

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 942

Introduced by Scheer, 19.

Read first time January 13, 2016

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to marketing plans and trade practices; to
2 amend sections 59-1724, 87-402, and 87-404, Reissue Revised Statutes
3 of Nebraska; to provide a disclosure requirement to the Department
4 of Banking and Finance for seller-assisted marketing plan contracts
5 as prescribed; to define a term; to provide for reformation of a
6 franchise agreement which unreasonably restrains competition; to
7 repeal the original sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 59-1724, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 59-1724 (1)(a) Before placing any advertisement, making any other
4 solicitation, making any sale, or making any representations to any
5 prospective purchaser in Nebraska, the seller shall file with the
6 Department of Banking and Finance a copy of a disclosure document
7 prepared pursuant to sections 59-1733 to 59-1740 and pay a filing fee of
8 one hundred dollars.

9 (b) The seller shall file an amended document with the department
10 whenever a material change in the information occurs and shall pay a fee
11 of fifty dollars for filing each such document.

12 (c) If the seller continues to solicit seller-assisted marketing
13 plans in Nebraska, he or she shall annually file an updated disclosure
14 document and pay a renewal fee of fifty dollars on or before the
15 anniversary date of the initial filing for the particular seller-assisted
16 marketing plan. In addition to the updated disclosure document, if a
17 seller requires a purchaser to enter into a non-compete agreement in a
18 side-agreement or ancillary agreement, the seller shall include a
19 disclosure of the existence of such side-agreement or ancillary agreement
20 in the updated disclosure document.

21 (d) In addition to the disclosure document, the seller shall file a
22 list of the names and resident addresses of those individuals who sell
23 the seller-assisted marketing plan on behalf of the seller. The list of
24 sales representatives shall be updated through a new filing every six
25 months. No fee shall be required to be paid for any filing which includes
26 only an updated list of sales representatives.

27 (2) All funds collected by the department under this section shall
28 be remitted to the State Treasurer for credit to the Securities Act Cash
29 Fund.

30 Sec. 2. Section 87-402, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 87-402 For purposes of the Franchise Practices Act, unless the
2 context otherwise requires:

3 (1) Franchise means ~~shall mean~~ (a) a written arrangement for a
4 definite or indefinite period, in which a person grants to another person
5 for a franchise fee a license to use a trade name, trademark, service
6 mark, or related characteristics and in which there is a community of
7 interest in the marketing of goods or services at wholesale or retail or
8 by lease, agreement, or otherwise and (b) any arrangement, agreement, or
9 contract, either expressed or implied, for the sale, distribution, or
10 marketing of nonalcoholic beverages at wholesale, retail, or otherwise.
11 Franchise shall not include any arrangement, agreement, or contract,
12 either expressed or implied, for the sale, distribution, or marketing of
13 petroleum products at wholesale, retail, or otherwise;

14 (2) Person means ~~shall mean~~ every natural person, firm, partnership,
15 limited liability company, association, or corporation;

16 (3) Franchisor means ~~shall mean~~ a person who grants a franchise to
17 another person;

18 (4) Franchisee means ~~shall mean~~ a person to whom a franchise is
19 offered or granted;

20 (5) Franchise fee includes ~~shall include~~ any payment made by the
21 franchisee to the franchisor other than a payment for the purchase of
22 goods or services, for a surety bond, for a surety deposit, or for
23 security for payment of debts due;

24 (6) Sale, transfer, or assignment means ~~shall mean~~ any disposition
25 of a franchise or any interest therein, with or without consideration,
26 which shall include, but not be limited to, bequest, inheritance, gift,
27 exchange, lease, or license;

28 (7) Place of business means ~~shall mean~~ a fixed geographical location
29 at which the franchisee displays for sale and sells the franchisor's
30 goods or offers for sale and sells the franchisor's services. Place of
31 business shall not mean an office, a warehouse, a place of storage, a

