



FOCUS ON FRANCHISING

ALERT

NJ EXPANDS PROTECTION UNDER FRANCHISE PRACTICES ACT TO WHOLESALE DISTRIBUTION BUSINESSES

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New legislation that expands the definition of “place of business” within the description of a franchise to include business relationships not previously covered under the New Jersey Franchise Practices Act (“Act”) was signed into law on January 16, 2010 (Assembly Bill No. 2491). The amendment broadens the amount of protection available under the Act to a much larger population of wholesaler and distributor franchisees.

The Act provides protection to franchisees by, among other things, restricting the circumstances under which a franchisor may terminate or not renew a franchisee in New Jersey. A distributor or wholesale franchisee can claim protection under the Act only if the franchisee maintains a “place of business” in New Jersey. Prior to the passage of the amendment, “place of business” was narrowly defined as a “fixed geographical location where the franchisee displays for sale and sells the franchisor’s goods or offers for sale and sells the franchisor’s services.” New Jersey case law interpreting the definition limited the term “place of business” to only those locations where direct sales activity with customers took place. Therefore most distributor or wholesale franchisees that did not sell directly to ultimate consumers in New Jersey did not fall within the Act’s protected class.

The amendment expands the reach of the Act by broadening the definition of “place of business” to

include “an office or warehouse from which the franchisee personnel visit or call upon customers or from which the franchisor’s goods are delivered to customers.” The amendment was a reaction by the legislature to the narrow interpretations of the Act by the courts and the rationale that further protections “are necessary to protect not only retail businesses, but also wholesale distribution franchisees that, through their efforts, enhance the reputation and goodwill of the franchisors” in New Jersey.

The amendment will likely result in a much larger population of wholesaler and distributor franchisees claiming protection under the Act because of the limited and narrow situations it provides a franchisor to terminate, cancel or not renew a franchisee, even despite contractual language to the contrary. Under the Act, a franchisor may only terminate or fail to renew a contract if there is “good cause” to do so. “Good cause” is narrowly defined as a material breach of the franchise agreement and does not include reasonable business decisions. The Act also places additional restrictions on a franchisor with respect to its business relationship with its franchisees, such as requiring specific notice requirements when a franchisee is in default under the franchise agreement, imposing a “reasonable” standard on performance requirements and prohibiting any actions constituting “constructive termination” — the attempt to

force out of a franchisee with unfavorable treatment without undertaking a technical termination under the franchise agreement. A franchisor should carefully determine if it is subject to the Act's restrictions as a new class of covered wholesaler and distributor franchisees can now receive the benefits of the Act.

The amendment is currently effective, and the full text can be found on the New Jersey Legislature web site at

http://www.njleg.state.nj.us/2008/Bills/A2500/2491_R1.PDF.

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