SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 676 (Holden)
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Fiscal: Yes
Urgency: No
TSG

SUBJECT

Franchises

DIGEST

This bill makes a series of revisions to the laws governing the business relationship between franchisors and franchisees.

EXECUTIVE SUMMARY

Numerous well-known California business chains operate under the franchise model: what looks from the outside like a single company with multiple establishments is actually a series of separate businesses – the franchisees – that agree to pay an overarching company– the franchisor – for use of a common brand as well as other benefits like marketing, business support, and supply chain integration. Two key California laws – the Franchise Investment Law (CFIL) and the Franchise Relations Act (CFRA) – govern the franchise business model. In response to emerging issues, this bill proposes modest revisions to both laws. Specifically, key provisions of the bill: (1) prohibit franchisors from demanding that franchisees waive contractual rights in exchange for assistance during states of emergency; (2) underscore that franchisors may not discriminate when considering applications from franchisees; (3) provide for additional transparency about the approval process when franchises change hands; (4) clarify the accounting and payment processes when a franchise relationship ends; and (5) prevent franchisors from attempting to evade accountability for representations made to prospective franchisees.

The bill is sponsored by the American Association of Franchisees and Dealers and Franchisee Advocacy Consulting. Support comes from other franchisee organizations and individual franchisees who view the bill as outlawing discriminatory practices and closing loopholes in the law that enable franchisors to take advantage of franchisees. There is no opposition on file, though an association representing franchisors has formally expressed a series of concerns. The bill passed off of the Assembly Floor by a vote of 63-1. If the bill passes out of this Committee, it will next be heard in the Senate Banking and Financial Institutions Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Provides, pursuant to the California Franchise Relations Act, for a set of rules governing the termination, nonrenewal, and transfer of franchises between a franchisor, a subfranchisor (if any), and a franchisee. (Bus. & Prof. Code §§ 20000 *et seq*.)

2) Requires a franchisor, upon the lawful termination of a franchise agreement, to purchase from the franchisee, at the value of the 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, 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. (Bus. & Prof. Code § 20022.)

3) Requires a franchisee, 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, to notify the franchisor of the intended transaction. (Bus. & Prof. Code § 20029 (a).)

4) Requires a franchisor, within 60 days of the receipt of the information provided pursuant to (3), above, to notify the franchisee of the approval or disapproval of the proposed sale, assignment, or transfer, as specified. (Bus. & Prof. Code § 20029(b).)

5) Requires, under the California Franchise Investment Law, specified disclosures and documentation to be provided during sale of franchises in California. (Corps. Code §§ 31000 *et seq*.)

6) Requires any person seeking to offer a franchise for sale in California to register with the Commissioner of the Department of Financial Protection and Innovation. (Corps. Code § 31110.)

7) Provides that the Commissioner of the Department of Financial Protection and Innovation (DFPI) may summarily revoke a franchise seller's registration if the Commissioner finds any of the following:
   a) there has been a failure to comply with any of the provisions of this law or the rules of the commissioner;
   b) an offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of the purchasers, or, in the case of a franchise other than a subfranchise, fees or other compensation resulting from participation in the sale of additional franchises is a major inducement to prospective franchisees;

c) an applicant has failed to comply with any rule or order of the commissioner; or
d) any person identified in the application or any officer or director of the franchisor involved in the transaction, whether or not identified in the application, creates an unreasonable risk to the prospective franchisee. (Corps. Code § 31115.)

8) Imposes civil liability, as specified, on any person who offers or sells a franchise in violation of the Franchise Investment Law. (Corps. Code § 31300 *et seq*.)

9) Authorizes the Commissioner of the DFPI to bring a court action, or request the Attorney General to bring an action in the name of the people of the State of California, to enjoin the acts or practices or to enforce compliance with the law whenever it appears to the Commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of CFIL or any rule or order thereunder. (Corps. Code § 31400.)

