

HB 2946 -1 STAFF MEASURE SUMMARY

House Committee On Business and Labor

Prepared By: Jan Nordlund, LPRO Analyst

Meeting Dates: 3/3, 4/5, 4/7

WHAT THE MEASURE DOES:

Requires parties of a franchise agreement to deal in good faith in a commercially reasonable manner. Specifies information franchisor must disclose when offering or advertising a franchise. Specifies what may not be included in a franchise agreement. Specifies conditions under which a franchisor may terminate or renew an agreement. Requires franchisor to provide franchisee written notice when agreement will be terminated or not renewed that includes reasons and effective date. Requires franchisor to purchase covered property upon termination or nonrenewal when specified conditions are met. Requires franchisor to allow franchisee to sell or transfer assets of the franchise business when specified conditions are met. Establishes successor rights when franchisee dies if specified conditions are met. Provides conditions under which franchisor is liable for franchisees actual damages when franchisor develops or operates a nearby business that effects franchisee's gross revenues or net profits. Provides franchisee with private right of action against franchisor who fails to comply with provisions of this Act.

Does not apply to motor vehicle, motor fuels, or recreational vehicle franchises. Applies to franchises that are operating on or after the effective date and to agreements that franchisor enters into or renews on or after the effective date.

ISSUES DISCUSSED:

- Existing regulatory framework limited to disclosure at time of advertisement or offer
- Investment to enter into a franchise agreement
- Vulnerability of franchisee if agreement does not include due process regarding termination or renewal of franchise
- Fear of retaliation by franchisor
- Importance of franchisor to protect brand
- Legislative Assembly's action in 2008/09 to assist motor vehicle franchisees

EFFECT OF AMENDMENT:

-1 (Adopted April 5) Clarifies condition under which franchisor may immediately terminate an agreement. Adds that Act applies to franchise agreements that are amended on or after the effective date.

BACKGROUND:

Under current statutory law, the Department of Consumer and Business Services has authority to adopt rules regulating the sale or offer of a franchise. The relevant administrative rules are 441-325-0010 through 441-325-0050. These rules specify what information the franchisor must disclose to the prospective franchisee. Current statutes also provide a private right of action to a franchisee if the seller employs any device, scheme, or artifice to defraud the buyer, or if the seller makes any untrue statement of material fact or fails to state a material fact. There are more robust statutes governing franchise agreements for motor vehicles, motor fuels, and recreational vehicles; the statutes for these specific types of franchises address such issues as successor and transfer rights, rights upon termination or cancellation, and prohibited franchise conditions.