

BLOGS

State Franchise and Dealer Laws

Alabama Introduces Comprehensive Franchise Relationship Bill

The Alabama Legislature recently introduced two companion bills in the House of Representatives (HB134) and State Senate (SB129) to create "The Protect Alabama Small Businesses Act," the first major state franchise relationship bill to be seriously considered this year. The bill, which purports to promote fair business relationships between franchisors and franchisees, contains some of the most expansive relationship law requirements seen in recent legislation. It requires good cause for termination and nonrenewal, and governs sales, transfers, or assignment of franchised businesses, the repurchase by a franchisor of a franchised business or an interest in a franchised business, and the mandatory repurchase of certain assets upon termination, nonrenewal, or expiration of a franchise agreement. Under the bill, franchise agreements are perpetual despite any stated contractual term of years, unless termination of the franchise agreement is authorized under the law or the franchisor completely withdraws from distributing its products or services in the geographic market then being served by the franchisee.

Except for certain enumerated exceptions, the bill defines "good cause" as the failure of the franchisee to substantially comply with a provision of the franchise agreement, which is both "reasonable and of material significance to the franchise," after receiving written notice of the failure to comply and being given at least 90 days to cure the failure. If the franchise agreement expires or is terminated without good cause, subject to specific exceptions, a franchisor must repurchase at fair market value the inventory, supplies, goods, fixtures, equipment, and furnishings of the franchised business. The franchisor must also purchase the "goodwill" of the franchised business or waive any post-term noncompete obligations of the franchisee so that the franchisee, at its option, may continue in business. A franchisee is entitled to receive from the franchisor the fair market value of the franchised business and assets in addition to other damages for terminations or nonrenewals that violate the proposed law.

If enacted into law in its current form, the law would apply broadly to both new and existing franchise agreements, would render void any franchise agreement provision restricting the applicable governing law or venue for disputes to jurisdictions outside of Alabama, and would afford aggrieved franchisees the right to bring a private action in state or federal court.

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