

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1958

STATE OF NEW JERSEY

DATED: MAY 12, 2022

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1958.

This bill creates provisions regarding hospitality franchises in the State of New Jersey, supplementing P.L.1971, c.356, the “Franchise Practices Act” (C.56:10-1 et seq.). These provisions apply to hospitality franchises where the franchisee is required to maintain a place of business within the State, or where the franchise owner, partner, member, investor, or guarantor is a resident of New Jersey and where over 20 percent of the franchisee’s gross sales are derived from their New Jersey franchise. The bill also ensures that franchises, as defined in 16 CFR 436 and 437, if they are hospitality franchises, will be considered “merchandise” under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.).

The bill defines “hospitality franchise” as a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trade mark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise, where the goods include any hotel, motel, inn, tourist camp, tourist cabin, tourist home, rooming house or similar establishment where sleeping accommodations are supplied for pay to transient or permanent guests.

The bill contains a list of hospitality franchisor activities that will be considered a violation of the “Franchise Practices Act” (C.56:10-1 et seq.). The bill makes it a violation for a hospitality franchisor to impose a restriction on the owner, officers, or employees of a franchise that limits their employment, ownership, or participation in any business activity for more than six months following their termination, cancellation, or non-renewal at the franchise in a county other than that in which the franchise was located.

The bill makes it a violation for a hospitality franchisor to require a franchisee to relocate or make any capital investment in excess of \$25,000 more than once every five years, unless the franchisor can demonstrate that the franchisee will be able to recover the value of the investment over the remaining term of the franchise. The bill prohibits franchisors from receiving kickbacks, rebates, or other consideration from vendors that franchisees must

patronize, unless the benefit is first disclosed to the franchisee and unless the benefit is turned over to the franchisee. The bill ensures that if the franchisee gives the hospitality franchisor a general release of claims upon renewal or transfer of the franchise, then the franchisee will receive a reciprocal release from the franchisor.

The bill makes it a violation for the hospitality franchisor to require a franchisee to purchase goods or services from suppliers designated by the franchisor if goods or services meeting the franchisor's reasonable specifications and standards are available from other sources. The bill also calls for the franchisor to license a third-party supplier to use its trademarks for franchisee supplies in the case of supplies that carry the mark. The bill ensures that the hospitality franchisor will not compete with the franchisee in an exclusive or protected territory under a different name or mark.

The bill prohibits the practice of unilaterally changing the material terms of the franchise agreement by implementing changes in the operations manual. This provision makes it clear that the hospitality franchisor may not materially change the contract with the franchisee by altering the manual. The bill prohibits the franchisor from imposing any new fees on the franchisee unless the fees were disclosed in a franchise disclosure document. The bill makes it a violation for a hospitality franchisor to impose a fee or charge on the franchisee as the result of a guest's published criticism of the franchisee, a franchisor's resolution of complaints related to the franchisee, or the franchisee's failure to enroll a minimum number of guests.

The bill prohibits a hospitality franchisor from selling points in a loyalty program to guests to use at a franchisee's facility without compensating the franchisee for lost revenue. The bill would restrict the hospitality franchisor's ability to deny a franchisee access to necessary franchisor programs, including but not limited to property management systems, online listings, phone sales or use of approved marks. The bill prohibits a hospitality franchisor from imposing fees based on a franchisee's alleged failure to perform, including but not limited to re-inspection fees, inspection failure fees, loyalty sign-up fees, loyalty program fees, and others.

Finally, the bill specifies that a violation of any of these provisions, or any of the provisions of section 7 of P.L.1971, c.356 (C.56:10-7), shall not constitute good cause for a franchisee's termination.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.