

SENATE, No. 2198

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Revises “Franchise Practices Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning franchises and amending and supplementing
2 P.L.1971, c.356.

3

4 BE IT ENACTED *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read
8 as follows:

9 4. This act applies only:

10 a. to a franchise (1) the performance of which contemplates or
11 requires the franchisee to establish or maintain a place of business
12 within the State of New Jersey, and (2) **【where gross sales of**
13 **products or services between the franchisor and franchisee covered**
14 **by such franchise shall have exceeded \$35,000.00 for the 12 months**
15 **next preceding the institution of suit pursuant to this act, and (3)**】****
16 **where more than 20% of the franchisee's gross sales are intended to**
17 **be or are derived from such franchise; or**

18 b. to a franchise for the sale of new motor vehicles as defined
19 in R.S.39:10-2, the performance of which contemplates or requires
20 the franchisee to establish or maintain a place of business within the
21 State of New Jersey.

22 (cf: P.L.1993, c.189, s.1)

23

24 2. Section 5 of P.L.1971, c.356 (C.56:10-5) is amended to read
25 as follows:

26 5. a. It shall be a violation of this act for any franchisor directly
27 or indirectly through any officer, agent, or employee to terminate,
28 cancel, or fail to renew a franchise without having first given
29 written notice setting forth all the reasons for such termination,
30 cancellation, or intent not to renew to the franchisee at least 60 days
31 in advance of such termination, cancellation, or failure to renew,
32 except (1) where the alleged grounds are voluntary abandonment by
33 the franchisee of the franchise relationship in which event the
34 aforementioned written notice may be given 15 days in advance of
35 such termination, cancellation, or failure to renew; and (2) where
36 the alleged grounds are the conviction of the franchisee in a court
37 of competent jurisdiction of an indictable offense directly related to
38 the business conducted pursuant to the franchise in which event the
39 aforementioned termination, cancellation or failure to renew may be
40 effective immediately upon the delivery and receipt of written
41 notice of same at any time following the aforementioned
42 conviction. It shall be a violation of this act for a franchisor to
43 terminate, cancel or fail to renew a franchise without good cause.
44 For the purposes of this act, good cause for terminating, canceling,
45 or failing to renew a franchise shall be limited to failure by the

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 franchisee to substantially comply with those requirements
2 imposed upon him by the franchise.

3 b. It shall be a violation of this act for any franchisor directly or
4 indirectly through any officer, agent, or employee to restrict or
5 prohibit a franchisee from terminating, cancelling, or not renewing
6 a franchise provided the franchisee provides the franchisor with at
7 least 60 days notice of that termination, cancellation, or failure to
8 renew.

9 c. It shall be a violation of P.L.1971, c.356 (C.56:10-1 et seq.)
10 for a franchisor, after termination, cancellation or non-renewal of a
11 franchise pursuant to this section, to:

12 (1) require a franchisee to pay excessive damages;

13 (2) require a franchisee to personally guarantee the debts of the
14 franchise to the franchisor; and

15 (3) impose any employment restriction on the owner or
16 employees of the franchise that exceeds six months duration and
17 restricts employment outside the county in which the franchise is
18 located.

19 (cf: P.L.1971, c.356, s.5)

20

21 3. Section 7 of P.L.1971, c.356 (C.56:10-7) is amended to read
22 as follows:

23 7. It shall be a violation of this act for any franchisor, directly
24 or indirectly, through any officer, agent or employee, to engage in
25 any of the following practices:

26 a. To require a franchisee at time of entering into a franchise
27 arrangement to assent to a release, assignment, novation, waiver or
28 estoppel which would relieve any person from liability imposed by
29 this act.

30 b. To prohibit directly or indirectly the right of free association
31 among franchisees for any lawful purpose.

32 c. To require or prohibit any change in management of any
33 franchisee unless such requirement or prohibition of change shall be
34 for good cause, which cause shall be stated in writing by the
35 franchisor.

36 d. To restrict the sale of any equity or debenture issue or the
37 transfer of any securities of a franchise or in any way prevent or
38 attempt to prevent the transfer, sale or issuance of equity securities
39 or debentures to employees, personnel of the franchisee, or spouse,
40 child or heir of an owner, as long as basic financial requirements of
41 the franchisor are complied with, and provided any such sale,
42 transfer or issuance does not have the effect of accomplishing a sale
43 or transfer of control, including, but not limited to, change in the
44 persons holding the majority voting power of the franchise.
45 Nothing contained in this subsection shall excuse a franchisee's
46 obligation to provide prior written notice of any change of
47 ownership to the franchisor if that notice is required by the
48 franchise.

1 e. To impose unreasonable standards of performance upon a
2 franchisee.

3 f. To provide any term or condition in any lease or other
4 agreement ancillary or collateral to a franchise, which term or
5 condition directly or indirectly violates this act.

6 g. To impose unreasonable facilities, financial, operating or
7 other requirements upon a franchisee.

8 h. To require or attempt to require a franchisee to relocate a
9 franchise or to implement any facility or operational modification
10 more than once every five years, unless the franchisor can
11 demonstrate that the franchisee will be able, in the ordinary course
12 of business as conducted by that franchisee, to earn a reasonable
13 return on the total investment in that facility or from that
14 operational modification, and the full return of the total investment
15 in that facility or from operational modifications within 10 years.
16 This subsection shall not be construed as requiring a franchisor to
17 guarantee that the return as provided in this paragraph will be
18 realized.

