
16 estate of the deceased shall either satisfy all of the then current
17 *and reasonable* qualifications for a purchaser of a franchise or sell,
18 transfer, or assign the franchise to a person who satisfies the
19 franchisor's then current *and reasonable* standards for new
20 franchisees. The rights granted pursuant to this section shall be
21 granted subject to the surviving spouse, heirs or estate of the
22 deceased maintaining all standards and obligations of the franchise.

23 (b) Nothing in subdivision (a) shall prohibit a franchisor from
24 exercising the right of first refusal to purchase a franchise after
25 receipt of a bona fide offer to purchase the franchise by a proposed
26 purchaser of the franchise.

27 ~~(c) This article shall not apply to any agreement or contract in~~
28 ~~effect prior to January 1, 1984, except an agreement or contract~~
29 ~~of an indefinite duration. This section shall not apply to any bequest~~
30 ~~or intestate succession that took effect prior to January 1, 1984.~~

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

33 20028. (a) (1) No franchisor shall refuse to permit a transfer
34 of ownership of a franchise, or of a proprietorship, partnership,
35 corporation, or other business entity that is a franchisee or
36 subfranchisor, except for good cause.

37 (2) For purposes of this subdivision, good cause shall include,
38 but not be limited to, any of the following:

1 (A) The failure of a proposed transferee to meet any of the
2 franchisor's or subfranchisor's reasonable qualifications or
3 standards then in effect for a franchisee or subfranchisor.

4 (B) The fact that the proposed transferee or any affiliated person
5 of the proposed transferee is a competitor of the franchisor or
6 subfranchisor.

7 (C) The inability or unwillingness of the proposed transferee to
8 agree in writing to comply with and be bound by all lawful
9 obligations imposed by the franchisor, including, without
10 limitation, all instruction and training obligations, and to sign the
11 current form of the franchise agreement used by the franchisor or
12 subfranchisor.

13 (D) The failure of the franchisee or proposed transferee to pay
14 any sums owing to the franchisor and to cure any default in the
15 franchise agreement or other agreements with the franchisor
16 existing at the time of the proposed transfer.

17 (b) A franchisor or subfranchisor shall have 30 days after being
18 notified in writing of a proposed transfer to approve or disapprove
19 in writing a proposed transfer of ownership or control of a
20 franchise, or of a proprietorship, partnership, corporation, or other
21 business entity that is a franchisee or subfranchisor, stating its
22 reason for disapproval. If a franchisor or subfranchisor fails to
23 approve or disapprove a proposed transfer in writing within that
24 period, the franchisor or subfranchisor shall be deemed to have
25 approved such transfer.

26 SEC. 10. Section 20030 of the Business and Professions Code
27 is amended to read:

28 20030. All notices of termination or nonrenewal required by
29 this chapter:

30 (a) Shall be in writing;

31 (b) Shall be posted by registered, certified or other receipted
32 mail, delivered by telegram, or personally delivered to the
33 franchisee; and

34 (c) Shall contain a statement of intent to terminate or not renew
35 the franchise:

36 (1) Together with *all of* the reasons therefor, and

37 (2) The effective date of such termination or nonrenewal-~~or~~
38 ~~expiration.~~

1 SEC. 11. The heading of Article 6 (commencing with Section
2 20035) of Chapter 5.5 of Division 8 of the Business and Professions
3 Code is amended to read:

4
5 Article 6. ~~Offers to Repurchase Inventory Remedies~~
6

7 SEC. 12. Section 20035 of the Business and Professions Code
8 is amended to read:

9 20035. In the event a franchisor terminates or fails to renew a
10 franchise other than in accordance with the provisions of this
11 chapter, the franchisor shall offer to repurchase from the franchisee
12 ~~the franchisee's resalable current inventory meeting the franchisor's~~
13 ~~present standards that is required by the franchise agreement or~~
14 ~~commercial practice and held for use or sale in the franchised~~
15 ~~business at the lower of the fair wholesale market value or the~~
16 ~~price paid by the franchisee. The franchisor shall not be liable for~~
17 ~~offering to purchase personalized items which have no value to~~
18 ~~the franchisor in the business which it franchises~~ *reinstate the*
19 *franchisee in accordance with the provisions of this chapter and*
20 *pay all damages caused thereby, or at the election of the*
21 *franchisee, shall pay to the franchisee the fair market value of the*
22 *franchise or the fair market value of the franchise assets.*

23 SEC. 13. Section 20036 of the Business and Professions Code
24 is repealed.

25 ~~20036. The franchisor may offset against any repurchase offer~~
26 ~~made pursuant to Section 20035 any sums owed the franchisor or~~
27 ~~its subsidiaries by the franchisee pursuant to the franchise or any~~
28 ~~ancillary agreement.~~

29 SEC. 14. Section 20036 is added to the Business and
30 Professions Code, to read:

31 20036. Any franchisee establishing a reasonable probability
32 of prevailing in an action under this chapter shall be entitled to a
33 temporary restraining order and preliminary injunction enjoining
34 termination or nonrenewal pending trial without any showing of
35 irreparable injury or posting bond.

