

LEGISLATIVE BILL 742

Approved by the Governor April 11, 2018

Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to the Franchise Practices Act; to amend section 87-404, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to noncompete agreements; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 87-404, Revised Statutes Cumulative Supplement, 2016, is amended to read:

87-404 (1) It shall be a violation of the Franchise Practices Act for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew, except (a) when the alleged grounds are voluntary abandonment by the franchisee of the franchise relationship in which event the written notice may be given fifteen days in advance of such termination, cancellation, or failure to renew; and (b) when the alleged grounds are (i) the conviction of the franchisee in a court of competent jurisdiction of an indictable offense directly related to the business conducted pursuant to the franchise, (ii) insolvency, the institution of bankruptcy or receivership proceedings, (iii) default in payment of an obligation or failure to account for the proceeds of a sale of goods by the franchisee to the franchisor or a subsidiary of the franchisor, (iv) falsification of records or reports required by the franchisor, (v) the existence of an imminent danger to public health or safety, or (vi) loss of the right to occupy the premises from which the franchise is operated by either the franchisee or the franchisor, in which event such termination, cancellation, or failure to renew may be effective immediately upon the delivery and receipt of written notice of the same. It shall be a violation of the Franchise Practices Act for a franchisor to terminate, cancel, or fail to renew a franchise without good cause. This subsection shall not prohibit a franchise from providing that the franchise is not renewable or that the franchise is only renewable if the franchisor or franchisee meets certain reasonable conditions.

(2) If restrictions in a noncompete agreement are found by an arbitrator or a court to be unreasonable in restraining competition, the arbitrator or court shall reform the terms of the noncompete agreement to the extent necessary to cause the restrictions contained therein to be reasonable and enforceable. The arbitrator or court shall then enforce the noncompete agreement against the franchisee, the guarantor, or any person with a direct or indirect beneficial interest in the franchise in accordance with the reformed terms of the noncompete agreement. The arbitrator or court may reform and enforce the restrictions in a noncompete agreement as part of an order for preliminary or temporary relief. Notwithstanding section 87-403, this subsection also applies to any noncompete agreement entered into by a franchisor headquartered in the State of Nebraska, unless otherwise agreed to by the franchisor and franchisee. This subsection applies to any noncompete agreement entered into before, on, or after April 8, 2016.

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

Sec. 2. Original section 87-404, Revised Statutes Cumulative Supplement, 2016, is repealed.

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