UNIDROIT 1992
Study LXVIII - Doc. 4
Etude LXVIII - Doc. 4
(Original: English/French)
(Original: anglais/français)

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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

INTERNATIONAL FRANCHISING / LE FRANCHISAGE INTERNATIONAL

Collection of materials relating to franchising
Recueil de documentation relative au franchisage

Rome, June 1992
Rome, juin 1992
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FRANCE

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Franchise Investment Law


PART I. DEFINITIONS

(¶ 3050.01) [Title. “This Law” References]

Section 31000. This division may be known as the “Franchise Investment Law.” References in this division to “this law” refer to the applicable provisions of this division.

(¶ 3050.02) [Need for Disclosures]

Sec. 31001. The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business which has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this division, the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to such transactions. California franchisees have suffered substantial losses where the franchisor or his representative has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor.

It is the intent of this law to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered. Further, it is the intent of this law to prohibit the sale of franchises where such

Sec. 31025.5. For the purposes of this division and in respect only to a franchise as defined in subdivision (b) of Section 31025, the following terms shall have the following meanings:

(a) "Franchisor" means a refiner or petroleum distributor who authorizes or permits, under a franchise, a petroleum retailer or petroleum distributor to use a trademark in connection with the sale, consignment, or distribution of fuel.

(b) "Franchisee" means a petroleum retailer or petroleum distributor who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of fuel.

(c) "Refiner" means any person engaged in the refining of crude oil to produce fuel, and includes any affiliate of such person.

(d) "Petroleum distributor" means any person, including any affiliate of such person, who either purchases fuel for resale, consignment, or distribution to another, or receives fuel on consignment for consignment or distribution to his or her own fuel accounts or to accounts of his or her supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(e) "Petroleum retailer" means any person who purchases fuel for sale to the general public for ultimate consumption.

(f) "Marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment, or distribution of fuel.

(g) "Leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of fuel.

(h) "Contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the prior year shall be prima facie evidence of an agreement to deliver such levels.

(i) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(j) "Fuel" means gasoline, diesel, gasoil, or aviation fuel.

(k) "Affiliate" means any person who, other than by means of a franchise, controls, is controlled by, or is under common control with, any other person.

(l) "Petroleum corporation" means any corporation or person owning, managing, or controlling the exploration, production, processing, transportation, or sale of crude or refined petroleum or any petroleum product.

Sec. 31008. A "franchisee" is a person to whom a franchise is granted.

Sec. 31007. A "franchisor" is a person who grants a franchise.
the offeror in this state, and acceptance is communicated to the offeror in this state
when the offeror directs it to the offeror in this state reasonably believing the offeror to
be in this state and it is received at the place to which it is directed.

(c) An offer to sell is not made in this state merely because (1) the publisher
circulates or there is circulated on his behalf in this state any bona fide newspaper or
other publication of general, regular, and paid circulation which has had more than
two-thirds of its circulation outside this state during the past 12 months; or (2) a radio
or television program originating outside this state is received in this state.

¶ 3050.18 [Order of the Commissioner]

Sec. 31014. “Order” means a consent, authorization, approval, prohibition or
requirement applicable to a specific case issued by the commissioner.

¶ 3050.19 [Person]

Sec. 31015. “Person” means an individual, partnership, a joint
venture, an association, a joint stock company, a trust or an unincorporated
organization.

¶ 3050.20 [Publish]

Sec. 31016. “Publish” means publicly to issue or circulate by newspaper, mail,
radio or television, or otherwise to disseminate to the public.

¶ 3050.21 [Rule by the Commissioner]

Sec. 31017. “Rule” means any published regulation or standard of general
application issued by the commissioner.

¶ 3050.22 [Sales and Offers]

Sec. 31018. (a) “Sale” or “sell” includes every contract or agreement of sale of,
contract to sell, or disposition of, a franchise or interest in a franchise for value.
(b) “Offer” or “offer to sell” includes every attempt to offer to dispose of, or
solicitation of an offer to buy, a franchise or interest in a franchise for value.
(c) The terms defined in this section do not include the renewal or extension of an
existing franchise where there is no interruption in the operation of the franchised
business by the franchisee; provided, that, a material modification of an existing
franchise, whether upon renewal or otherwise, is a “sale” within the meaning of this
section.

¶ 3050.23 [State]

Sec. 31019. “State” means any state, territory, or possession of the United States,
the District of Columbia and Puerto Rico.

PART 2. REGULATION OF THE SALE OF FRANCHISES

Chapter 1. Exemptions from Registration

¶ 3050.24 [Rule of Commissioner]

Sec. 31100. There shall be exempted from any or all of the provisions of Chapter 2
(commencing with Section 31110) any other transaction which the commissioner by
rule exempts as not being comprehended within the purposes of this law and the
registration of which the commissioner finds is not necessary or appropriate in the
public interest or for the protection of investors.

¶ 3050.25 California
(D) The business experience of the franchisee, including the length of time the
franchisor (i) has conducted a business of the type to be operated by the franchisee,
(ii) has granted franchises for such business, and (iii) has granted franchises in other
lines of business.

(E) A copy of the typical franchise contract or agreement proposed for use or in
use in this state.

(F) A statement of the franchise fees charged, the proposed application of the
proceeds of such fees to the franchisee, and by which the amount of the fees is
determined if the fees are to be paid by the franchisee in a franchise.

(G) A statement describing any payments or fees other than franchise fees that
the franchisee or subfranchisor is required to pay to the franchisee, including royalties
and payments or fees which the franchisee collects in whole or in part on behalf of a
third party or parties.

(H) A statement of the conditions under which the franchise agreement may be
terminated or renewal refused, or repurchased at the option of the franchisee.

(I) A statement as to whether, by the terms of the franchise agreement or other
device or practice, the franchisee or subfranchisor is required to purchase from the
franchisor or his or her designee services, supplies, products, fixtures, or other goods
relating to the establishment or operation of the franchise business, together with a
description thereof.

(J) A statement as to whether, by the terms of the franchise agreement or other
device or practice, the franchisee is limited in the goods or services offered by him or
her to his or her customers.

(K) A statement of the terms and conditions of any financing arrangements when
offered directly or indirectly by the franchisee or his or her agent or affiliate.

(L) A statement of any past or present practice or any intent of the franchisee
to sell, assign, or discount to a third party any note, contract, or other obligation of
the franchisee or subfranchisor in whole or in part.

(M) If any statement of estimated or projected franchise earnings is used, a
statement of such estimation or projection and the data upon which it is based.

(N) A statement as to whether franchises or subfranchises receive an exclusive
area or territory.

(O) A copy of the financial statement or statements required by subdivision (a).

(P) A copy of the unconditioned guaranty, if applicable, required by paragraph (3)
of subdivision (b).

(2) In the case of a material modification of an existing franchise, the franchisee
discloses in writing to each franchisee information concerning the specific portions of
the franchise agreement proposed to be modified and such additional information as
may be required by rule or order of the commission. Any agreement by such
franchisee to such material modifications shall not be binding upon the franchisee if the
franchisee, within 10 business days after the receipt of such writing identifying the
material modification, notifies the franchisee in writing that the agreement to such
modification is rescinded. A writing identifying the material modification is received
when delivered to the franchisee. A written notice by the franchisee rescinding an
agreement to a material modification is effective when delivered to the franchisee or
when deposited in the mail, postage prepaid, and addressed to the franchisee in
accordance with any notice provisions in the franchise agreements, or when delivered or
mailed to the person designated in the franchise agreement for the receipt of notices on
behalf of the franchisee.

(d) Notice Filing. The franchisee filed with the commission a notice of
exemption and paid the fee required by subdivision (f) of Section 31500 prior to an
offer or sale of a franchise in this state during any calendar year in which one or more
franchises are sold, excluding any material modification.