10) Prohibits, business establishments of any kind whatsoever from refusing to contract with another person or business on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, as defined. (Civ. Code § 51.5.)

This bill:

1) Requires a prospective franchisee applying to a franchisor to buy all or part of an existing franchise to provide the franchisor with all of the following:
   a) the franchisee's name and address;
   b) a copy of any agreement related to the sale, assignment, or transfer of the franchise, the assets of the franchise business, or the interest in the franchise business to the franchisor, if purchasing an existing franchise; and
   c) an application for approval of the transfer, which must include all forms, financial disclosures, and related information required by the franchisor in reviewing prospective franchisees.

2) Provides that if a form or document required pursuant to (1), above, is not reasonably available to the prospective franchisee, the prospective franchisee may make a written request for the form to the franchisor, and the franchisor must deliver the form or document to the prospective franchisee by email, courier, or certified mail within 15 calendar days of receiving the request.

3) Provides that if the franchisor's standards for approval of an application required pursuant to (1), above, 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 must communicate the standards to the prospective franchisee within 15 calendar days of receiving the request.

4) Provides that the franchisor must notify the prospective franchisee in writing of any additional information or documentation necessary to complete the application, as soon as practicable.

5) Requires a franchisor to notify a prospective franchisee of the approval or disapproval of their application by specified means within 60 days after receiving the information and documentation required pursuant to (1), above, and if the application is disapproved, to include in the notice a statement setting forth the reasons for the disapproval.

6) Provides that in any legal action in which the franchisor's disapproval of a sale, assignment, or transfer pursuant to the bill is an issue, the reasonableness of the franchisor's decision must be a question of fact requiring consideration of all relevant circumstances, however, nothing in this bill prohibits summary judgment when the reasonableness of the disapproval can be decided as a matter of law.

7) Provides that a violation of (1) through (6), above, is a violation of the CFIL whether committed by the franchisor directly or indirectly through any officer, agent, or employee.

8) Prohibits a franchisor from failing or refusing to grant a franchise, or failing or refusing 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 if that characteristic is protected by the Unruh Civil Rights Act.

9) Deems void and unenforceable as contrary to public policy any provision of a franchise agreement that disclaims or denies:
   a) representations made by the franchisor or its personnel or agents to a prospective franchisee;
   b) reliance by the prospective franchisee on any representations made by the franchisor or its personnel or agents;
   c) reliance by the prospective franchisee on any representations in the franchise disclosure document including any accompanying exhibits; or
   d) violations of any provision of CFIL.

10) Clarifies 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 California.

11) Adds to the list of criteria upon which the Commissioner of the DFPI may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the Commissioner determines that the franchisor's method of business includes or would include activities that are or would be illegal where performed.

12) Provides that any provision of a franchise agreement requiring the franchisee to waive the provisions of the CFRA is to be deemed contrary to public policy and to be void and unenforceable.

13) Provides that, upon the termination or nonrenewal of a franchise, a franchisor may offset against the amounts owed to a franchisee any amounts owed by the franchisee to the franchisor so long as the franchisee agrees to the amount owed or if the franchisor has received a final adjudication of any amounts owed.

14) Prohibits a franchisor from modifying a franchise agreement, or requiring a general release, in exchange for any assistance to a franchisee that is related to a declared state or federal emergency.

15) Sets forth rules governing when the various changes to the Franchise Relations Act become applicable to existing franchise agreements.

16) Makes other technical and conforming amendments.

COMMENTS

1. About the franchise business model generally

Numerous well-known California business chains operate using the franchise business model. Under the franchise model, what appears from the outside to be a single company with multiple establishments is actually a series of separate businesses – the franchisees – that agree to pay an overarching company– the franchisor – for use of the franchisor's brand and other benefits like marketing, business support, and supply chain integration. Although franchise arrangements are commonly associated with fast food restaurants, they are present across a wide range of industries. For example, chains like Planet Fitness, Ace Hardware, UPS Stores, Hampton Inns, and Keller-Williams real estate brokers all operate under the franchise model.

