

AMENDED IN ASSEMBLY JUNE 30, 2014

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 9, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 610

Introduced by Senator Jackson

February 22, 2013

An act to amend Sections 20010, 20020, ~~20025~~, and 20035 of, and to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of, the Business and Professions Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

SB 610, as amended, Jackson. Franchises.

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. Existing law provides that any condition purporting to bind any person to waive compliance with the act is contrary to public policy and void.

This bill would provide that a condition of a franchise agreement requiring the franchisee to waive the implied covenant of good faith and fair dealing is contrary to public policy and void. The bill would prohibit a franchise agreement from restricting the right of a franchisee to join or participate in an association of franchisees to the extent the restriction is prohibited by existing law. The bill would prohibit a franchise agreement from preventing a franchisee from selling or

transferring a franchise or a part of the interest of a franchise to another person, except as provided. The bill would prohibit a franchise agreement from giving a franchisee a right to sell, transfer, or assign the franchise, or a right thereunder, without the consent of the franchisor, as provided. The bill would prohibit a franchise agreement from allowing the transferring franchisee to fail to notify the franchisor of the franchisee's decision to sell, transfer, or assign the franchise, as provided.

Existing law prohibits a franchisor from terminating a franchise agreement prior to the expiration of its term, except for good cause, as defined, and upon the occurrence of specified events.

This bill would prohibit a franchisor from terminating a franchise agreement prior to the expiration of its term unless there is a substantial and material breach on the part of the franchisee of a lawful requirement of the franchise agreement, except as otherwise provided.

~~Existing law prohibits a franchisor from failing to renew a franchise agreement unless the franchisor provides the franchisee at least 180 days prior written notice of its intention not to renew and specified conditions are met.~~

~~This bill would additionally condition a franchisor's failure to renew a franchise agreement upon a substantial and material breach on the part of the franchisee of a lawful requirement of the franchise agreement and would require the franchisor to offer the franchisee either a renewal of the franchise agreement under terms then being offered to new franchisees or under existing terms.~~

Existing law 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 ~~instead~~ require a franchisor that terminates or fails to ~~renew~~ *allow the sale, transfer, or assignment of* a franchise, other than in accordance with specified provisions of law, to, at the election of the franchisee, either reinstate the franchisee and pay specified damages or pay to the franchisee the fair market value of the franchise and franchise assets, as provided.

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 20010 of the Business and Professions
2 Code is amended to read:

3 20010. Any condition, stipulation, or provision purporting to
4 bind any person to waive compliance with any provision of this
5 law or to waive the implied covenant of good faith and fair dealing
6 is contrary to public policy and void.

7 SEC. 2. Article 2.5 (commencing with Section 20016) is added
8 to Chapter 5.5 of Division 8 of the Business and Professions Code,
9 to read:

10
11 Article 2.5. Relationships Between Franchisor and Franchisees
12

13 20016. It is unlawful for a franchise agreement to do any of
14 the following:

15 (a) Restrict the right of a franchisee to join or participate in an
16 association of franchisees to the extent the restriction is prohibited
17 by Section 31220 of the Corporations Code.

18 (b) (1) Prevent a franchisee from selling or transferring a
19 franchise or a part of the interest of a franchise to another person,
20 *provided the person is qualified*. A franchisee shall not, however,
21 have the right to sell, transfer, or assign the franchise, or a right
22 thereunder, without the consent of the franchisor except that the
23 consent shall not be unreasonably withheld.

24 (2) (A) Allow the transferring franchisee to fail, prior to the
25 sale, transfer, or assignment of a franchise or the sale, assignment,
26 or transfer of all, or substantially all, of the assets of the franchised
27 business or a controlling interest in the franchised business to
28 another person, to notify the franchisor of the franchisee's decision
29 to sell, transfer, or assign the franchise. The notice shall be in
30 writing and shall include all of the following:

31 (i) The proposed transferee's name and address.

32 (ii) A copy of all of the agreements relating to the sale,
33 assignment, or transfer of the franchised business or its assets.

34 (iii) The proposed transferee's application for approval to
35 become the successor franchisee. The application shall include
36 forms and related information generally utilized by the franchisor
37 in reviewing prospective franchisees, if those forms are readily
38 made available to existing franchisees. As soon as practicable after

1 receipt of the proposed transferee's application, the franchisor
2 shall notify the franchisee and the proposed transferee of
3 information needed to make the application complete.

4 (B) For the franchisor, to fail, on or before 60 days after the
5 receipt of all of the information required pursuant to subparagraph
6 (A), or as extended by a written agreement between the franchisor
7 and the franchisee, to notify the franchisee of the approval or the
8 disapproval of the sale, transfer, or assignment of the franchise.
9 The notice shall be in writing and shall be personally served or
10 sent by certified mail, return receipt requested, or by guaranteed
11 overnight delivery service that provides verification of delivery
12 and shall be directed to the franchisee. A proposed sale,
13 assignment, or transfer shall be deemed approved, unless
14 disapproved by the franchisor in the manner provided by this
15 subdivision. If the proposed sale, assignment, or transfer is
16 disapproved, the franchisor shall include in the notice of
17 disapproval a statement setting forth the reasons for the
18 disapproval.

19 (3) In an action in which the franchisor's withholding of consent
20 under this subdivision is an issue, whether the withholding of
21 consent was unreasonable is a question of fact requiring
22 consideration of all the existing circumstances.

23 SEC. 3. Section 20020 of the Business and Professions Code
24 is amended to read:

25 20020. Except as otherwise provided by this chapter, a
26 franchisor shall not terminate a franchise prior to the expiration
27 of its term, except upon a substantial and material breach on the
28 part of the franchisee of a lawful requirement of the franchise
29 agreement. If there is a substantial and material breach of a lawful
30 requirement of the franchise agreement, the franchisor shall allow
31 the franchisee 30 days to cure the failure before termination.