California 3050.25 [Franchisee's Sale]

Sec. 31102. The offer or sale of a franchise by a franchisee for his own account or
the offer or sale of the entire franchise owned by a subfranchisor for his own
account, is exempted from the provisions of Section 31110 if the sale is not effectuated by
or through a franchisor. A sale is not effectuated by or through a franchisor merely because
a franchisee has a right to approve or disapprove a different franchisee.

California 3050.27 [Bank Credit Card Plans]

Sec. 31103. This division shall not be applicable to any transaction relating to a
bank credit card plan. "Bank credit card plan" means a credit card plan in which the
issuers of credit cards, as defined in subdivision (a) of Section 1747.02 of the Civil Code
are only: banks regulated by or under the supervision of the Federal Reserve Board, the
Federal Deposit Insurance Corporation, the Comptroller of the Currency of the United
States, or the Superintendent of Banks of this state; or, persons controlling these
banks, provided that the assets of such a bank or banks represent a majority of the assets on
a consolidated basis of any holding company system of which the card issuers may be a
party; or, persons controlled by these banks.

California 3050.28 [Petroleum Wholesalers]

Sec. 31104. There shall be exempted from the provisions of Chapter 2 (commencing
with Section 31110) of this part the offer and sale of a franchise if the franchisee:
(a) Is a petroleum corporation or distributor who is a wholesale distributor or
marketer of petroleum products; doing business continuously for the past five years and
who does not require an advance of funds in the nature of a fee or lease for such
franchise agreements; not engaged in the production or the refining of petroleum,
and
(b) Complies with the provisions of subdivisions (c) and (d) of Section 31110.
(c) For the purposes of subdivision (a) of this section:
(1) A "wholesale distributor" or "marketer" means any entity which, for
wholesale, purchases or receives through transfer, or otherwise obtains, by consignment
or otherwise, refined petroleum products and resells or otherwise transfers such
products, without substantially changing their form, to other purchasers.
(2) An "advance of funds" means (A) a fee or lessee for a franchise agreement,
and
(B) does not mean rent for the possession or use, or both, of premises or property,
the purchase of inventory for resale or supplies, utility deposits, and other consideration or
expenditures for the formation of operation, or both, of a wholesale distributor or
marketer entity.
Sec. 31110. On and after April 15, 1971, it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part or exempted under Chapter 1 (commencing with Section 31100) of this part.

Sec. 31111. (a) The application for registration of an offer shall be filed with the commissioner upon the Uniform Franchise Registration Application, as identified, modified, and supplemented by rule of the commissioner.

(b) An authorization for the commissioner to examine the registrant's financial records of the sale of the franchise pursuant to Section 7425 of the Government Code shall be filed with the application.

Sec. 31112. Any application or amendment under this law shall be signed and verified by the franchisor or by the subfranchisor. Such verification shall be in the same manner provided in the Code of Civil Procedure for the verification of pleadings.

Sec. 31113. If the commissioner finds that it is necessary and appropriate for the protection of prospective franchisees or subfranchisees because the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the commissioner may by rule or order require the escrow or imposition of franchise fees and other funds paid by the franchisor or subfranchisor until such obligations have been satisfied. At the option of the franchisor, the franchisor may furnish a surety bond as provided by rule of the commissioner.

Sec. 31114. The application for registration shall be accompanied by a proposed offering circular, which shall contain the material information set forth in the application for registration, as specified by rule of the commissioner, and such additional disclosures as the commissioner may require. The offering circular shall state in bold type of not less than 10-point type that registration does not constitute approval, recommendation, or endorsement by the commissioner.

Sec. 31115. The commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration if the commissioner finds:

(a) That there has been a failure to comply with any of the provisions of this law or the rules of the commissioner pertaining thereto.

(b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of the purchasers, or that, in the case of a franchise other than a subfranchise, a major inducement to prospective franchisees is fees or other compensation from participation in the sale of additional franchises.

(c) That the applicant has failed to comply with any rule or order of the commissioner issued pursuant to Section 31113.

(d) That any person identified in the application or any officer or director of the franchisor, whether or not identified in the application, meets one or more of the following conditions, and the involvement of this person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees:

(1) Has been convicted of a felony, or pleaded no contest to a felony charge, or held liable in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(2) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to, or revoking or suspending the registration of the person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities and Exchange Act of 1934) suspending or expelling the person from membership in the association or exchange.

(3) Is subject to any currently effective order or ruling of the Federal Trade Commission.

(4) Is subject to any currently effective injunctive or restrictive order relating to business activity as a result of an action brought by any public agency or department, including, without limitation, actions affecting a license as a real estate broker or salesperson.

Sec. 31116. (a) Except as provided in subdivision (b), if no stop order under Section 31115 is in effect under this law, registration of the offer of franchises automatically becomes effective at 12 o'clock noon, California time, of the 15th business day after the filing of the application for registration or the last amendment thereto, or at such earlier time as the commissioner determines.

(b) With respect to any application for registration or the last amendment thereto filed between January 1, 1971, and March 15, 1971, if no stop order under Section 31115 is in effect under this law, registration becomes effective on April 15, 1971, with respect to any application filed after March 15, 1971 and before May 15, 1971, if no stop order under Section 31115 is in effect under this law, registration becomes effective on June 1, 1971, or the 15th business day after the filing, whichever is the later, or at such earlier time as the commissioner determines.

Sec. 31117. Upon the entry of a stop order under Section 31115 the commissioner shall promptly notify the applicant that it has been entered and of the reasons therefor and that upon receipt of written request the master will be set down for hearing to commence within 15 business days after such receipt unless the applicant consents to a later date. If no hearing is requested within 30 days after receipt of the notice and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice and hearing in accordance with the provisions of Chapter 5 (commencing...
with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, in connection with which the commissioner shall have all of the powers granted thereunder, may modify or vacate the order or extend it until its final determination.

§ 3050.37 [Change of Stop Order]

Sec. 31118. The commissioner may vacate or modify a stop order if he finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

§ 3050.38 [Presentation to Prospective Franchisees]

Sec. 31119. It is unlawful to sell any franchise in this state which is subject to registration under this law without first providing to the prospective franchisees, at least 10 business days prior to the execution of the prospective franchisee of any binding franchise or other agreement, or at least 10 business days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular, together with a copy of all proposed agreements relating to the sale of the franchise.

§ 3050.39 [Duration]

Sec. 31120. A franchise offering shall be deemed duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.

§ 3050.40 [Renewal]

Sec. 31121. The registration may be renewed for additional periods of one year each, unless the commissioner by rule or order specifies a different period, by submitting to the commissioner a registration renewal statement no later than 15 business days prior to the expiration of the registration unless such period is waived by order of the commissioner. If a stop order is still in effect under this law, registration of the offer of the franchisee is renewed effective at 12 o'clock noon, California time, of the date on which the prior registration is due to expire, or at such earlier time as the commissioner determines.

§ 3050.41 [Form]

Sec. 31122. The registration renewal statement shall be in the form and content prescribed by the commissioner, and shall be accompanied by a certified copy of the offering circular. Each such registration renewal statement shall be accompanied by the fee prescribed in Part 5 (commencing with Section 31500) of this division.

§ 3050.42 [Changes]

Sec. 31123. A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed. The commissioner may by rule further define what shall be considered a material change for such purposes, and the circumstances under which a revised offering prospectus must accompany such application.

§ 3050.43 [Amendment Effective Date]

Sec. 31124. An amendment to an application filed after the effective date of the registration of the sale of franchises, if such amendment is approved by the commissioner, shall become effective on such date as the commissioner may determine, having due regard for the public interest and the protection of franchisees.

