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AB-676 Franchises. (2021-2022)

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Assembly Bill No. 676

CHAPTER 728

An act to amend Sections 20015, 20022, and 20041 of, and to add Section 20044 to, the Business and Professions Code, and to amend Sections 31004, 31013, 31115, and 31306 of, and to add Sections 31126, 31212, 31221, and 31512.1 to, the Corporations Code, relating to franchises.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 676, Holden. Franchises.

(1) Existing law, 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 the act applies to any franchise when either the franchisee is domiciled in this state or the franchised business is or has been operated in this state.

This bill would additionally specify that any provision of a franchise agreement requiring the franchisee to waive specified provisions of law are contrary to public policy and are void and unenforceable.

Existing law authorizes a franchisor, upon the termination or nonrenewal of a franchise, to offset any amounts owed to the franchisee against any amounts owed by the franchisee to the franchisor.

This bill would recast that provision to authorize the offset only if the franchisee agrees to the amount owed or the franchisor has received a final adjudication of any amounts owed.

Existing law requires a franchisee, before the sale, assignment, or transfer of a franchise, as specified, to another person, to notify, in writing, the franchisor of the franchisee's intent to sell, transfer, or assign the franchise. Existing law requires this notice of transfer to include specified information and meet certain criteria.

This bill would prohibit a franchisor from modifying a franchise agreement, or requiring a general release, in exchange for any assistance related to a declared state or federal emergency.

This bill would limit the application of the above changes to a franchise agreement entered into, amended, except as specified, or renewed on or after January 1, 2023, or to franchises of an indefinite duration that may be terminated without cause.

(2) Existing law, the Franchise Investment Law, provides that an offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

This bill would instead provide that an offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or if the franchise business is intended to or will be operated in this state.

Existing law authorizes the Commissioner of Business Oversight to summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds certain things, including, but not limited to, that there has been a failure to comply with the Franchise Investment Law or the rules of the commissioner pertaining to that law. Existing law renamed the Department of Business Oversight as the Department of Financial Protection and Innovation and renamed the commissioner of the department as the Commissioner of Financial Protection and Innovation.

This bill would clarify that the Commissioner of Financial Protection and Innovation has the authority described above, consistent with the renaming of the Department of Business Oversight to the Department of Financial Protection and Innovation. The bill would also authorize the commissioner to summarily issue a stop order if the commissioner finds the franchisor's method of business includes or would include activities that are or would be illegal where performed or if the commissioner finds that the franchise agreement contains a provision that is contrary to law.

Existing law prohibits a person from offering or selling any franchise in this state unless the offer has been registered, as specified. Existing law prohibits the sale of a franchise in this state that is subject to registration without first providing certain information to the prospective franchisee. Existing law makes it a crime to, among other things, willfully violate any provision of the Franchise Investment Law.

This bill would require a prospective franchisee seeking to buy an existing franchise, all or substantially all of the assets of an existing franchise business, or an interest in an existing franchise business to provide specified information and documentation to the franchisor. The bill would also require the franchisor to notify the prospective franchisee in writing of any additional information or documentation necessary to complete the application, as specified, and require the franchisor to notify and provide certain information to the prospective franchisee of the decision to approve or disapprove the application, as specified. The bill would make it a violation of the Franchise Investment Law for any franchisor, directly or indirectly, through any officer, agent or employee, to violate these provisions. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law prohibits a person from effecting or attempting to effect a sale of a franchise, except as specified. Existing law, the Unruh Civil Rights Act, provides that all persons within the jurisdiction of the state are entitled to certain protections regardless of certain specified characteristics.

This bill would prohibit a franchisor from refusing to grant a franchise or refusing to provide financial assistance to a franchisee or prospective franchisee based solely on those characteristics, as specified.

Existing law provides that a person who violates certain provisions of the Franchise Investment Law shall be civilly liable, as specified. Existing law provides that, except as explicitly provided, no civil liability in favor of any private party shall arise against any person by implication from or as a result of the violation of any provision of this law or any rule or order.

This bill would remove the provision protecting against civil liability by implication from or as a result of the violation of any provision of this law or any rule or order.

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

This bill would specify that disclaimers of representations and similar disclaimers are contrary to public policy and are void.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20015 of the Business and Professions Code is amended to read:

20015. (a) The provisions of this chapter apply to any franchise when either the franchisee is domiciled in this state or the franchised business is or has been operated in this state.

(b) Any provision of a franchise agreement requiring the franchisee to waive the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

SEC. 2. Section 20022 of the Business and Professions Code is amended 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, provided the franchisee agrees to the amount owed or the franchisor has received a final adjudication of any amounts owed.

SEC. 3. 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.

(c) The amendments to this chapter made by the act adding this subdivision shall apply only to franchise agreements entered into, amended, or renewed on or after January 1, 2023, or to franchises of an indefinite duration that may be terminated by the franchisee or franchisor without cause, except that a franchise agreement amended after January 1, 2023, shall not be subject to the amendments to this chapter made by the act adding this subdivision if the amendment to the franchise agreement was initiated by the franchisee and did not substantially and adversely impact the franchisee's rights, benefits, privileges, duties, obligations, or responsibilities under the franchise agreement.

SEC. 4. Section 20044 is added to the Business and Professions Code, to read:

20044. A franchisor is prohibited from modifying a franchise agreement, or requiring a general release, in exchange for any assistance related to a declared state or federal emergency.