32 ~~SEC. 4. Section 20025 of the Business and Professions Code~~
33 ~~is amended to read:~~

34 ~~20025. Unless there has been a substantial and material breach~~
35 ~~on the part of the franchisee of a lawful requirement of the~~
36 ~~franchise agreement, the franchisor shall offer to the franchisee~~
37 ~~either a renewal of the franchise agreement under terms then being~~
38 ~~offered to new franchisees or under existing terms. If the franchisor~~
39 ~~has claimed a substantial and material breach on the part of the~~
40 ~~franchisee of a lawful requirement of the franchise agreement, the~~

1 franchisor shall provide the franchisee at least 180 days prior
2 written notice of its intention not to renew; and
3 (a) ~~During the 180 days prior to expiration of the franchise the~~
4 ~~franchisor shall permit the franchisee to sell his business to a~~
5 ~~purchaser meeting the franchisor's then current requirements for~~
6 ~~granting new franchises, or if the franchisor is not granting a~~
7 ~~significant number of new franchises, the then current requirements~~
8 ~~for granting renewal franchises; or~~
9 (b) ~~(1) The refusal to renew shall not be for the purpose of~~
10 ~~converting the franchisee's business premises to operation by~~
11 ~~employees or agents of the franchisor for such franchisor's own~~
12 ~~account, provided, that nothing in this paragraph shall prohibit a~~
13 ~~franchisor from exercising a right of first refusal to purchase the~~
14 ~~franchisee's business; and~~
15 ~~(2) Upon expiration of the franchise, the franchisor shall not~~
16 ~~seek to enforce any covenant of the nonrenewed franchisee not to~~
17 ~~compete with the franchisor or franchisees of the franchisor; or~~
18 (c) ~~Termination is permitted pursuant to Section 20020 or 20021;~~
19 or
20 (d) ~~The franchisee and the franchisor agree not to renew the~~
21 ~~franchise; or~~
22 (e) ~~The franchisor withdraws from distributing its products or~~
23 ~~services through franchises in the geographic market served by~~
24 ~~the franchisee, provided that:~~
25 ~~(1) Upon expiration of the franchise, the franchisor agrees not~~
26 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~
27 ~~to compete with the franchisor or franchisees of the franchisor;~~
28 ~~and~~
29 ~~(2) The failure to renew is not for the purpose of converting the~~
30 ~~business conducted by the franchisee pursuant to the franchise~~
31 ~~agreement to operation by employees or agents of the franchisor~~
32 ~~for such franchisor's own account; and~~
33 ~~(3) Where the franchisor determines to sell, transfer, or assign~~
34 ~~its interest in a marketing premises occupied by a franchisee whose~~
35 ~~franchise agreement is not renewed pursuant to this paragraph:~~
36 ~~(A) The franchisor, during the 180-day period after giving notice~~
37 ~~offers such franchisee a right of first refusal of at least 30 days'~~
38 ~~duration of a bona fide offer, made by another to purchase such~~
39 ~~franchisor's interest in such premises; or~~

1 ~~(B) In the case of the sale, transfer, or assignment to another~~
2 ~~person of the franchisor's interest in one or more other controlled~~
3 ~~marketing premises, such other person in good faith offers the~~
4 ~~franchisee a franchise on substantially the same terms and~~
5 ~~conditions currently being offered by such other person to other~~
6 ~~franchisees; or~~

7 ~~(f) The franchisor and the franchisee fail to agree to changes or~~
8 ~~additions to the terms and conditions of the franchise agreement,~~
9 ~~if such changes or additions would result in renewal of the~~
10 ~~franchise agreement on substantially the same terms and conditions~~
11 ~~on which the franchisor is then customarily granting renewal~~
12 ~~franchises, or if the franchisor is not then granting a significant~~
13 ~~number of renewal franchises, the terms and conditions on which~~
14 ~~the franchisor is then customarily granting original franchises. The~~
15 ~~franchisor may give the franchisee written notice of a date which~~
16 ~~is at least 30 days from the date of such notice, on or before which~~
17 ~~a proposed written agreement of the terms and conditions of the~~
18 ~~renewal franchise shall be accepted in writing by the franchisee.~~
19 ~~Such notice, when given not less than 180 days before the end of~~
20 ~~the franchise term, may state that in the event of failure of such~~
21 ~~acceptance by the franchisee, the notice shall be deemed a notice~~
22 ~~of intention not to renew at the end of the franchise term.~~

23 ~~SEC. 5.~~

24 *SEC. 4.* Section 20035 of the Business and Professions Code
25 is amended to read:

26 20035. (a) In the event a franchisor terminates or fails to
27 ~~renew~~ *allow the sale, transfer, or assignment of* a franchise other
28 than in accordance with the provisions of this chapter, the
29 franchisor shall reinstate the franchisee in accordance with the
30 provisions of this chapter and shall pay all damages caused thereby,
31 or, at the election of the franchisee, shall pay to the franchisee the
32 fair market value of the franchise and franchise assets. A court
33 shall be entitled to grant preliminary and permanent injunctions
34 for violations of this chapter.

35 (b) *In the event a franchisor fails to renew a franchise other*
36 *than in accordance with the provisions of this chapter, the*
37 *franchisor shall offer to repurchase from the franchisee the*
38 *franchisee's resalable current inventory meeting the franchisor's*
39 *present standards that is required by the franchise agreement or*
40 *commercial practice and held for use or sale in the franchised*

- 1 *business at the lower of the fair wholesale market value or the*
- 2 *price paid by the franchisee. The franchisor shall not be liable for*
- 3 *offering to purchase personalized items that have no value to the*
- 4 *franchisor in the business that it franchises.*

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