§ 3050.44 [Modification of Franchise]

Sec. 31125. (a) An application for registration of a material modification of an existing franchise or of an existing franchise without first delivering to the franchisee a written disclosure, in a form and containing such information as the commissioner may by rule or order require, identifying the proposed modification, either five business days prior to the execution of any binding agreement by the franchisee to such modification or containing a statement that the franchisee may, by written notice mailed or delivered to the franchisee or a specified agent of the franchisee within not less than five business days following the execution of such agreement, rescind such agreement to the material modification.


§ 3050.45 [Records]

Sec. 31150. Every franchisor or subfranchisor offering franchises for sale in this state shall at all times keep and maintain a complete set of books, records, and accounts of such sales.

§ 3050.46 [Verification of Applications]

Sec. 31151. The commissioner may accept and act upon the opinions, appraisements and reports of any engineers, appraisers, or other experts which may be presented by an applicant or any interested party, on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisements, and reports, the commissioner may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon and certified to him by engineers, appraisers or other experts selected by him.

§ 3050.47 [Reference to Other Filings]

Sec. 31152. Any document filed under this law or under the Corporate Securities Law of 1966 or a predecessor statute thereto may be incorporated by reference in a subsequent application filed under this law if it was filed within four years prior to the filing of such application, or is otherwise available in the files of the commissioner, to the extent that the document is currently accurate.

§ 3050.48 [Burden of Proving Exemption]

Sec. 31153. In any proceeding under this law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§ 3050.49 [Lack of Commissioner Finding]

Sec. 31154. (a) Neither (1) the fact that an application for registration under this law has been filed, nor (2) the fact that such registration has become effective constitutes a finding by the commissioner that any document filed under this law is true, complete or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the commissioner has passed in any way upon
Chapter 3. Unfair Practices

[¶ 3050.59] [Franchisee Associations]

Sec. 31220. It shall be a violation of this division for any franchisor, directly or indirectly, through any officer, agent or employee, to restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for any lawful purpose. Notwithstanding Section 31410, a violation of this section shall not constitute a crime.

PART 4. ENFORCEMENT

Chapter 1. Civil Liability

[¶ 3050.60] [Exemption Conditions, Registration, Filings, Disclosures]

Sec. 31300. Any person who offers or sells, a franchise in violation of Section 31101, 31110, 31119, 31200, or 31202, shall be liable to the franchisee or subfranchisor, who may sue for damages caused thereby, and if such violation is willful, the franchisee may also sue for rescission, unless, in the case of a violation of Section 31200 or 31202, the defendant proves that the plaintiff knew the facts concerning the untruth or omission, or that the defendant exercised reasonable care and did not know, or, if he had exercised reasonable care, would not have known, of the untruth or omission.

[¶ 3050.61] [Unfilled Communications]

Sec. 31301. Any person who violates Section 31201 shall be liable to any person (not knowing or having cause to believe that such statement was false or misleading) who, while relying upon such statement shall have purchased a franchise, for damages, unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know, (or if he had exercised reasonable care would not have known) of the untruth or omission.

[¶ 3050.62] [Persons Liable]

Sec. 31302. Every person who directly or indirectly controls a person liable under Section 31303 or 31301, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions as an employee of a person so liable who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the other person who is so liable had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of which the liability is alleged to exist.

[¶ 3050.63] [Association Rule]

Sec. 31302.5. (a) Any person who violates Section 31220 may be sued in the superior court in the county in which the defendant resides or where a franchise affected by the violation does business, for temporary and permanent injunctive relief and for damages, if any, and the costs of suit, including reasonable attorney’s fees. A plaintiff shall not be required to allege or prove that actual damages have been suffered in order to obtain injunctive relief.

(b) No action shall be maintained to enforce any liability created under Section 31220 unless before the expiration of two years after the violation upon which it is based or the expiration of one year after the discovery by the plaintiff of the facts constituting such violation, whichever occurs first.
of rules and forms hereunder, and (2) publish information concerning the violation of this law or any rule or order hereunder:

(b) For the purpose of any investigation or proceeding under this law, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(d) No person is excused from testifying or giving evidence or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, or in any proceeding to which the commissioner is a party, to testify or to give evidence touching the matter under investigation or in question.

[§ 3050.70] [Registration Noncompliance]

Sec. 31402. If in the opinion of the commissioner the offer of any franchise is subject to registration under this law and it is being, or has been, offered for sale without the offer first being registered, the commissioner may order the franchisor or offeror of that franchise to desist and refrain from the further offer or sale of that franchise unless and until the offer has been duly registered under this law. If, after such an order has been made, a request for a hearing is filed in writing within one year from the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with the provisions of Section 3 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless that hearing is commenced within 15 business days after the request is made (or the person affected consents to a later date), the order shall be deemed rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 31501.

[§ 3050.71] [Exemption Noncompliance]

Sec. 31403. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this law is being or has been offered for sale without complying with Section 31101 or 31201, the commissioner may order the franchisor or offeror of such franchise to desist and refrain from the further offer or sale of such franchise unless and until such offer is made in compliance with this law. If, after such

an order has been made, a request for a hearing is filed in writing within one year from the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with Section 3 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the commissioner shall have all of the powers granted under that chapter. Unless that hearing is commenced within 15 business days after the request is made, or the person affected consents to a later date, the order shall be deemed rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 31501.

[§ 3050.72] [Criminal Action]

Sec. 31404. The commissioner may refer evidence that is available concerning any violation of this law or of any rule or order hereunder to the district attorney of the county in which the violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings under this law. Upon request of the district attorney, the commissioner and the counsel, deputies, or assistants of the commissioner may assist the district attorney in presenting the law or facts at the trial.

[§ 3050.725] [Civil Penalties; Limitation on Actions]

Sec. 31405. (a) Any person who violates any provision of this law, or who violates any rule or order made under this law, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this chapter, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

Chapter 3. Crimes

[§ 3050.73] [Willful Violations—Penalties]

Sec. 31410. Any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

[§ 3050.74] [Fraud—Penalties]

Sec. 31411. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise shall upon conviction be fined not more than
ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment:

§ 3050.75 [Other Criminal Statutes]
Sec. 31412. Nothing in this law limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Chapter 4. Service of Process

§ 3050.76 [Service on Commissioner]
Sec. 31420. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this law or any rule or order hereunder, whether or not he has filed a consent to service of process under Section 31155, and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which grows out of that conduct and which is brought under this law or any rule or order hereunder, with the same force and validity as if served on him personally.

Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (a) the plaintiff, or the commissioner, or the commissioner’s successor in office, shall personally serve the plaintiff with a copy of the process, or (b) the plaintiff’s affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Part 5. Administration

§ 3050.77 [Fees]
Sec. 31300. (a) The commissioner shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof, and shall be credited to the General Fund.

(b) The fee for filing an application for registration of the offer or sale of franchises under Section 31111 is one hundred sixty-five dollars ($165).

(c) The fee for filing an application for renewal of a registration under Section 31121 is four hundred fifty dollars ($450).

(d) The fee for filing an amendment to the application filed under Section 31111 or 31121 after the effective date of the registration of the offer of franchises is eighty dollars ($80).

(e) The fee for filing an application for material modification under Section 31125 is eighty dollars ($80), whether or not it accompanies an application under Section 31111 or 31121.

(f) The fee for filing the initial notice of exemption under Section 31101 is one hundred fifty dollars ($150) and the fee for filing each subsequent notice of exemption under these provisions is one hundred fifty dollars ($150).

(g) The fee for filing an application for approval of a written notice of violation under Section 31303 or 31304 is six hundred seventy-five dollars ($675).

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(b) Copies on microfilm or in other form which may be retained by the commissioner in his discretion of any records destroyed under this section shall be accepted for all purposes as equivalent to the original when certified by the commissioner.

PART 6. GENERAL PROVISIONS

[§ 3050.84] [Interpretive Opinions]

Sec. 31510. The commissioner in his discretion may honor requests from interested persons for interpretive opinions.