There are advantages to the franchise model for both sides. Franchisees get access to a pre-packaged business plan and ongoing support to make that business operate. Franchisors make money without having to take risks and handle the day-to-day business operations. Structurally, however, the franchise relationship is marked by significant imbalances. Investing in a franchise typically requires franchisees to make an initial payment to the franchisor of several hundred thousand dollars. After that, the

franchisee may be obligated to purchase supplies, décor, and other items from the franchisor in order to comply with the branding and product requirements of the franchisor. The franchisee is generally not at liberty to consider alternatives; franchisors can and do audit their franchisees to make sure that the business is being run according to the franchisor's standards and guidelines. If it is not, the franchisee risks cancellation of the agreement and loss of the franchise. Finally, while franchise agreements are usually set up so that the franchisor gains from the franchisee's success, it is the franchisee who ultimately carries the risk if the business fails.

These and other considerations led one California Court of Appeal to comment that:

> The relationship between franchisor and franchisee is characterized by a prevailing, although not universal, inequality of economic resources between the contracting parties. Franchisees typically, but not always, are small businessmen or businesswomen or people seeking to make the transition from being wage earners and for whom the franchise is their very first business. Franchisors typically, but not always, are large corporations. The agreements themselves tend to reflect this gross bargaining disparity. Usually they are from contracts the franchisor prepared and offered to franchisees on a take-it-or-leave-it basis. Some courts and commentators have stressed the bargaining disparity between franchisors and franchisees is so great that franchise agreements exhibit many of the attributes of an adhesion contract and some of the terms of those contracts may be unconscionable. (*Postal Instant Press v. Sealy* (1996) 43 Cal. App. 4th 1704, 1715-1717. Internal citations omitted.)

2. Background on California laws governing franchisor-franchisee relations

To harness the positive attributes of the franchise business model and tame some of its more infamous abuses, California has enacted two major laws governing the franchisor-franchisee relationship.

The first, enacted in 1970, is the California Franchise Investment Law (CFIL). CFIL established ground rules for the marketing of franchise opportunities and the formation of the franchise relationship. It is designed to protect California investors from flimsy or fraudulent franchise investments. In broad strokes, CFIL requires franchisors to provide prospective franchisees with the information necessary to make an intelligent decision regarding franchise offers and prohibits the sale of franchises where they would lead to fraud or likelihood that a franchisor's promises would not be fulfilled. (Corps. Code §§ 31000 *et seq*.) CFIL includes enforcement mechanisms that allow aggrieved franchisees to seek damages, cancellation of the contract, injunctive relief, and, in some cases, recovery of attorney's fees and costs.

A decade later, California enacted the California Franchise Relations Act (CFRA). CFRA governs the ongoing relationships between franchisors and franchisees in an effort to prevent unfair practices in the renewal, transfer, or termination of a franchise, where either the franchise is domiciled in California or the franchise business is or has been operated in California. (Bus. & Prof. Code §§ 20000 *et seq*.) For example, the CFRA generally prohibits franchisors from terminating a franchise prior to the expiration of its term except for good cause and usually after notice and an opportunity to cure the problem. (Bus. & Prof. Code § 20020.) CFRA only permits immediate termination of the franchise relationship in specified situations including things like bankruptcy, abandonment, mutual agreement, material misrepresentation, illegal activity, breach of the franchise agreement, failure to pay franchise fees, and imminent danger to the public.

Since the enactment of these laws, the franchising model has developed further and additional concerns have come to the attention of the Legislature. The Legislature has considered several revisions to the CFRA and CFIL in response. (*See* Prior Legislation, below, for details about these bills.) Most recently, in 2015, California enacted AB 525 (Holden, Ch. 776, Stats. 2015). AB 525 revised franchisor and franchisee rights, responsibilities, and remedies under CFRA with respect to the termination of franchise agreements. The author of those 2015 reforms now returns with further proposed refinements to CFRA and CFIL in light of newly emerging issues and concerns.

