

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1958

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 20, 2023

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 1958, with committee amendments.

As amended, this bill would supplement the “Franchise Practices Act,” P.L.1971, c.356 (C.56:10-1 et seq.) (Franchise Practices Act) to address hospitality franchises in which the franchisee is required to maintain a place of business within the State. Under the bill, a franchise, as defined in 16 CFR 36 and 437, that is a hospitality franchise, 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. The bill makes it a violation for a hospitality franchisor to receive consideration, directly or indirectly, from a vendor or affiliate unless the consideration is first disclosed to the franchisee and unless the benefit is turned over to the franchisee.

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 without the franchisee's consent.

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, unless the change concerns the health, safety, or welfare of guests or employees. The bill prohibits the franchisor from imposing any new fees on the franchisee unless the fees were disclosed in a franchise disclosure document, and unless they were approved by the franchisee advisory committee or the franchisee. The bill makes it a violation for a hospitality franchisor to impose a fee or charge on the franchisee as the result of a 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.

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.

COMMITTEE AMENDMENTS:

Proposed committee amendments would:

- Omit from the bill's scope a hospitality franchise agreement that requires a franchisee owner, partner, member, investor, or guarantor to be a resident of New Jersey, and intends more than 20 percent of the franchisee's gross sales to be derived from that franchise.
- Define the terms "consideration" and "franchise advisory committee."
- Omit from the bill several potential violations of the Franchise Practices Act and clarify some other potential violations.