[§ 3050.85] [Applicability of Liability Provisions]

Sec. 31511. No provision of this law imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, order, or any written interpretive opinion of the commissioner, or any opinion of the Attorney General, notwithstanding that the rule, form, order, or written interpretive opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

[§ 3050.86] [Waiver of Compliance]

Sec. 31512. Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law or any rule or order hereunder is void.

[§ 3050.87] [Hearings]

Sec. 31513. Whenever a person is entitled under this law to a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, a formal hearing before the Department of Corporations may be substituted with the consent of such person and of the commissioner for such hearing before an independent hearing officer; and in that case after such hearing before the Department of Corporations such person shall not be entitled to any further administrative remedy.

[§ 3050.88] [Saving Clause]

Sec. 31514. If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this law which can be given effect without the invalid provision or application, and to this end the provisions of this law are declared to be severable.

[§ 3050.89] [Validity of Prior Law]

Sec. 31515. Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this law.

[§ 3050.90] [Real Estate Law]

Sec. 31516. Nothing in this law is intended to preclude the applicability of the Real Estate Law, Part 1 (commencing with Section 10000), Division 4 of the Business and Professions Code, to any sale or lease of real property.
UNITED STATES OF AMERICA
STATE OF NEW YORK:

Franchises Law (*)

4. A "franchisee" is a person to whom a franchise is granted.

5. A "franchisor" is a person who grants a franchise.

6. "Area franchise" means a contract for agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for consideration given in whole or in part for such right, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor; unless specifically stated otherwise, "franchise" includes "area franchise".

7. "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agree to pay directly or indirectly for the right to enter into a business under a franchise agreement or otherwise sell, resell or distribute goods, services, or franchises under such an agreement, including, but not limited to, any such payment for goods or services. The following are not the payment of a franchise fee:

(a) The purchase or agreement to purchase goods at a bona fide wholesale price;

(b) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card;

(c) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services;

(d) The purchase or lease, at fair market value, of real property or agreement to so purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement;

(e) The payment of a fee which on an annual basis does not exceed five hundred dollars where the payor receives sales materials of an equivalent or greater value than his payment;

(f) The purchase of sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(g) A lease, license or other agreement by a retailer permitting the lessee, licensee or other party to offer, sell or distribute goods or services on or about the premises occupied by said retailer.

8. "Franchise sales agent" means a person who directly or indirectly engages in the offer or sale of any franchise on behalf of another; franchising, subfranchising, and their employees are not to be considered franchise sales agents.

9. "Franchise salesman" means each and every person employed by a franchisor or franchise sales agent for the purpose of representing such franchisor or franchise sales agent in the offer or sale of any franchise.

10. "Fraud," "fraudulent practice," and "deceit" are not limited to common law fraud or deceit, and include:

(a) Any deception, concealment, suppression, device or artifice employed by a franchisor, franchise sales agent, subfranchisor or franchise salesman to obtain any money, promissory note, commitment or property by any false or fraudulent pretense, representation or promise;

(b) Any material misrepresentation in any registered prospectus filed under this article; or

(c) The omission of any material fact in any registered prospectus filed under this article.
11. "Offer" or "offer to sell" includes any attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value. The terms "offer" and "offer to sell" do not include the renewal or extension of an existing franchise when there is no interruption in the operation of the franchised business by the franchisee.

12. (a) An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is, or will be, operated in this state.

(b) An offer to sell is made in this state when the offer either originated in this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror from this state.

(c) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular and paid circulation which has had more than two-thirds of its circulation outside this state during the past twelve months, or a radio or television program originating outside this state is received in this state.

13. "Person" means an individual, corporation, partnership, joint venture, association, company, trust, unincorporated organization or other entity, and shall include any other person that has a substantial interest in or effectively controls such person, as well as the individual officers, directors, general partners, trustees or other individuals in control of the activities of each such person.

14. "Publish" means publicly to issue or circulate by newspaper, mail, radio or television, or otherwise to disseminate to the public.

15. "Sale" or "sell" includes every contract or agreement of sale, contract to sell or disposition of, a franchise or interest in a franchise for value.

16. "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

17. "Subfranchisor" means a franchisee who has the right to sell or subdivide his franchise to another or others, known as "subfranchisees," while having and retaining all or part of the franchisee's interest in or rights under franchise agreements with such subfranchisees. Under this article and in this situation, the subfranchisee shall be considered the franchisee, and both the principal franchisor and the subfranchisor shall be considered the franchisor.

18. In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

¶ 3320.03  Scope

Sec. 682. The disclosure requirements mandated by this article apply to all written or oral arrangements between a franchisor and franchisee in connection with the offer or sale of a franchise, including, but not limited to, the franchise offering, the franchise agreement, sales of goods or services, leases and mortgages of real or personal property, promises to pay, security interests, pledges, insurance, advertising, construction or installation contracts, servicing contracts, and all other arrangements in which the franchisor or subfranchisor has an interest.

¶ 3320.04  Disclosure Requirements

Sec. 683. 1. It shall be unlawful and prohibited for any person to offer to sell or sell in this state any franchise unless and until there shall have been registered with the department of law, prior to such offer or sale, a written statement to be known as an "offering prospectus" concerning the contemplated offer or sale, which shall contain the information and representations set forth in and required by this section. Any uniform disclosure document approved for use by any agency of the federal...
government or sister state may be utilized and sought to be registered, provided that
said uniform disclosure documents comply with the provisions of this article.

2. The offering prospectus sought to be registered with the department of law shall
be filed with the department, accompanied by an application for registration on
forms prescribed by the department, and shall contain the following:

(a) The name of the franchisor, the name under which the franchisor is doing or
intends to do business, and the name of any parent or affiliated company that will
engage in business transactions with franchisees.

(b) The franchisor's principal business address and the name and address of its
agent in this state authorized to receive process.

(c) The business form of the franchisor, whether corporate, partnership, or
otherwise.

(d) Such information concerning the identity and business experience of persons
affiliated with the franchisor as the department of law may by rule prescribe.

(e) A statement as to whether the franchisor and its principals, officers, partners,
directors, or any other person identified in the application for registration:

(1) Has been convicted of a felony, or pleaded nolo contendere to a felony charge,
or held liable or enjoined in a civil action by a final judgment if such civil action
involved fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Is subject to any currently effective order of the United States securities and
exchange commission or the securities or the securities administrator of any state
regarding the registration of or barring, revoking or suspending the registration of such person as a
securities broker or dealer, or investment advisor, or securities agent or registered
representative, or is subject to any currently effective order of any national securities
association or national securities exchange, as defined in the Securities and Exchange
Act of 1934, suspending or expelling such person from membership in such association or
exchange.

(3) Is subject to a currently effective order or ruling of the federal trade
commission.

(4) Is subject to any currently effective injunctive or restrictive order relating to
business activity as a result of an action brought by a public agency or department,
including, without limitation, actions affecting a license as a real estate broker or
salesman.

Such statement shall set forth the court, date of conviction or judgment, any
penalty imposed or damages assessed, or the date, nature and issuer of such order.

(f) The length of time the franchisor: (1) has conducted a business of the type to
be operated by the franchisees, (2) has granted franchises for such business, and (3)
has granted franchises in other lines of business.

(g) The most recent financial statement of the franchisor, together with a
statement of any material changes in the financial condition of the franchisor from the
date thereof. The department of law may by rule or order prescribe (1) the form and
content of financial statements required under this article, (2) the circumstances under
which consolidated financial statements shall be required, and (3) the circumstances
under which financial statements shall be audited by independent certified public
accountants.

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(h) A statement of the franchise fee charged, the proposed application of the
proceeds of such fee by the franchisor, and the formula by which the amount of the fee
is determined if the fee is not uniform and the same in all cases.