3. Proposed revisions to CFRA

The legislation before this Committee represents something of a mini-omnibus bill on franchisor-franchisee relations. The first four sections of the bill propose changes to CFRA, which governs the franchisor-franchisee relationship after a franchise agreement has been formed.

a. Addressing franchisor requests for waiver of claims in exchange for assistance during states of emergency

Many businesses struggled to survive the economic fallout from the COVID-19 pandemic. According to the author and sponsors of this bill, several franchisors offered financial assistance to their franchisees in order to help weather the economic storm. The assistance came with a catch though: in order to receive it, the franchisees had to release essentially all of their potential legal claims against the franchisors. In essence, the franchisees were coerced into waiving their rights in order to stay in business. To prevent such a dynamic from recurring, this bill would prohibit franchisors from modifying the franchise agreement or requiring a general release of claims in exchange for assistance related to a declared state of emergency.

In its letter expressing concerns about the bill, the International Franchise Association points out that this aspect of the bill might have unintended consequences. Specifically,

absent the benefit of a general release or some favorable change to the terms of the franchise agreement, the cold reality is that franchisors might not bother to offer any assistance to franchisees facing an emergency at all. After all, at the end of the day, this is a business relationship. For their part, the sponsors of the bill remain confident that the franchisors' self-interest in keeping franchisees afloat will still be sufficient incentive to spur offers of assistance from franchisors in an emergency.

b. Clarifying the accounting and payment processes when a franchise relationship ends

As previously discussed, AB 525 (Holden, Ch. 776, Stats. 2015) reformed several aspects of the procedures around franchise termination. Of particular relevance to this bill, AB 525 obligated a franchisor terminating a franchise to purchase all of the inventory, equipment, furnishings, and inventory from the franchisee at the cost the franchisee paid for it less any depreciation. (Bus. & Prof. Code § 20022.) Before paying that amount out, however, AB 525 allowed the franchisor to offset any amount still owed to the franchisor by the franchisee, such as outstanding royalties or lease payments. (Bus. & Prof. Code § 20022(h).)

The problem, according to the sponsors, is that under AB 525:

> There are no parameters around what a franchisor can call an "amount owed" which leaves franchisees vulnerable to the franchisor's determinations. The only way a franchisee can dispute the "amount owed" is a lawsuit after the fact, and they often don't have the resources to defend their position.

To address this dynamic, the bill before this Committee would only permit franchisors to offset the amount owed to them by a terminated franchisee if the franchisee agrees to the amount owed or the franchisor has a final adjudication of the amount owed. In essence, this proposal inverts the current paradigm. Whereas currently franchisees have to accept the amount given to them or sue the franchisor for a higher amount, under this bill, the franchisors will either have to agree to whatever the franchisee says is the amount owed or pay everything owed to the franchisee up front and hope to claw back what the franchisor believes to be the correct set off amount through subsequent litigation. This inversion is arguably appropriate given the typical resource imbalance between franchisors and franchisees.

c. Eliminating the option of waiver

The bill adds a provision underscoring that the statutory rights and duties set forth in CFRA cannot be waived by contract. The intent here is to ensure that franchisors cannot simply make a contractual end run around the public policy aims of CFRA.

d. Specifying when CFRA becomes applicable to existing franchise agreements

Both the state and federal constitutions contain a clause prohibiting the impairment of existing contracts. (U.S. Const. Art. I, § 10, cl. 1; Cal. Const., art. 1, § 9.) Although the courts have ruled that this prohibition is not as absolute as the language implies (*Sveen v. Melin* (2018) 138 S. Ct. 1815), the drafters of CFRA and AB 525 evidently took care to prevent the resulting changes in the law from altering the substance of franchise agreements already in existence. Instead, by their terms, those laws become applicable whenever a new contract is effectively established, be it through original execution, renewal of an existing contract, or in the case of contracts of indefinite duration that can be terminated without cause, the parties' mutual decision not to exercise that option.

