

SENATE, No. 3762

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 11, 2021

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Concerns hospitality franchise agreements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2021)

1 AN ACT concerning hospitality franchises and supplementing
2 P.L.1971, c.356 (C.56:10-1 et seq.).

3

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

6

7 1. a. For the purposes this act, a franchise, as defined in 16
8 C.F.R. 436 and 437, that is a hospitality franchise, shall be considered
9 merchandise for the purposes of P.L.1960, c.39 (C.56:8-1 et seq.).

10 b. Notwithstanding any provision of section 4 of P.L.1971, c.356
11 (C.56:10-4) to the contrary, this act shall apply only to a hospitality
12 franchise, the performance of which requires the franchisee to
13 establish and maintain a place of business within the State of New
14 Jersey, or where the franchisee owner, partner, member, investor, or
15 guarantor is a resident of New Jersey and where more than 20 percent
16 of the franchisee's gross sales are intended to be or derived from that
17 franchise.

18 c. For the purposes of this act, "hospitality franchise" means a
19 written arrangement for a definite or indefinite period, in which a
20 person grants to another person a license to use a trade name, trade
21 mark, service mark, or related characteristic, and in which there is a
22 community of interest in the marketing of goods or services at
23 wholesale, retail, by lease, agreement, or otherwise, where the goods
24 include any hotel, motel, inn, tourist camp, tourist cabin, tourist
25 home, rooming house or similar establishment where sleeping
26 accommodations are supplied for pay to transient or permanent
27 guests.

28

29 2. It shall be a violation of the "Franchise Practices Act,"
30 P.L.1971, c.356 (C.56:10-1 et seq.) for a hospitality franchisor or an
31 entity owned or controlled by the franchisor or affiliated under
32 common ownership by the franchisor to:

33 a. Impose or enforce any restriction on the owner, officers, or
34 employees of the franchisee that limits their employment, ownership,
35 or participation in the operation of any business or activity for more
36 than six months duration after termination, cancellation, or non-
37 renewal in a location outside the county in which the hospitality
38 franchise is located;

39 b. Require or attempt to require a franchisee to relocate a
40 hospitality franchise or to make any capital investment over \$25,000
41 more than once every five years, unless the franchisor can
42 demonstrate that the franchisee, in the ordinary course of business,
43 will be able to recover the value of that investment over the remaining
44 term of the franchise agreement;

45 c. Receive any rebate, commission, kickback, services, other
46 consideration or anything of value from any vendor that sells goods
47 or services to a franchisee of the hospitality franchisor unless the

1 consideration is fully disclosed to the franchisee and promptly turned
2 over to the franchisee;

3 d. Require a franchisee, as a condition for the approval of a
4 renewal or transfer of a hospitality franchise, to assent to a general
5 release from liability for the franchisor unless the franchisor provides
6 to the franchisee a reciprocal general release;

7 e. Require a franchisee to purchase goods, services, supplies or
8 inventories exclusively from the hospitality franchisor or sources
9 designated by the franchisor where goods, services, supplies or
10 inventories of comparable quality are available from sources other
11 than those designated by the franchisor. However, the publication by
12 the franchisor of a list of approved suppliers of goods, supplies,
13 inventories, or services or the requirement that goods, supplies,
14 inventories, or services comply with specifications and standards
15 prescribed by the franchisor shall not constitute designation of a
16 source, and a reasonable right of the franchisor to disapprove a
17 supplier shall not constitute a designation. In the case of goods,
18 supplies or inventories that carry a trademark, trade name or other
19 identifying characteristic of the franchisor, the hospitality franchisor
20 shall not unreasonably refuse to license the identifying characteristics
21 to a vendor or supplier who meets the franchisor's reasonable
22 specifications and standards for quality of goods, financial soundness
23 and capacity to meet the business requirements of the franchise;

24 f. Establish, directly or indirectly, a franchisor-owned or
25 franchised outlet engaged in a substantially identical business to that
26 of the franchisee within the franchisee's exclusive or protected
27 territory, if the franchise agreement provides for either. For the
28 purposes of this act, an exclusive or protected territory is an area in
29 which the franchisor shall not place a company-owned outlet or other
30 franchisee;

31 g. Make any material change in the terms of the franchise
32 agreement between a hospitality franchisor and franchisee through
33 any unilateral change, made by the franchisor, to any operations
34 manual or through any bulletin or other communication;

35 h. Impose any fee or charge upon a franchisee that has not
36 previously been disclosed in a franchise disclosure document
37 provided to the franchisee prior to signing the franchise agreement
38 without the franchisee's written agreement to pay the fee or charge;

39 i. Impose any fee or charge upon a hospitality franchisee for or
40 on account of published guest reviews or criticisms of a franchisee,
41 including:

42 (1) a franchisee's failure to enroll a minimum number of guests
43 prescribed by the franchisor in a franchisor's loyalty program; or

44 (2) a franchisor's services in resolving guest complaints to the
45 franchisor about a franchisee, except that a refund provided by the
46 franchisor to a complaining guest may be charged back to the
47 franchisee;

1 The bill contains a list of hospitality franchisor activities that will
2 be considered a violation of the “Franchise Practices Act” (C.56:10-
3 1 et seq.). The bill makes it a violation for a hospitality franchisor to
4 impose a restriction on the owner, officers, or employees of a
5 franchise that limits their employment, ownership, or participation in
6 any business activity for more than six months following their
7 termination, cancellation, or non-renewal at the franchise in a county
8 other than that in which the franchise was located.

9 The bill makes it a violation for a hospitality franchisor to require
10 a franchisee to relocate or make any capital investment in excess of
11 \$25,000 more than once every five years, unless the franchisor can
12 demonstrate that the franchisee will be able to recover the value of
13 the investment over the remaining term of the franchise. The bill
14 prohibits franchisors from receiving kickbacks, rebates, or other
15 consideration from vendors that franchisees must patronize, unless
16 the benefit is first disclosed to the franchisee and unless the benefit
17 is turned over to the franchisee. The bill ensures that if the franchisee
18 gives the hospitality franchisor a general release of claims upon
19 renewal or transfer of the franchise, then the franchisee will receive
20 a reciprocal release from the franchisor.

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

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

42 The bill prohibits a hospitality franchisor from selling points in a
43 loyalty program to guests to use at a franchisee’s facility without
44 compensating the franchisee for lost revenue. The bill would restrict
45 the hospitality franchisor’s ability to deny a franchisee access to
46 necessary franchisor programs, including but not limited to property
47 management systems, online listings, phone sales or use of approved
48 marks. The bill prohibits a hospitality franchisor from imposing fees

1 based on a franchisee's alleged failure to perform, including but not
2 limited to re-inspection fees, inspection failure fees, loyalty sign-up
3 fees, loyalty program fees, and others.

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