(i) A statement describing any payments or fees other than franchise fees that the
franchisor or subfranchisor is required to pay to the franchisor, including royalties and
payments of fees which the franchisor collects in whole or in part on behalf of a third
party or parties.

(j) A statement of the conditions under which the franchise agreement may be
terminated or renewed refused or repurchased at the option of the franchisor.

(k) A statement as to whether, by the terms of the franchise agreement or by
other device or practice, the franchise or subfranchise is required to purchase from
the franchisor or his designee supplies, supplies, products, fixtures or other goods
relating to the establishment or operation of the franchise business, together with a
description and the terms and conditions thereof.

(l) A statement as to whether, by the terms of the franchise agreement or other
device or practice, the franchise is limited in the goods or services offered by him to
his customers.

(m) A statement of the terms and conditions of any financing arrangements when
offered directly or indirectly by the franchisor or his agent or affiliate.

(n) A statement of any past or present practice or of any intent of the franchisor
to sell, assign, or discount to a third party any note, contract, or other obligation of
the franchise or subfranchisor in whole or in part.

(o) Any representation of estimated or projected franchisee earnings or income,
together with a statement setting forth the data, methods and computations upon
which such estimate or projection is based.

(p) A statement of any compensation or other benefit given or promised to a
public figure arising, in whole or in part, from (1) the use of the public figure in the
name or symbol of the franchise, or (2) the endorsement or recommendation of the
franchise by the public figure in advertisements.

(q) A statement of the total number and location of franchises presently operating
and proposed to be sold.

(r) A statement as to whether franchisees or subfranchisees receive an exclusive
area or territory.

(s) A representation that the registered prospectus does not knowingly omit any
material fact or contain any untrue statement of a material fact.

(t) Other information which the franchisor may desire to present.

(u) Other information or such additional disclosures related to the offer or sale of
the franchise as the department of law may prescribe by rules or regulations
promulgated under section six hundred ninety-four of this article as will afford
prospective franchisees an adequate basis upon which to found their judgment.

(v) When the person filing the application for registration of an offering
prospectus is a subfranchisor, the prospectus shall also include the same information
concerning the subfranchisor as is required from the franchisor pursuant to this article.
3. Applications for registration of an offering prospectus shall be signed and verified by the franchisor or by the subfranchisor in the same manner provided in the civil practice law and rules for the verification of pleadings.

4. Every application by a franchisor for registration of an offering prospectus shall be accompanied by a copy of the typical franchise contract or agreement proposed for use or in use in this state, including all amendments, deletions, variations, and supplements thereto.

5. Every application by a franchisor for registration of an offering prospectus shall be accompanied by such materials, data, records, or other information as the department may by rule require in connection with its consideration of the application.

6. The offering prospectus shall recite in bold type not less than twelve-point that registration does not constitute approval, recommendation, or endorsement by the department of law. The department may require that the applicant set forth in its prospectus potentially adverse information in designated positions and in a type size acceptable to the department.

7. Unless otherwise provided by regulation issued by the department, applications to register the offering prospectus required by subdivision one of this section shall be filed with the department of law at its office in the city of New York prior to the offering of the franchise involved. No offer, advertisement, or sale of such a franchise shall be made in or from the state of New York until the department has issued to the franchisor or other offerer a letter stating that the offering prospectus sought to be registered has been accepted for filing and filed. The department, not later than thirty days after such filing, shall issue such a letter or, in the alternative, a notification in writing indicating the respect in which the application for registration or the proposed offering prospectus itself is deficient or otherwise fails to make adequate disclosure. A refusal to register an offering prospectus, and notification thereof, shall be forthcoming if the department finds:

(a) That there has been a failure to comply with any of the provisions of this article or the rules of the department pertaining thereto.

(b) That the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud of, prospective franchisees.

(c) That the application for registration of the offering prospectus or the proposed offering prospectus itself is incomplete in any material respect or contains any statement which is, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(d) That the franchisor's method of business includes or would include activities which are illegal where performed.

(e) That a person identified in the application has been convicted of an offense described in subparagraph one of paragraph (c) of subdivision two of this section, is subject to an administrative order, or has had a civil judgment entered against him involving the illegal offering of franchises or securities, and the department determines that the involvement of the person in the sale or management of the franchise creates an unreasonable risk to prospective franchisees.

(f) That the franchising offering sought to be registered is the subject of a permanent or temporary injunction entered under any federal or state act applicable to the offering.

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(g) That the franchisor has failed to pay the proper fee.

8. A franchise which is subject to registration under this article shall not be sold without first providing to the prospective franchisee, a copy of the offering prospectus, together with a copy of all proposed agreements relating to the sale of the franchise at the earlier of (a) the first personal meeting between the franchisor or its agent and the prospective franchisee, (b) at least ten business days prior to the execution of a binding franchise or other agreement, or (c) at least ten days prior to the receipt of any consideration in connection with the sale or proposed sale of a franchise. For the purposes of this chapter, the words: (i) "first personal meeting" shall mean the first face to face meeting between a franchisor or franchisor's agent or any representative or employee thereof and a prospective franchisee which is held for the purpose of discussing the sale or possible sale of a franchise; (ii) "other agreement" shall mean an agreement imposing a binding legal obligation on such prospective franchisee, about which the franchisor, franchise sales agent, or any agent, representative or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise; and, (iii) "receipt of any consideration" shall mean the payment by a prospective franchisee, about which the franchisor, franchise sales agent, or any agent, representative or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.

9. (a) A franchisor shall promptly notify the department in writing, by an application to amend the registered offering prospectus, of any material change in the information contained in the prospectus as originally submitted or amended. The department may further define by rule what is a material change for the purpose and circumstances under which an amendment of a registered prospectus shall be mandatory.

(b) An amendment to a registered offering prospectus filed after the effective date of the registration of the original offering prospectus, if the amendment is approved by the department, shall become effective on such date the department may determine, having due regard for the public interest and the protection of franchisees.

10. (a) Neither the fact that an application for registration of an offering prospectus under this article has been filed, nor the fact that such registration has become effective, constitutes a finding by the department that any document filed under this article, including the registered offering prospectus, is true, complete or not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the department has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, franchise, or franchising.

(b) It is unlawful to make or cause to be made to any prospective purchaser or offeror a representation inconsistent with paragraph (a) of this subdivision.

11. No offer of a franchise shall be made except by the offering prospectus registered with the department of law pursuant to this section. Any advertisement in whatever form, including periodicals or on radio or television, shall contain a statement that no offer of such franchise is made except by such offering prospectus, and all such advertisements shall be consistent with the representations and information required to be set forth in such prospectus as hereinbefore in this section provided.

12. In all literature employed in the offer and sale of a franchise and in all advertising in connection therewith, there shall be contained, in easily readable print on the face thereof, a statement that the filing of an application for registration of an
offering prospectus or the acceptance and filing thereof by the department of law as required by this section does not constitute approval of the offering or the sale of such franchise by the department of law or the attorney general of this state.

13. A person shall not offer to sell or sell a franchise in this state on behalf of a franchisor or subfranchisor, except in transactions exempted under this article, unless the franchisor or subfranchisor and the person file a franchise agent's application with the department of law on the form prescribed by the department, and the department issues an order of registration for such person. The department may prescribe rules relating to the qualifications, conduct, and denial, suspension, or revocation or registrations of franchise sales agents.

14. (a) Every franchisor or subfranchisor offering franchises for sale in this state shall keep and maintain a complete set of books and records and shall keep and maintain accounts of franchise sales in accordance with generally accepted accounting principles, and shall make and file with the department such reports as the department may by rule prescribe, including an annual report setting forth the franchises sold by it and the proceeds derived therefrom, and shall furnish to the department such materials relating to the offer or sale of the franchise as it may by rule require. All such records are subject at any time to reasonable periodic, special, or other examinations by a representative of the department, within or without this state, as the department deems necessary or appropriate in the public interest or for the protection of investors.