36 SEC. 15. Section 20038 is added to the Business and
37 Professions Code, to read:

38 20038. Any franchisee prevailing in an action under this chapter
39 shall be entitled to an award of reasonable attorney's fees and
40 costs.

SEC. 16. Section 20039 is added to the Business and Professions Code, to read:

20039. A condition, stipulation, or provision in a franchise agreement requiring the application of the law of another state in lieu of this chapter is void.

SEC. 17. Section 20040 of the Business and Professions Code is amended to read:

20040. Nothing contained in this chapter shall limit the right of a franchisor and franchisee to agree before or after a dispute has arisen to binding arbitration of claims under this chapter, provided that:

(a) The standards applied in ~~such~~ *the* arbitration are not less than the requirements specified in this chapter; and

(b) The arbitrator or arbitrators employed in ~~such~~ *the* arbitration are chosen from a list of impartial arbitrators supplied by the American Arbitration Association or other impartial ~~person~~ *person*; and

(c) *The arbitration procedures and costs allow franchisees the opportunity to vindicate their rights under this chapter.*

SEC. 18. Section 20040.5 of the Business and Professions Code is amended to read:

20040.5. A provision in a franchise agreement restricting venue ~~solely~~ to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state.

SEC. 19. Section 20044 is added to the Business and Professions Code, to read:

20044. This chapter shall be liberally construed to effectuate its purposes.

SEC. 20. Section 31001 of the Corporations Code is amended to read:

31001. The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business ~~which~~ *that* has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this division, the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to those transactions. California franchisees have suffered substantial losses where the franchisor or his or her representative has not provided full and complete information

1 regarding the franchisor-franchisee relationship, the details of the
2 contract between franchisor and franchisee, and the prior business
3 experience of the franchisor.

4 It is the intent of this law to provide each prospective franchisee
5 with the information necessary to make an intelligent decision
6 regarding franchises being offered. Further, it is the intent of this
7 law to prohibit the sale of franchises where the sale would lead to
8 fraud or a likelihood of *deceit* or that the franchisor's promises
9 would not be fulfilled, and to protect the franchisor and franchisee
10 by providing a better understanding of the relationship between
11 the franchisor and franchisee with regard to their business
12 relationship.

13 SEC. 21. Section 31012 of the Corporations Code is amended
14 to read:

15 31012. ~~“Fraud” and “deceit”~~ “*Fraud,*” “*deceit,*”
16 “*misrepresentation,*” and “*omissions*” are not limited to common
17 law fraud or deceit, *and scienter and reasonable reliance are not*
18 *required for recovery for fraud, deceit, misrepresentation, or*
19 *omissions under this division.*

20 SEC. 22. Section 31110.5 is added to the Corporations Code,
21 to read:

22 31110.5. The commissioner shall not register any franchise
23 offer that contains a provision in a franchise agreement, contrary
24 to Section 20040.5 of the Business and Professions Code,
25 restricting venue for resolution of disputes solely to a forum outside
26 this state.

27 SEC. 23. Section 31201 of the Corporations Code is repealed.

28 ~~31201. It is unlawful for any person to offer or sell a franchise~~
29 ~~in this state by means of any written or oral communication not~~
30 ~~enumerated in Section 31200 which includes an untrue statement~~
31 ~~of a material fact or omits to state a material fact necessary in order~~
32 ~~to make the statements made, in the light of the circumstances~~
33 ~~under which they were made, not misleading.~~

34 SEC. 24. Section 31201 is added to the Corporations Code, to
35 read:

36 31201. (a) It is unlawful for any person in connection with the
37 offer, sale, or purchase of any franchise, or in any filing with the
38 commissioner, to do any of the following, directly or indirectly:

39 (1) Employ any device, scheme, or artifice to defraud.

(2) Make any untrue statements of a material fact or omit to state a material fact necessary to make the statement, in light of the circumstances under which they are made, not misleading.

(3) Engage in any act that operates or that would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person when offering or selling a franchise to do any of the following:

(1) Intentionally misrepresent the prospects or chances for success of a proposed or existing franchise.

(2) Intentionally misrepresent, by failure to disclose or otherwise, the known required total investment for a franchise.

(3) Intentionally misrepresent, or fail to disclose, efforts to sell or establish more franchises than is reasonable to expect the market or market area for the particular franchise to sustain.

SEC. 25. Section 31220 of the Corporations Code is amended to read:

31220. It shall be a violation of this division for any franchisor, directly or indirectly, through any officer, agent, or employee, to restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for any lawful ~~purposes~~ *purpose, or to refuse to recognize and deal fairly and in good faith with any independent franchisee association.* Notwithstanding Section 31410, a violation of this section shall not constitute a crime.