This bill utilizes the same formula to provide for its application to franchise agreements that are already in existence, with an additional twist: according to the bill, it also becomes applicable whenever an existing franchise agreement is amended, since this effectively results in the establishment of new contract terms. In response to concerns from the International Franchise Association that this arrangement would dissuade franchisors from agreeing to minor amendments favorable to and requested by the franchisee, recent amendments specify that amendments of that variety do not trigger application of the bill to the franchise agreement in question.

4. Proposed revisions to CFIL

The remaining sections of the bill propose changes to CFIL, the laws governing the creation of new franchisor-franchisee relationships.

a. Clarifying applicability to franchises "intended" to be operated in California

Currently the language in CFIL states that it applies when an offer to sell a franchise is made in California, an offer to buy a franchise is made in this state, or the franchisee is domiciled in California and the franchise will be operated here. (Corps. Code § 31013(a).) This language could be interpreted to leave out instances in which the franchisee is domiciled outside of the state but the negotiations are for a franchise that is meant to operate in California. To ensure that the language is comprehensive, this bill modifies the existing law to clarify that CFIL applies to any negotiation over the purchase or sale of a franchise if the franchise is intended to operate in California or will be operated in California.

b. Expanding DFPI Commissioner authority to suspend or revoke registration

In order to offer or sell a franchise in California, CFIL requires that the offer be registered with the Commissioner of the Department of Financial Protection and Innovation (DFPI, formerly Business Oversight). (Corps. Code § 31110.) CFIL empowers the Commissioner to suspend or revoke that registration under a series of circumstances carrying indicia of fraud or malfeasance. (Corps. Code § 31115.) To the

list of circumstances that would trigger revocation or suspension, this bill adds situations in which the franchisor's method of business includes activities that are illegal where performed, and scenarios in which the franchise agreement contains provisions that are unlawful.

c. Increasing transparency around approval of franchise ownership transfer

People who wish to become a franchisee not only have to pay the franchisor for that privilege, they also have to apply to the franchisor for approval. According to the proponents of this bill, the would-be franchisees are frequently in the dark about what standards apply for approval. If the franchisor rejects the applicant, the would-be franchisee often has little clue as to why. The problem is especially acute, the proponents say, when the would-be franchisee is not applying to open a new location, but is simply applying to purchase or otherwise take over the reins of an existing franchise location. Obtaining approval for such a transfer of franchise ownership is particularly treacherous because the people responsible for the approvals sometimes have an interest in acquiring the franchise themselves. That is what took place at a string of Northern California Subway franchises according to a 2019 New York Times report.[1]

AB 525 (Holden, Ch. 776, Stats. 2015) attempted to address this problem by mandating a certain amount of transparency when a prospective franchisee is applying to the franchisor to take over an existing franchise. AB 525 requires the franchisor to provide the approval standards in writing. (Bus. & Prof. Code § 20029(a)(2).) It gives the franchisor 60 days in which to approve or reject the application and obligates the franchisor to explain the reason any denial in writing. (Bus. & Prof. Code § 20029(d).) However, AB 525 only applies to franchise agreements signed or renewed after January 1, 2016. (Bus. & Prof. Code § 20041(b).) The proponents of the bill point out that this often means the transparency requirements of AB 525 will not apply, since many franchise agreements are for 20 years.

With all this in mind, this bill adds a similar set of transparency requirements to CFIL and requires franchisors to abide by them, whether the franchisor is directly managing the approval process or doing so through an officer, agent, or employee. The idea is that because CFIL governs franchise investments, it more appropriately applies to the circumstances of the would-be purchaser of an existing franchise. By incorporating the same transparency provision into CFIL, the bill ensures that, going forward, anyone seeking to purchase or otherwise acquire an existing franchise will benefit from a more transparent approval process.