(b) The department may consider the opinions, appraisals, and reports of engineers, appraisers, or other experts which may be presented by an applicant or any interested party, on any question of fact concerning or affecting the franchises proposed to be offered and sold. In lieu of, or in addition to, such opinions, appraisals, and reports, the department may have any or all matters concerning or affecting such franchises investigated, appraised, passed upon, and certified to it by engineers, appraisers, or other experts selected by it. The experts' cost of travel and lodging relating to such investigation, and the costs of experts' fees, shall be borne by the applicant and shall be paid before effectiveness of its registration, provided that the applicant shall have agreed in writing with the department to bear such costs and fees, or shall have had the opportunity to establish that no good cause exists for such investigation or expenditure, or shall have himself furnished the desired information to the department.

(c) If information that the department deems necessary relating to the franchise is requested by the department and is not furnished by the applicant, or the department deems information submitted to be unreliable or substantially incomplete, the department may investigate any or all matters concerning or affecting such franchise. The costs of all travel and lodging expenses relating to investigations outside of this state shall be borne by the applicant and shall be paid before effectiveness of its registration.

15. The department may by rule require the filing and approval prior to use of any pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed to or intended for distribution to prospective franchisees.

[¶ 3320.05] Exemptions

Sec. 684. 1. The department of law is hereby authorized and empowered to exempt by rule or regulation any person, franchise, or transaction from any provision
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of section six hundred eighty-three of this article or from any rule or regulation
thereunder if the department finds that such action is not inconsistent with the public
interest or the protection of prospective franchisees.

2. The department of law may, upon application and within its discretion, exempt
from the registration requirements of section six hundred eighty-three of this article
the offer and sale of a franchise if:

(a) The franchisor has a net worth on a consolidated basis, according to its most
recently audited financial statement, of not less than five million dollars; or the
franchisor has a net worth, according to its most recently audited financial statement,
of not less than one million dollars and is at least eighty percent owned by a
corporation which has a net worth on a consolidated basis, according to its most
recently audited financial statement, of not less than five million dollars; and

(b) The franchisor files with the department of law an application for an
exemption, on forms and in the manner prescribed by the department, and a consent to
service of process on the form required by the department; and

(c) The franchisor discloses in writing to each prospective franchisee, at least
seven days prior to the execution by the prospective franchisee of any binding
franchise or other agreement, or at least seven days prior to the receipt of any
consideration, whichever occurs first, the following information:

(1) The name of the franchisor, the name under which the franchisor is doing or
intends to do business, and the name of any parent or affiliated company that will
engage in business transaction with the franchisee.

(2) The franchisor's principal business address and the name and address of its
agent in this state authorized to receive process.

(3) The business form of the franchisor, whether corporate, partnership, or
otherwise.

(4) Such information concerning the identity and business experience of persons
affiliated with the franchisor as the department may by rule prescribe.

(5) The business experience of the franchisor, including the length of time the
franchisor (i) has conducted a business of the type to be operated by franchisees, (ii)
has granted franchises for such business, and (iii) has granted franchises in other lines
of business.

(6) A copy of the typical franchise contract or agreement proposed for use and in
use in this state, including all amendments, deletions, variations, and supplements
thereto.

(7) A statement of the franchise fee charged, the proposed application of the
proceeds of such fee by the franchisor, and the formula by which the amount of the fee
is determined if the fee is not uniform and the same in all cases.

(8) A statement describing any payments or fees other than franchise fees that
the franchisor is required to pay to the franchisor, including royalties and payments or
fees which the franchisor collects in whole or in part on behalf of a third party or
parties.

(9) A statement of the conditions under which the franchise agreement may be
terminated or renewal refused, or repurchased at the option of the franchisor.

(10) A statement as to whether, by the terms of the agreement or by other device
or practice, the franchisee is required to purchase from the franchisor or his designee
services, supplies, products, fixtures or other goods relating to the establishment or
operation of the franchise business, together with a description and the terms and
conditions thereof.

(11) A statement as to whether, by the terms of the franchise agreement or by
other device or practice, the franchisee is limited in the goods or services offered by
him to his customers.

(12) A statement of the terms and conditions of any financing arrangements when
offered directly or indirectly by the franchisor or his agent or affiliate.
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13. A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part.

14. If any statement of estimated or projected franchisee earnings or income is used, a statement of such estimate or projection and the data, methods and computations upon which such estimate or projection is based.

15. A statement as to whether franchisers receive an exclusive area or territory.

16. Other information related to the offer and sale of the franchise as the department of law may reasonably require.

Applications for exemptions shall be signed and verified by the franchisor in the same manner provided in the civil practice law and rules for the verification of pleadings, and shall be filed with the department of law at its office in the city of New York.

3. There shall be exempted from the registration provisions of section six hundred eighty-three of this article the offer and sale of a franchise if:

(a) (i) The franchisor has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than fifteen million dollars; or the franchisor has a net worth, according to its most recent audited financial statement, of not less than three million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than fifteen million dollars; and

(ii) The franchisor discloses in writing to each prospective franchiser, at least seven days prior to the execution by the prospective franchiser of any binding franchisee or other agreement, or at least seven days prior to the receipt of any consideration, whichever occurs first, such information as is required to be disclosed under subparagraph two of paragraph (c) of subdivision two of this section.

(b) The offer or sale is to a bank, savings institution, trust company, insurance company, investment company, or other financial institution, association, or institutional buyer, or to a broker-dealer, where the purchaser is acting for itself or in some fiduciary capacity.

(c) The transaction is pursuant to an offer directed by the franchisor to not more than two persons, other than persons specified in this subdivision, if the franchisor does not grant the franchise the right to offer franchises to others, a commission or other remuneration is not paid directly or indirectly for soliciting a prospective franchiser in this state, and the franchisor is domiciled in this state or has filed with the department of law its consent to service of process on the form prescribed by the department.

(d) The offer or sale of a franchiser of a franchise to one of his existing franchisers. This exemption shall apply where:

(i) The existing franchisee has actively operated a franchise for the eighteen months preceding the offer; and

(ii) The existing franchisee purchases the franchise in order to operate the business and not for the purpose of resale; and

(iii) The franchisee reports the sale to the department of law on the form required by the department within fifteen days of the sale.

Escrows and Impoundments

Sec. 685. If the department of law finds that the applicant for registration has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the department may require the escrow or impoundment of franchise fees and other funds paid by the franchiser or subfranchiser until the obligations are fulfilled, or, at the option of the franchiser, the furnishing of a surety bond as provided by rule of the department of law if it finds that the requirement is necessary and appropriate to protect prospective franchisers or subfranchisers.

Designation of Secretary of State as Agent for Service of Process; Service of Process

Sec. 685. Any person who shall offer to sell or sell a franchise in this state as a franchiser, subfranchiser or franchise sales agent shall be deemed to have irrevocably appointed the secretary of state as his or its agent upon whom may be served any summons, complaint, subpoena, subpoena duces tecum, notice, order or other process directed to such person, or any partner, principal, officer, salesman or director thereof, or his or its successor, administrator or executor, in any action, investigation, or proceeding which arises under this article or a rule hereunder, with the same force and validity as if served personally on such person. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him or a
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deputy secretary of state a copy thereof at the office of the department of state, and such service shall be sufficient provided that notice of such service and a copy of such process are sent forthwith by the department to each person, by registered or certified mail with return receipt requested, to his address as set forth in the application for registration of his offering prospectus or in the registered offering prospectus itself filed with the department of law pursuant to this article, or in default of the filing of such application or prospectus, at the last address known to the department. Service of such process shall be complete upon receipt by the department of a return receipt purporting to be signed by the addressee or a person qualified to receive his or its registered or certified mail, in accordance with the rules and customs of the post office department, or, if acceptance was refused or unclaimed by the addressee or his or its agent, or if the addressee moved without leaving a forwarding address, upon return to the department of the original envelope bearing a notation by the postal authorities that receipt thereof was refused or that such mail was otherwise undeliverable.