SEC. 26. Section 31300 of the Corporations Code is amended to read:

31300. Any person who offers or sells a franchise in violation of ~~Section 31101, 31110, 31119, 31200, or 31202, or in violation of any provision of this division that provides an exemption from the provisions of Chapter 2 (commencing with Section 31110) of Part 2 or any portions of Part 2;~~ *this division* shall be liable to the franchisee or subfranchisor, who may sue for damages ~~caused thereby, and if the violation is willful, the franchisee may also sue following the purchase of the franchise, or for rescission, restitution, and ancillary damages, unless, in the case of a violation of Section 31200 or 31202, the defendant proves that the plaintiff knew the facts concerning the untruth or omission, or that the defendant exercised reasonable care and did not know, or, if he or she had exercised reasonable care, would not have known, of the untruth or omission.~~

1 SEC. 27. Section 31301 of the Corporations Code is repealed.

2 ~~31301. Any person who violates Section 31201 shall be liable~~
3 ~~to any person (not knowing or having cause to believe that such~~
4 ~~statement was false or misleading) who, while relying upon such~~
5 ~~statement shall have purchased a franchise, for damages, unless~~
6 ~~the defendant proves that the plaintiff knew the facts concerning~~
7 ~~the untruth or omission or that the defendant exercised reasonable~~
8 ~~care and did not know, (or if he had exercised reasonable care~~
9 ~~would not have known) of the untruth or omission.~~

10 SEC. 28. Section 31302 of the Corporations Code is amended
11 to read:

12 31302. Every person who directly or indirectly controls a
13 person liable under ~~Section 31300 or 31301~~ *this chapter*, every
14 partner in a firm so liable, every principal executive officer or
15 director of a corporation so liable, every person occupying a similar
16 status or performing similar functions, every employee of a person
17 so liable who materially aids in the act or transaction constituting
18 the violation, are also liable jointly and severally with and to the
19 same extent as such person, unless the other person who is so liable
20 had no knowledge of or reasonable grounds to believe in the
21 existence of the facts by reason of which the liability is alleged to
22 exist.

23 SEC. 29. Section 31302.5 of the Corporations Code is amended
24 to read:

25 31302.5. (a) Any person who violates ~~Section 31220~~ *any*
26 *provision of this chapter* may be sued in the superior court in the
27 county in which the defendant resides or where a franchise affected
28 by the violation does business, for temporary and permanent
29 injunctive relief and for damages, ~~if any, and the costs of suit,~~
30 ~~including reasonable attorneys' fees.~~ A plaintiff shall not be
31 required to allege or prove that actual damages have been suffered
32 in order to obtain injunctive relief.

33 ~~(b) No action shall be maintained to enforce any liability created~~
34 ~~under Section 31220 unless brought before the expiration of two~~
35 ~~years after the violation upon which it is based or the expiration~~
36 ~~of one year after the discovery by the plaintiff of the facts~~
37 ~~constituting such violation, whichever occurs first.~~

38 *(b) A plaintiff prevailing in a claim for violation of any provision*
39 *of this chapter shall also be awarded costs of suit, including*
40 *reasonable attorney's fees.*

1 SEC. 30. Section 31303 of the Corporations Code is amended
2 to read:

3 31303. No action shall be maintained to enforce any liability
4 ~~created under Section 31300~~ *under this chapter* unless brought
5 before the expiration of four years after the act or transaction
6 constituting the violation, ~~the expiration of one year after the~~
7 ~~discovery by the plaintiff of the fact constituting the violation, or~~
8 ~~90~~ 180 days after delivery to the franchisee of a written notice
9 disclosing any violation of Section 31110 or 31200, which notice
10 shall be approved as to form by the commissioner, ~~whichever shall~~
11 ~~first expire. The notice shall include an offer of restitution of~~
12 ~~investment and ancillary damages to the franchisee.~~

13 SEC. 31. Section 31304 of the Corporations Code is repealed.

14 ~~31304. No action shall be maintained to enforce any liability~~
15 ~~created under Section 31301 unless brought before the expiration~~
16 ~~of two years after the violation upon which it is based, expiration~~
17 ~~of one year after the discovery by the plaintiff of the facts~~
18 ~~constituting such violation, or 90 days after delivery to the~~
19 ~~franchisee of a written notice disclosing any violation of Section~~
20 ~~31201 or 31202 which notice shall be approved as to form by the~~
21 ~~commissioner, whichever shall first expire.~~

22 SEC. 32. Section 31306 of the Corporations Code is amended
23 to read:

24 ~~31306. Except as explicitly provided in this chapter, no civil~~
25 ~~liability in favor of any private party shall arise against any person~~
26 ~~by implication from or as a result of the violation of any provision~~
27 ~~of this law or any rule or order hereunder.~~

28 *31306. Nothing in this chapter shall preempt, supersede, limit,*
29 *or repeal any liability which that may exist by virtue of any other*
30 *statute or under common law if this law were not in effect,*
31 *including, but not limited to, common law fraud.*

32 SEC. 33. Section 31512 of the Corporations Code is amended
33 to read:

34 31512. Any condition, stipulation, or provision purporting to
35 bind any person acquiring any franchise to waive compliance with
36 any provision of this law or any rule or order hereunder is void
37 *and of no effect, without limitation. All no representation, no*
38 *reliance, and choice of law, other than California law, clauses in*
39 *the offer or sale of franchises, including in the franchise agreement,*

1 *franchise disclosure document, or separate disclaimer, are void*
2 *and of no effect.*

3 SEC. 34. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

O