[1] Hsu and Abrams. *Subway Got Too Big. Franchisees Paid a Price.* (Jun. 28, 2019) New York Times https://www.nytimes.com/2019/06/28/business/subway-franchisees.html (as of May 31, 2022).

Recent amendments to this component of the bill address the concern expressed by the International Franchising Association that the language could be interpreted to apply to applications for new franchises, as opposed to just the transfer of existing franchises. The author only intends this component to apply to the latter scenario.

d. Underscoring the prohibition on discrimination in the franchisor/franchisee context

As described in (c), above, franchisors' power to approve or disapprove franchise applications can be exploited by unscrupulous actors for financial gain. It can also be abused for discriminatory purposes. According to media reports, almost 100 Black McDonald's franchisees or would-be franchisees have sued that restaurant chain in recent years, alleging that the company tried to steer them to locations in predominantly Black communities, obligated them to take on franchises that were not performing as well as others, and refused to give the Black franchisees the same pandemic aid that they offered to franchisees of other racial backgrounds.[2] In 2021, McDonald's settled one of those lawsuits for over $30 million and committed to investing another $250 million over five year in loans to underrepresented franchise operators. (*Ibid*.)

Existing California law probably already prohibits the sort of discriminatory practices alleged in these cases. The Unruh Civil Rights Act states that all business establishments of any kind whatsoever must not discriminate against customers on the basis of race, among other protected characteristics. (Civ. Code § 51.) Related Civil Code Section 51.5 goes on to make clear that these same anti-discrimination laws apply to business-to-business transactions. By making discriminatory franchising practices a violation of CFIL, however, the bill opens up the possibility of additional liability as well as regulatory action by DFPI.

e. Seeking to remove statutory barriers to enforcement through private civil liability

As it presently reads, CFIL expressly states that "no civil liability in favor of a 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 hereunder" unless such liability is explicitly provided for in the text of the specific provision in question. In other words, the provision states that there is no general private right of action to enforce CFIL; private enforcement is available only as to those provisions within CFIL that specifically mention it. This bill strikes that provision.

By implication, the proposed change manifests an intent to enable aggrieved franchisees and would-be franchisees to sue franchisors for any violation of CFIL. In general, however, California courts have held that legislative intent to create a private right of

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[2] Rogers. *McDonald's Settles Racial Discrimination Lawsuit with Former MLB Player Herb Washington* (Dec. 16, 2021) CNBC https://www.cnbc.com/2021/12/16/mcdonalds-settles-discrimination-lawsuit-with-herb-washington.html (as of May 30, 2022).

action must be "clear, understandable, [and] unmistakable," (*See Lu v. Hawaiian Gardens Casino, Inc.*, (2010) 50 Cal. 4th 592, 596.) If, as it appears, the author hopes that this component of the bill will create a private right of action to enforce all aspects of CFIL, therefore, the realization of that intent would be on stronger legal footing if the bill said so directly.

In any event, the absence of an express private right of action within CFIL should not prevent aggrieved franchisees from seeking relief for violations of CFIL based on other statutory or common law grounds. (*Hawaiian Gardens, supra,* at 603: "our holding that [the statute at issue] does not provide a private cause of action does not necessarily foreclose the availability of other remedies.") For instance, a violation of CFIL could presumably serve as the basis for cause of action under California's Unfair Competition Laws. (Bus. & Prof. Code §§ 17200 *et seq*.)

f. Preventing denial or disclaimer of franchisor representations

A final issue addressed by the bill is the use of disclaimers or denials in franchise sales. Apparently franchisors and their agents sometimes attempt to avoid accountability for what they tell potential franchisees about the franchise opportunity by invoking disclaimers written into various documents. These disclaimers presumably warn the potential franchisee not to rely on the franchisor's statements about the franchise opportunity. If given any legal weight, such disclaimers would effectively enable the franchisor to misrepresent any and all aspects of the franchise opportunity with complete impunity. Accordingly, the bill before the Committee nullifies the legal effect of any such disclaimer or denial. Recent amendments spell out the nature of the representations covered in response to criticism from the International Franchise Association that the prior language was overly broad and imprecise.

