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## Franchisors Should Take Notice of Two Recent Developments

In this Alert, we report on two recent developments that will be of interest to franchisors.

On June 6, 2016, a bill was introduced in the New Jersey State Senate that would amend the New Jersey Franchise Practices Act in several important ways. For example, it would require that franchisors provide 60 days' notice prior to termination or non-renewal; it would prohibit franchisors from requiring franchisees to pay "excessive damages," to personally guarantee the debts of the franchisee to the franchisor, or to agree to a post-term non-compete that lasts more than six months or extends beyond the county in which the franchised business is located; it would prohibit franchisors from receiving commissions and other payments from vendors; it would prohibit franchisors from mandating suppliers from whom the franchisor has not taken reasonable steps to secure the "best possible price" for the goods or services; and it would prohibit franchisors from requiring general releases on renewal or transfer. The bill has been referred to the Commerce Committee of the New Jersey State Senate, and we will watch and report on its progress closely.

On June 8, 2016, the Illinois Attorney General filed a complaint against the Jimmy John's franchisor alleging that a form non-competition agreement that it previously made

available to its franchisees (for use with the franchisee's employees) violated Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "Consumer Protection Act"). Here's why the position taken by the Illinois Attorney General's Office is noteworthy: first, it seeks to hold the franchisor liable for a non-mandatory form that, if used by the franchisee, would be an agreement between the franchisee and its employees; second, it takes issue with the fact that whether a business was a "competing" business was determined by the percentage of its revenue derived from the sale of deli-style sandwiches (a common component of "competitive business" definitions found in franchise agreements, but information which the Illinois Attorney General's Office believes the employee is not likely to have); and third, as to the franchisor, it considers the franchisee's employees "consumers" under the Consumer Protection Act. Since the complaint was only recently filed, no responsive pleadings have yet been filed. This is a case that bears watching, and we will report developments in future Alerts.

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