SEC. 5. Section 31004 of the Corporations Code is amended to read:

31004. "Commissioner" means the Commissioner of Financial Protection and Innovation.

SEC. 6. Section 31013 of the Corporations Code is amended to read:

31013. (a) An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or if the franchise business is intended to or will be operated in this state.

(b) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state, and acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(c) An offer to sell is not made in this state merely because (1) the publisher circulates or there is circulated on their behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation that has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

SEC. 7. Section 31115 of the Corporations Code is amended to read:

31115. The commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds any of the following:

(a) That there has been a failure to comply with any of the provisions of this law or the rules of the commissioner pertaining thereto.

(b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of the purchasers, or that, in the case of a franchise other than a subfranchise, a major inducement to prospective franchisees is fees or other compensation from participation in the sale of additional franchises.

(c) That the applicant has failed to comply with any rule or order of the commissioner issued pursuant to Section 31113.

(d) That any person identified in the application or any officer or director of the franchisor, whether or not identified in the application, meets one or more of the following conditions, and the involvement of this person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees:

(1) Has been convicted of a felony, or pleaded nolo contendere to a felony charge, or held liable in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(2) Is subject to any currently effective order of the United States Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of the person as a securities broker or dealer or investment adviser or is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities Exchange Act of 1934) suspending or expelling the person from membership in the association or exchange.

(3) Is subject to any currently effective order or ruling of the Federal Trade Commission.

(4) Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by any public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales person.

(e) The franchisor's method of business includes or would include activities that are or would be illegal where performed.

(f) The franchise agreement contains a provision that is contrary to law.

SEC. 8. Section 31126 is added to the Corporations Code, to read:

31126. (a) A prospective franchisee seeking to buy an existing franchise, all or substantially all of the assets of an existing franchise business, or an interest in an existing franchise business shall do all of the following when applying with the franchisor to buy that franchise, those assets, or that interest:

(1) Provide their name and address to the franchisor.

(2) Provide to the franchisor 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) Provide an application to the franchisor for approval of the transfer, which shall include all forms, financial disclosures, and related information required by the franchisor in reviewing prospective franchisees.

(b) (1) If a form or document required to be submitted with an application pursuant to paragraph (3) of subdivision (a) is not reasonably available to the prospective franchisee, the prospective franchisee may make a written request for the form or document to the franchisor, and the franchisor shall deliver the form or document to the prospective franchisee by email, courier, or certified mail within 15 calendar days of receiving the request.

(2) If the franchisor's then-existing standards for approval of an application required by paragraph (3) of subdivision (a) are not reasonably available to the prospective franchisee, the prospective franchisee may make a written request for the standards to the franchisor, and the franchisor shall communicate the standards to the prospective franchisee within 15 calendar days of receiving the request.

(c) As soon as practicable after receiving the application required by paragraph (3) of subdivision (a), the franchisor shall notify the prospective franchisee in writing of any additional information or documentation necessary to complete the application.

(d) (1) The franchisor shall notify the prospective franchisee of the approval or disapproval of their application within 60 days after receiving the information and documentation required by subdivision (a) and requested by the franchisor pursuant to subdivision (c). The notice shall be in writing and shall be delivered to the prospective franchisee by email, courier, or certified mail. If the application is disapproved, the franchisor shall include in the notice a statement setting forth the reasons for the disapproval.

(2) In any legal 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 relevant circumstances. However, nothing in this paragraph shall prohibit summary judgment when the reasonableness of the disapproval can be decided as a matter of law.

(e) This section neither prohibits a franchisor from exercising nor requires a franchisor to exercise a contractual right of first refusal to purchase an existing franchise, all or substantially all of the assets of an existing franchise business, or an interest in an existing franchise business.

(f) This section shall not be interpreted to prevent the franchisor, in connection with a proposed sale under subdivision (a), from requiring that the prospective franchisee and the prospective seller comply with the transfer conditions specified in the franchise agreement.

SEC. 9. Section 31212 is added to the Corporations Code, to read:

31212. No franchisor shall refuse to grant a franchise, or refuse to provide financial assistance, to a franchisee or prospective franchisee that has been granted or provided to other similarly situated franchisees or prospective franchisees based solely on any characteristic of the franchisee or prospective franchisee, or any characteristic of the composition of the neighborhood or geographic area where the franchise is located or the proposed franchise would be located, listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to a prospective franchisee as part of a program to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

SEC. 10. Section 31221 is added to the Corporations Code, to read:

31221. It shall be a violation of this division for any franchisor, directly or indirectly, through any officer, agent, or employee, to violate the provisions of Section 31126.

SEC. 11. Section 31306 of the Corporations Code is amended to read:

31306. Nothing in this chapter shall limit any liability which may exist by virtue of any other statute or under common law if this law were not in effect.

SEC. 12. Section 31512.1 is added to the Corporations Code, to read:

31512.1. Any provision of a franchise agreement, franchise disclosure document, acknowledgment, questionnaire, or other writing, including any exhibit thereto, disclaiming or denying any of the following shall be deemed contrary to public policy and shall be void and unenforceable:

(a) Representations made by the franchisor or its personnel or agents to a prospective franchisee.

(b) Reliance by a franchisee on any representations made by the franchisor or its personnel or agents.

(c) Reliance by a franchisee on the franchise disclosure document, including any exhibit thereto.

(d) Violations of any provision of this division.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.