

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 942

FINAL READING

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

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

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

24 (3) If a franchisor is also a seller of a seller-assisted marketing
25 plan as defined in section 59-1705 and has previously filed a disclosure
26 document pursuant to section 59-1724 with the Department of Banking and
27 Finance, and such franchisor subsequently executes a noncompete agreement
28 in a stand-alone or ancillary agreement with a franchisee, a disclosure
29 of such stand-alone or ancillary agreement shall be included with the
30 annual updated disclosure document required to be filed under section
31 59-1724.

1 Sec. 4. Original sections 59-1724, 87-402, and 87-404, Reissue
2 Revised Statutes of Nebraska, are repealed.

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