5. Arguments in support of the bill

According to the author:

> When AB 525 was signed, it was clear that current law was stacked in favor of corporate owners and that franchise small business owners in California needed a more equal legal footing to protect their investments. The bill brought some much-needed balance between corporations and small business franchisees such as convenience stores and fast-food restaurants – small businesses that are the backbone of our economy. This bill continues that work by addressing new practices that go against the spirit of AB 525, and addresses new unfair practices that occurred during the pandemic. Like AB 525, the goal of AB 676 is to provide franchisees basic protections and contract rights that most other businesses enjoy.

As sponsor of the bill, the American Associations of Franchisees and Dealers (AAFD) writes:

> [AB 676] ensures that franchise outlets located in California are subject to the state franchise laws. It will ensure on a non-renewal or termination, when the franchisor takes possession of the outlet, that any offsets to the amount owed by the franchisee aren't unilaterally determined by the franchisor. It requires franchisors to provide a franchisee applicant with approval qualifications upon an application to buy a franchise. It doesn't allow a franchisor to require modifications to the agreement or sign a general release in exchange for assistance during a state or federal emergency. The AAFD enthusiastically endorses this legislation […].

The other sponsor of the bill, Franchisee Advocacy Consulting writes:

> AB 676 builds on the improvements from AB-525 (Holden) in 2015 and takes additional steps to ensure franchise investors in California are protected.

SUPPORT

American Association of Franchisees & Dealers (sponsor)
Franchisee Advocacy Consulting (sponsor)
Equity for All

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 257 (Holden, 2022), among other things, makes fast food franchisors, as defined, jointly and severally liable for labor violations committed by their franchisees. The bill also empowers fast food franchisees to sue their franchisor if the terms of the franchise agreement prevent or create a substantial barrier to the franchisee compliance with the law. AB 257 is currently pending consideration before the Senate Labor, Public Employment and Retirement Committee.

Prior Legislation:

AB 2672 (Holden, 2020) contained several provisions similar to those in this bill relating to the California Franchise Relations Act. AB 2672 died in the Assembly Business and Professions Committee.

AB 525 (Holden, Ch. 776, Stats. 2015) revised the rights and responsibilities of franchisors and franchisees under the California Franchise Relations Act with respect to the termination of franchise agreements.

SB 610 (Jackson, 2014) would have, among other things, changed the standard required to terminate a franchise agreement from "good cause" to a "substantial and material breach." In his message vetoing SB 610, Governor Brown wrote: "[w]hile the 'good cause' standard is common and well understood, the standard provided in this bill is new and untested."

AB 2305 (Huffman, 2012) would have enacted the Level Playing Field for Small Businesses Act of 2012 amending both the CFIL and CFRA in the process. The bill would have permitted termination of a franchise agreement for good cause only where there has been a substantial and material breach of the franchise agreement and the franchisee was granted specified time to cure the breach. The bill would also have created a cause of action and would have permitted the award of attorney's fees where a franchisor or subfranchisor sold or offered to sell a franchise in violation of the bill's prohibitions against specified unfair or deceptive practices. AB 2305 died in the Assembly Business, Professions, and Consumer Protection Committee.

AB 295 (Young, Ch. 1355, Stats. 1980) created the California Franchise Relations Act to govern relationships between franchisors and franchisees after they have entered into contract with each other.

SB 647 (Bradley, Ch. 1400, Stats. 1970) created the California Franchise Investment Act, which governs procedures for the establishment of the business relationship between a franchisor and a franchisee.

PRIOR VOTES:

Assembly Floor (Ayes 63, Noes 1)
Assembly Appropriations Committee (Ayes 13, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
Assembly Business and Professions Committee (Ayes 15, Noes 0)

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