

ASSEMBLY, No. 2682

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Concerns hospitality franchise agreements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/20/2020)

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
9 considered merchandise for the purposes of P.L.1960, c.39 (C.56:8-
10 1 et seq.).

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

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

29

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

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

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

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

- 1 consideration is fully disclosed to the franchisee and promptly
2 turned 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
6 provides 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
12 by 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
20 franchisor shall not unreasonably refuse to license the identifying
21 characteristics to a vendor or supplier who meets the franchisor's
22 reasonable specifications and standards for quality of goods,
23 financial soundness and capacity to meet the business requirements
24 of the franchise;
- 25 f. Establish, directly or indirectly, a franchisor-owned or
26 franchised outlet engaged in a substantially identical business to
27 that of the franchisee within the franchisee's exclusive or protected
28 territory, if the franchise agreement provides for either. For the
29 purposes of this act, an exclusive or protected territory is an area in
30 which the franchisor shall not place a company-owned outlet or
31 other franchisee;
- 32 g. Make any material change in the terms of the franchise
33 agreement between a hospitality franchisor and franchisee through
34 any unilateral change, made by the franchisor, to any operations
35 manual or through any bulletin or other communication;
- 36 h. Impose any fee or charge upon a franchisee that has not
37 previously been disclosed in a franchise disclosure document
38 provided to the franchisee prior to signing the franchise agreement
39 without the franchisee's written agreement to pay the fee or charge;
- 40 i. Impose any fee or charge upon a hospitality franchisee for or
41 on account of published guest reviews or criticisms of a franchisee,
42 including:
- 43 (1) a franchisee's failure to enroll a minimum number of guests
44 prescribed by the franchisor in a franchisor's loyalty program; or
45 (2) a franchisor's services in resolving guest complaints to the
46 franchisor about a franchisee, except that a refund provided by the
47 franchisor to a complaining guest may be charged back to the
48 franchisee;

1 j. Sell points or credits in a hospitality franchisor's loyalty
2 program to a guest for the purpose of permitting the guest to redeem
3 points for a specific stay at a specific franchisee's facility without
4 compensating the franchisee for the stay at no less than the
5 franchisee's lowest publicly advertised rate for that stay or the
6 value of the points sold, whichever is less;

7 k. Suspend, restrict, stop-sell, or prevent access to franchise
8 services, including but not limited to property management systems,
9 online listings, phone call sales, use of approved marks, or any
10 other specified services included in the franchise agreement or
11 provided in the usual course by a franchisor to a franchisee; or

12 l. Impose any costs, fees, charges, or penalties for a
13 franchisee's alleged failure to perform, including but not limited to:
14 re-inspection fees, inspection failure fees, loyalty sign up fees, rate
15 parity violation fees, customer care fees, conference attendance
16 fees, retraining fees, and loyalty program fees.

17
18 3. A franchisee's failure to comply with any provisions of
19 section 7 of P.L.1971, c.356 (C.56:10-7) or this act shall not
20 constitute good cause for termination of the franchise.

21
22 4. This act shall take effect immediately and shall apply to
23 franchise agreements that are entered into, modified, amended, or
24 renewed after its effective date.

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27 STATEMENT

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

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

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

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

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

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

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

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1 approved marks. The bill prohibits a hospitality franchisor from
2 imposing fees based on a franchisee's alleged failure to perform,
3 including but not limited to re-inspection fees, inspection failure
4 fees, loyalty sign-up fees, loyalty program fees, and others.

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