SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Richard Roth, Chair
2021 - 2022 Regular

Bill No:	SB 1247	**Hearing Date:**	April 18, 2022
Author:	Hueso		
Version:	March 16, 2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Sarah Mason		

Subject: Product sales: incentives

SUMMARY: Requires any manufacturer, wholesaler, or other entity that does business in the state and that offers a rebate, promotion, allowance, or any other monetary incentive for the sale of that entity's product to a retail business that does business in the state to report the amount of the rebate, promotion, allowance, or other monetary incentive to the Franchise Tax Board. Requires any agreement requiring a person to assign their rights to a rebate, promotion, allowance, or other monetary incentive for the sale of a product within the state to include the potential or current value of that rebate, promotion, allowance, or other monetary incentive.

Existing law:

1) Regulates various businesses to, among other things, preserve and regulate competition, prohibit unfair trade practices, and regulate advertising. (Business and Professions Code (BPC) § 16600 *et seq.*)

2) Establishes the California Franchise Relations Act (CFRA) which governs the renewal, termination, transfer, and all other conditions and provisions made pursuant to franchise agreements. (BPC § 20000 *et seq.*)

3) Defines a franchise as a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

   a) A franchisee is granted the right to offer, sell or distribute goods or services under the plan or system of the franchisor;

   b) Operation of the business is substantially associated with franchisor's trademark, advertising or other symbol; and,

   c) A franchise fee, as defined, is paid by the franchisee.
   (Business & Professions Code (BPC) § 20001 (a), (b) and (c))

4) Establishes the Franchise Tax Board (FTB) in the Government Operations Agency to, among other things, administer state personal income taxes and corporation franchise and income taxes. (Government Code § 12803.2.)

5) Establishes the California Franchise Investment Law (CFIL) which governs financial disclosures and registration requirements with the Department of Business Oversight. (Corporations Code (CORP) § 31000 *et seq.*)

This bill:

1) Requires any manufacturer, wholesaler, or other entity that does business in the state and that offers a rebate, promotion, allowance, or any other monetary incentive for the sale of that entity's product to a retail business that does business in the state to report the amount of the rebate, promotion, allowance, or other monetary incentive to the FTB.

2) Requires any agreement that requires the assignment of a person's right to a rebate, promotion, allowance, or other monetary incentive for the sale of a product within the state to include the potential or current value of the rebate, promotion, allowance, or other incentive.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author, "Under federal and state law, there is a form which is required to be filled out between a franchisor and a franchisee that describes sourcing of products and franchisor's benefits from this sourcing. However, this deals with products before sale. Rebates, promotions and incentives are income generated at the point of sale to the consumer and so they are different." The Author's office indicates that the idea for this bill stems from the experience of a franchisee constituent who did not realize the monetary value of rebates, promotions, and other incentives for products when they signed their franchise agreement.

2. **Background.** Franchise businesses represent a large and growing segment of the nation's businesses and remain a popular and potentially lucrative way for people to open their own business. Just like any other small business owner, franchisees invest a large amount of their own money in the business and continue to pay for upgrades and changes in response to the market. Also like independent business owners, they often work long days and nights handling operations, managing employees and overseeing expenses. Owning a franchise over an independent business comes with advantages like name brand recognition and the support of the corporation.

   The California Franchise Investment Law (CFIL) was enacted in 1970 to regulate franchise investment opportunities in order to protect California investors from potentially fraudulent franchise investments. CFIL generally requires franchisors to disclose to prospective franchisees the information necessary to make an informed decision about franchise offers, and prohibits the sale of franchises that would lead to fraud or the likelihood that a franchisor's promises would not be fulfilled. CFIL contains explicit provisions for enforcement generally through damages (payment for economic losses) and rescission (cancellation of the contract). It also provides

for injunctive relief (to require or prohibit a specific action), and reasonable costs and attorneys' fees in certain circumstances.

The California Franchise Relations Act (CFRA) (which excludes petroleum-related franchises, like gas stations) was enacted in 1980 to govern relationships between franchisors and franchisees after they have entered into contract with each other. CFRA is designed to prevent unfair practices in the transfer, renewal, or termination of a franchise. CFRA prohibits termination of a franchise agreement except for good cause and only after notice and an opportunity to fix the problem. It also lays out certain circumstances where immediate termination is permitted, for example: bankruptcy, abandonment, mutual agreement, material misrepresentation, illegal activity, noncompliance with the franchise agreement, failure to pay franchise fees, and imminent danger to the public. CFRA prohibits nonrenewal of a franchise agreement without 180 days prior notice, and with certain additional protections for the franchisee. It also provides for the transfer of ownership to surviving spouses or heirs. CFRA does not contain explicit provisions to compensate a franchisee for the nonrenewal or termination of a franchise, except for the buyback of inventory when a franchise is improperly terminated or nonrenewed, although general contract remedies may still be available.

The franchise agreement contract is the central authority for the relationship between the franchisor and franchisee, which can be hundreds of pages long and contains a highly detailed description of the rights, responsibilities and remedies of the parties. The franchisee must sign the contract promising to comply with all of the requirements and the franchisor's service and marketing directives now and in the future. According to the International Franchise Association, a "franchise is the agreement or license between two legally independent parties which gives a person or group of people (the franchisee) the right to market a product or service using the trademark or trade name of another business (the franchisor)." It also gives the franchisee the right to market a product or service using the operating methods of the franchisor and the obligation to pay the franchisor fees for those rights. The franchisor has the obligation to provide those rights and support the franchisee according to their agreement. More specifically, franchisees serve to provide the look, name recognition, and brand of the business. The franchisee builds the brand locally and develops good will within the community. The franchisee's business success helps support the community with taxes and other contributions as well as improves the bottom line for franchisors.

3. **Proposed Author's Amendments.** The current version of the bill requires reporting to FTB which the Author is proposing to remove.

   On page 2, strike lines 7-12 inclusive.

   ~~*Any manufacturer, wholesaler, or other entity that does business in the state and that offers a rebate, promotion, allowance, or any other monetary incentive for the sale of that entity's product to a retail business that does business in the state shall report the amount of the rebate, promotion, allowance, or other monetary incentive to the Franchise Tax Board.*~~

SUPPORT AND OPPOSITION:

Support:

None received

Opposition:

None received

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