

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 742

FINAL READING

Introduced by Lindstrom, 18.

Read first time January 03, 2018

Committee: Banking, Commerce and Insurance

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

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

1 Section 1. Section 87-404, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 87-404 (1) It shall be a violation of the Franchise Practices Act
4 for any franchisor directly or indirectly through any officer, agent, or
5 employee to terminate, cancel, or fail to renew a franchise without
6 having first given written notice setting forth all the reasons for such
7 termination, cancellation, or intent not to renew to the franchisee at
8 least sixty days in advance of such termination, cancellation, or failure
9 to renew, except (a) when the alleged grounds are voluntary abandonment
10 by the franchisee of the franchise relationship in which event the
11 written notice may be given fifteen days in advance of such termination,
12 cancellation, or failure to renew; and (b) when the alleged grounds are
13 (i) the conviction of the franchisee in a court of competent jurisdiction
14 of an indictable offense directly related to the business conducted
15 pursuant to the franchise, (ii) insolvency, the institution of bankruptcy
16 or receivership proceedings, (iii) default in payment of an obligation or
17 failure to account for the proceeds of a sale of goods by the franchisee
18 to the franchisor or a subsidiary of the franchisor, (iv) falsification
19 of records or reports required by the franchisor, (v) the existence of an
20 imminent danger to public health or safety, or (vi) loss of the right to
21 occupy the premises from which the franchise is operated by either the
22 franchisee or the franchisor, in which event such termination,
23 cancellation, or failure to renew may be effective immediately upon the
24 delivery and receipt of written notice of the same. It shall be a
25 violation of the Franchise Practices Act for a franchisor to terminate,
26 cancel, or fail to renew a franchise without good cause. This subsection
27 shall not prohibit a franchise from providing that the franchise is not
28 renewable or that the franchise is only renewable if the franchisor or
29 franchisee meets certain reasonable conditions.

30 (2) If restrictions in a noncompete agreement are found by an
31 arbitrator or a court to be unreasonable in restraining competition, the

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

14 (3) If a franchisor is also a seller of a seller-assisted marketing
15 plan as defined in section 59-1705 and has previously filed a disclosure
16 document pursuant to section 59-1724 with the Department of Banking and
17 Finance, and such franchisor subsequently executes a noncompete agreement
18 in a stand-alone or ancillary agreement with a franchisee, a disclosure
19 of such stand-alone or ancillary agreement shall be included with the
20 annual updated disclosure document required to be filed under section
21 59-1724.

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

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