1 residence, or a vehicle;~~and~~

2 (8) Good cause for terminating, canceling, or failure to renew a
3 franchise ~~is shall~~ be limited to failure by the franchisee to
4 substantially comply with the requirements imposed upon him or her by the
5 franchise; ~~and -~~

6 (9) Non-compete agreement means any agreement between a franchisor
7 and a franchisee, guarantor, or any person with a direct or indirect
8 beneficial interest in the franchise that restricts the business
9 activities in which such persons may engage during or after the term of
10 the franchise. Non-compete agreement includes any stand-alone agreement
11 or any covenant not to compete provision within a franchise agreement or
12 ancillary agreement.

13 Sec. 3. Section 87-404, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 87-404 (1) It shall be a violation of sections 87-401 to 87-410 for
16 any franchisor directly or indirectly through any officer, agent, or
17 employee to terminate, cancel, or fail to renew a franchise without
18 having first given written notice setting forth all the reasons for such
19 termination, cancellation, or intent not to renew to the franchisee at
20 least sixty days in advance of such termination, cancellation, or failure
21 to renew, except (a 1) when the alleged grounds are voluntary abandonment
22 by the franchisee of the franchise relationship in which event the
23 written notice may be given fifteen days in advance of such termination,
24 cancellation, or failure to renew; and (b 2) when the alleged grounds are
25 (i a) the conviction of the franchisee in a court of competent
26 jurisdiction of an indictable offense directly related to the business
27 conducted pursuant to the franchise, (ii b) insolvency, the institution
28 of bankruptcy or receivership proceedings, (iii c) default in payment of
29 an obligation or failure to account for the proceeds of a sale of goods
30 by the franchisee to the franchisor or a subsidiary of the franchisor,
31 (iv d) falsification of records or reports required by the franchisor, (v

1 e) the existence of an imminent danger to public health or safety, or (vi
2 f) loss of the right to occupy the premises from which the franchise is
3 operated by either the franchisee or the franchisor, in which event such
4 termination, cancellation or failure to renew may be effective
5 immediately upon the delivery and receipt of written notice of the same.
6 It shall be a violation of sections 87-401 to 87-410 for a franchisor to
7 terminate, cancel or fail to renew a franchise without good cause. This
8 subsection ~~section~~ shall not prohibit a franchise from providing that the
9 franchise is not renewable or that the franchise is only renewable if the
10 franchisor or franchisee meets certain reasonable conditions.

11 (2) If restrictions in a non-compete agreement are found by an
12 arbitrator or a court to be unreasonable in restraining competition, the
13 arbitrator or court shall reform the terms of the non-compete agreement
14 to the extent necessary to cause the restrictions contained therein to be
15 reasonable and enforceable. The arbitrator or court shall then enforce
16 the non-compete agreement against the franchisee, guarantor, or any
17 person with a direct or indirect beneficial interest in the franchise in
18 accordance with the reformed terms of the non-compete agreement. The
19 arbitrator or court may reform and enforce the restrictions in a non-
20 compete agreement as part of an order for preliminary or temporary
21 relief. This subsection applies to any non-compete agreement entered into
22 before, on, or after the effective date of this subsection.

23 (3) If a franchisor is also a seller of a seller-assisted marketing
24 plan as defined in section 59-1705 and has previously filed a disclosure
25 document pursuant to section 59-1724 with the Department of Banking and
26 Finance, and such franchisor subsequently executes a non-compete
27 agreement in a stand-alone or ancillary agreement with a franchisee, a
28 disclosure of such stand-alone or ancillary agreement shall be included
29 with the annual updated disclosure document required to be filed under
30 section 59-1724.

31 Sec. 4. Original sections 59-1724, 87-402, and 87-404, Reissue

1 Revised Statutes of Nebraska, are repealed.

2 Sec. 5. Since an emergency exists, this act takes effect when
3 passed and approved according to law.