¶ 3320.08 Fraudulent and Unlawful Practices

Sec. 687. 1. It is unlawful for any person to make any untrue statement of a material fact in any application, notice, statement, prospectus or report filed with the department under this article, or willfully to omit to state in any such application, notice, statement, prospectus or report any material fact which is required to be stated therein, or to fail to notify the department of any material change as required by this article.

2. It is unlawful for a person, in connection with the offer, sale or purchase of any franchise, to directly or indirectly:

(a) Employ any device, scheme, or artifice to defraud.

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. It is an affirmative defense to one accused of omitting to state such a material fact that said omission was not an intentional act.

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

3. It is unlawful for any person to violate any provision of this article, or any rule of the department promulgated hereunder, or any condition to the effectiveness of the registration of an offering prospectus or of an exemption from the registration provisions of this article.

4. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law, or rule promulgated hereunder, shall be void.

5. It is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability imposed by this article.

¶ 3320.09 Investigations

Sec. 688. 1. Whenever it shall appear to the department of law, either upon complaint or otherwise, that any person has violated any provision of this article, the department:

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(a) may make such investigations within or outside of this state as it deems necessary to determine whether any person has violated any provision of this article or any rule or regulation hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder, and

(b) may require or permit any person to file a statement in writing, under oath or otherwise as the attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

2. The costs of all out of state travel and lodging expenses relating to investigations by the department of persons who appear to the department to have violated any provision of this article shall be borne by such persons upon a judicial determination that said persons have committed unlawful and fraudulent acts or practices, as defined in this article, or so much thereof as is deemed proper by the court.

3. The department is empowered to subpoena witnesses, compel their attendance, examine them under oath before it or a court of record or a judge or justice thereof, and require the production of any books or papers which it deems relevant or material to the inquiry. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the department under this article.

4. (a) No person is excused from attending and testifying or from producing a document or record, in obedience to the subpoena of the department or in a proceeding instituted by the department, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but a person may not be prosecuted or subjected to a penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. The department shall compel such testimony or the production of such evidence only after notifying and consulting with any appropriate local prosecuting authorities.

(b) No person shall be excused from attending such inquiry pursuant to the mandate of a subpoena, or from producing a paper or book, or from being examined or required to answer a question, on the ground of failure of tender or payment of a witness fee and/or mileage, unless at the time of such appearance or production, as the case may be, such witness makes demand for such payment as a condition precedent to the offering of testimony or production required by the subpoena and unless such payment is not thereupon made. The provision for payment of witness fees and/or mileage shall not apply to any officers, director, salesman or other person in the employ of any person whose conduct or practice is being investigated.

5. If a person subpoenaed to attend such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce and permit reasonable examination of a book or paper when ordered so to do by the officer conducting such inquiry, or if a person fails to perform any act required hereunder to be performed, he shall be guilty of a class A misdemeanor punishable as provided in section six hundred ninety of this article.

6. It shall be the duty of all public officers, their deputies, assistants, subordinates, clerks or employees and all other persons to render and furnish to the

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department or other designated officer when requested all information and assistance in their possession or within their power with respect to all matters being investigated by the department under this article. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than his attorney or the department the name of any witness examined or any other information obtained upon such inquiry except as directed by the department shall be guilty of a class A misdemeanor punishable as provided in section six hundred ninety of this article.

§ 3320.10 Action by the Department of Law
Sec. 689. 1. Whenever the department shall believe from evidence satisfactory to it that any person has engaged in or is engaged in or is about to engage in any practice or transaction heretofore referred to as and declared to be an unlawful or a fraudulent practice, it may bring an action in the name and on behalf of the people of the state of New York against such person and any other person theretofore concerned in or in any way participating in such unlawful or fraudulent practice, to enjoin such person or persons from continuing such unlawful and fraudulent practice or engaging therein or doing any act or acts in furtherance thereof or, if the department should believe from such evidence that such person actually has or is engaged in any such unlawful or fraudulent practice, it may include in such action an application to enjoin permanently such person and such other person as may have been or may be concerned with or in any way participating in such unlawful or fraudulent practice, from selling or offering for sale within or from this state as franchisor, franchisor sales agent, franchisor salesman, or a principal thereof, any franchise offered or to be offered or sold, or from continuing any such practice. In said action an order or a judgment may be entered awarding the relief applied for or so much thereof as the court may deem proper. Upon a showing by the department in its application for a permanent injunction that the defendant named in the action or an officer thereof has refused to be sworn or to be examined or to answer a material question or to produce a book or paper relevant to the inquiry when duly ordered to do so by the officer or judge duly conducting an inquiry into the subject matter forming the basis of the application for such injunction, such refusal shall be prima facie proof that such defendant is or has engaged in an unlawful or fraudulent practice as set forth in such application and a permanent injunction may issue from the Supreme Court without further showing by the department. In an action brought under section two of this section the court may award to the plaintiff a sum not in excess of ten thousand dollars for each defendant as an additional allowance.

2. Upon a showing by the department in an application for an injunction, that any person engaged in the offer or sale of a franchise in this state has ever been convicted by a court of competent jurisdiction in any state or county of any felony or of any other criminal offense by any such court, whether or not constituting a felony, involving franchises, securities or subdivided land, the Supreme Court after a hearing may issue a permanent injunction awarding the relief applied for, or so much thereof as the court may deem proper, against such person shown to have been so convicted, in the form and manner provided for in subsection one of this section in the case of one who actually has or is engaged in any unlawful or fraudulent practice.

3. If a franchise is offered or sold within the state of New York by a non-resident and such non-resident person has not filed pursuant to laws heretofore or hereafter existing the designation of a person upon whom process against him or it may be served or the designation of the secretary of state as such person, pursuant to section thirteen hundred four of the business corporation law or other laws heretofore or hereafter existing, or in lieu thereof, an instrument in writing duly acknowledged and filed in the office of the secretary of state designating the secretary of state as the person upon whom may be served any subpoena, subpoenas duces tecum or other process directed to such non-resident person and issued in any investigation, examination or proceeding pending or about to be instituted and pursuant to the provisions of this article, the department may serve a notice upon such non-resident person by mailing the same in a securely sealed postage wrapper addressed to such non-resident person at its or his last known place of business or residence, and may in such notice require that such non-resident person furnish a written statement under oath, as required in said notice, giving the information therein specified relating to the franchise offered, to be offered or sold in the state of New York by such non-resident person or, in the alternative, that such non-resident person shall appear within a reasonable time from the date of mailing such notice at a designated place within this state for examination and shall produce at the time and place of such examination such books and papers of such non-resident person as may be designated in such notice.

If such non-resident person shall fail to appear pursuant thereto or to produce the books and papers required thereby to be produced, or shall refuse to submit to examination or to answer any proper question, the proof of such failure or refusal shall constitute prima facie evidence that the offer or sale of a franchise by such non-resident person constitutes a fraudulent practice and may in the discretion of the court be treated as a sufficient basis for a permanent injunction against the continuance of such fraudulent practice.