19 i. To receive a commission or any other payment from any
20 vendor that sells goods or services to franchisees of the franchisor.

21 j. To require any franchisee to purchase goods or services from
22 a vendor if the franchisor has not taken reasonable steps to secure
23 the best possible price for the goods and services from the vendor.

24 k. To require a franchisee, as a condition for the approval of a
25 renewal or transfer of a franchise, to assent to a general release
26 from liability for the franchisor.

27 l. If the franchise agreement provides that the franchisee has
28 an exclusive territory, which exclusive territory shall be specified in
29 the franchise agreement, for the franchisor to compete with the
30 franchisee in an exclusive territory or to grant competitive
31 franchises in the exclusive territory area previously granted to
32 another franchisee.

33 (cf: P.L.1999, c.45, s.1)

34

35 4. (New section) A franchisor shall have a fiduciary duty to
36 their franchisees concerning any funds collected by the franchisor
37 from the franchisee to be used for advertising. With respect to any
38 funds collected from franchisees by the franchisor to be used for
39 advertising, the franchisor shall provide a report to the franchisee
40 annually detailing how the funds were used.

41

42 5. (New section) It shall be a violation of the "Franchise
43 Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.) for a franchisor
44 to require a franchisee to agree to a term or condition in a franchise,
45 or in any lease or agreement ancillary or collateral to a franchise,
46 which specifies the court in which a claim may be brought
47 regarding disputes arising with respect to the franchise, lease or
48 agreement or otherwise prohibits a franchisee from bringing an

1 action in a particular court otherwise available under the law of this
2 State.

3

4 6. This act shall take effect immediately.

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STATEMENT

8

9 This bill revises the “Franchise Practices Act” (the “Act”) to
10 increase protections for franchisees. Specifically, the bill removes a
11 provision from the act that limits the act’s application to a franchise
12 where gross sales of products or services between the franchisor
13 and franchisee covered by the franchise exceed \$35,000 in the 12
14 months preceding a suit instituted under the act. Therefore, under
15 the bill, the act would now apply to more franchise arrangements
16 including “business format” or “package” franchises where the
17 franchisor provides the franchisee with the business system, trade
18 names, trademarks and advertising, but no sales occur between the
19 franchisor and franchisee.

20 Additionally, the bill provides certain rights and protections to
21 franchisees that terminate or do not renew a franchise. Specifically,
22 the bill provides that it is a violation of the act for any franchisor to
23 restrict or prohibit a franchisee from terminating, cancelling, or not
24 renewing a franchise provided the franchisee provides the
25 franchisor with at least 60 days notice of such termination,
26 cancellation, or failure to renew. In addition, the bill provides that it
27 is a violation of the act for a franchisor, after termination,
28 cancellation or non-renewal of a franchise, to:

29 (1) require a franchisee to pay excessive damages;

30 (2) require the franchisee to personally guarantee the debts of the
31 franchise to the franchisor; and

32 (3) impose any employment restriction on the owner or
33 employees of the franchisee that exceeds six months duration and
34 restricts employment outside the county in which the franchise is
35 located.

36 The bill also places a restriction on the ability of a franchisor to
37 impose unreasonable facilities, financial, operating or other
38 requirements upon a franchisee. A franchisor is also prohibited
39 from requiring a franchisee to relocate his franchise or to implement
40 any facility or operational modification more than once every five
41 years, unless the franchisor can demonstrate that the franchisee will
42 be able, in the ordinary course of business as conducted by such
43 franchisee, to earn a reasonable return on the total investment in
44 such facility or from such operational modification, and the full
45 return of the total investment in such facility or from such
46 operational modifications within 10 years.

1 In some cases franchisors create relationships with third-party
2 vendors that benefit the franchisor at the expense of the franchisee.
3 The bill addresses this by restricting a franchisor from:

4 (1) receiving a commission or any other payment from any
5 vendor that sells goods or services to franchisees of the franchisor;
6 and

7 (2) requiring any franchisee to purchase goods or services from
8 a vendor if the franchisor has not taken reasonable steps to secure
9 the best possible price for the goods and services from the vendor.

10 The bill also prohibits a franchisor from requiring a franchisee,
11 as a condition for the approval of a renewal or transfer of a
12 franchise, to assent to a general release from liability for the
13 franchisor.

14 In addition, the bill provides that if the franchise agreement
15 provides that the franchisee has an exclusive territory, the
16 franchisor is prohibited from competing with the franchisee in the
17 exclusive territory or granting competitive franchises in the
18 exclusive territory area previously granted to another franchisee.

19 With respect to court claims regarding disputes arising with
20 respect to the franchise, the bill prohibits a franchisor from
21 requiring a franchisee to agree to a term or condition in a franchise,
22 or in any lease or agreement ancillary or collateral to a franchise,
23 which specifies the court in which a claim may be brought or
24 otherwise prohibits a franchisee from bringing an action in a
25 particular court otherwise available under the law of this State.

26 Finally, the bill places a fiduciary duty on a franchisor to their
27 franchisees concerning any funds collected by the franchisor from
28 the franchisee to be used for advertising. The bill also requires
29 franchisors to provide a report to the franchisee annually detailing
30 how the advertising funds were used.