4. In any action brought by the department as provided in this article, the court at any stage of the proceedings may appoint a receiver of any and all property derived by the defendant or defendants or any of them by means of any such unlawful or fraudulent practice, including also all property with which such property has been commingled if such property cannot be identified in kind because of such commingling, together with any or all books of account and papers relating to the same. The judgment entered in such action may provide that such receiver shall take title to any or all such property and books of account and papers relating to the same and liquidate such property or any part thereof for the benefit of all persons involved in the said action and establishing an interest in such property. The judgment may also provide that all such property, the title to or interest in which has not been established in such action by intervenors or otherwise by due process to be in a person or persons other than defendant or defendants, shall be returned to the defendant or defendants as their interest may appear. Such receiver shall be subject to all the duties of receivers in civil actions as far as practicable except that such provisions relating to commissions or compensation of receivers shall not be applicable to receivers appointed pursuant to this section, but such commissions or compensations shall be fixed by the court in an amount which it may determine to be just and equitable. In any action brought by the department as provided in this article the court may grant such other and further relief as may be proper.

5. Whenever the department has determined to commence an action under this article, it may present to any judge of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or other judge designated in such order and answer such questions as may be put to them or to any of them, to produce such papers, documents and books concerning the alleged unlawful
or fraudulent practices to which the action which the department has determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application. The application for such order may simply show upon information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear necessary. It shall specify the time and place where the examination is to be held, the witnesses required to appear, and the service of a copy thereof. The justice or referee may adjourn such examination from time to time and place, and may require the attendance of witnesses by subpoena. The testimony of such witness must be subscribed by him and must be filed with the clerk of the court in which such order for examination is filed.

6. The order for such examination shall be signed by the justice making it, and service of a copy thereof with an endorsement by the department to the effect that the person named therein is required to appear and be examined at the time and place before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce at such examination all books, papers and documents in his possession or under his control relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid by delivering to and with him a certified copy thereof, endorsed as above provided, subject to the payment of witness fees and mileage as and when provided to be paid by paragraph (b) of subdivision four of section six hundred eighty-eight of this article in connection with attendance pursuant to subpoenas authorized to be issued under said section. Service of such an order may also be served under section six hundred eighty-six of this article in cases falling thereunder.

7. The referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed in a civil action, so far as practicable, and may punish for contempt a witness duly served with the papers as prescribed in this article for non-attendance or refusal to be sworn or to testify or to produce books, papers and documents according to the direction of the endorsement aforesaid in the same manner and to the same extent as a referee is bound. Try and determine an issue of fact or law.

8. Any person against whom a permanent injunction has been granted under the provisions of this article may apply to the supreme court at any time upon at least sixty days notice to the department for an order dissolving such injunction or modifying the same upon such terms and conditions as the court deems necessary or desirable. Such application for dissolution or modification of such injunction shall contain a recitation of the facts and circumstances which caused the granting of the injunction; the occupation and employment of the person making the application and his financial remuneration therefrom since the time the injunction was granted; his net worth at the time of the application and the source thereof; together with any other facts bearing upon the reasonableness of the application and the character of the applicant as may enable the court to issue an order that will properly dispose of such application in the interest of justice. A copy of such application together with copies of any other papers in support thereof shall be served upon the department at least sixty days prior to the return date thereof. In addition thereto the applicant shall file with the court a good and sufficient surety bond in the sum of one thousand dollars guaranteeing that he will pay all costs and expenses of an investigation by the department of such applicant and the statements and claims alleged in the application together with any further investigation which the department may deem necessary or desirable to determine whether it should consent to the application, oppose the same, or make such other recommendations to the court as in its opinion are desirable to be included in any modification of such injunction. Should it appear in the course of such investigation by the department that said sum is not sufficient, the department may apply to the court by usual notice of motion or order to show cause for an increase in the amount of security or further surety bond necessary to fully pay all of the costs of the investigation and the court may require such further bond as the situation requires to fully pay the costs and expenses of the investigation. Upon the completion of such investigation, the department may file an answer to such application setting forth such facts as are pertinent to the determination by the court of the matter before it and whether said injunction should be dissolved, modified or continued in whole or in part and what conditions, if any, shall be attached to any dissolution or modification of said injunction. After a hearing upon such application and after any further investigation, proof or testimony which the court may desire has been offered, or at any adjourned date thereof, the court may make a final order dissolving the permanent injunction or modifying the same upon such terms and conditions as in its opinion are just and desirable, or in its discretion may deny the application. Such order shall contain a direction that the applicant pay to the department the costs and expenses of the investigation in connection with the proceeding, and any judgment entered thereon may be enforced directly against the surety on the bond. The court shall grant no temporary or other relief from the injunction in force pending a final determination of such application. No application under this subdivision shall be entertained:

(a) in any case where the applicant has been convicted of a felony or crime that would be a felony if committed in the state of New York since the issuance of the injunction, nor

(b) in any case where the injunction was granted incident to a felony, or the applicant has been convicted at any time of any felony involving franchises which are the subject matter of this article. Nor shall anything contained in this subdivision be construed to deny to or interfere with the power of the department to bring any other action or proceeding, civil or criminal, against the applicant at any time.

9. The provisions of the civil practice law and rules shall apply to all actions brought under this article except as herein otherwise provided.

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violation is willful and material, for rescission, with interest at six percent per year from the date of purchase, and reasonable attorney fees and court costs.

2. A person may not file or maintain suit under this section if the franchisee or such person received a written offer before suit, and at a time when he owned the franchise, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of income earned by the franchisee from the franchise, conditioned only upon tender by the person of all items received by him for the consideration and not sold, and failed to accept the offer within thirty days of its receipt, provided that the offering documents are submitted to the department for approval at least ten business days prior to submission to the franchisee. The rescission offer shall recite the provisions of this section. If the franchisee involves a substantial building or substantial equipment or fixtures, and a significant period of time has elapsed since the sale of the franchise to the franchisee, the department in approving a rescission offer may approve an equitable offer recognizing depreciation, amortization, and other factors which bear upon the value of the franchise being returned to the franchisee. Nothing in this subdivision shall prohibit settlement of any dispute arising under or involving claims based on this chapter, without approval of the department.

3. A person who directly or indirectly controls a person liable under this article, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person occupying a similar status or performing similar functions, and an employee of a person so liable, who materially aids in the act of transaction constituting the violation, is also liable jointly and severally with and to the same extent as the controlled person, partnership, corporation or employer. It shall be a defense to any action based upon such liability that the defendant did not know or could not have known by the exercise of due diligence the facts upon which the action is predicated.

4. An action shall not be maintained to enforce a liability created under this section unless brought before the expiration of three years after the act or transaction constituting the violation.

5. Except as explicitly provided in this article, civil liability in favor of any private party shall not arise against a person by implication from or as a result of the violation of a provision of this article or a rule, regulation or order hereunder. Nothing in this article shall limit a liability which may exist by virtue of any other statute or under common law if this article were not in effect.

¶ 3320.13 Enforcement by Attorney General

Sec. 692. 1. The department may prosecute every person charged with a criminal offense in violation of this article and regulations issued thereunder. In all such proceedings, the department may appear before any court of record or any grand jury and perform all the duties in respect of such actions or proceedings which the district attorney would otherwise be authorized or required to exercise or perform; or the department may in its discretion transmit evidence, proof and information as to such offense to the district attorney of the county or counties in which the alleged violation has occurred, and every district attorney to whom such evidence, proof and information is so transmitted may proceed to investigate and prosecute any person charged with such violation. In any such proceeding wherein the department has appeared, the district attorney shall only exercise such powers and perform such duties as are required of him by the department.
UNITED STATES OF AMERICA
STATE OF ILLINOIS:

Franchise Disclosure Act of 1987 (*)

Illinois

Franchise Disclosure Act of 1987

[¶ 3130.01] Short Title
Sec. 1. This Act shall be known and may be cited as "The Franchise Disclosure Act of 1987".

[¶ 3130.02] Findings and Purpose
Sec. 2. (1) The General Assembly finds and declares that the sale of franchises is a widespread business activity. Illinois residents have suffered substantial losses where franchisors or their representatives have not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between the franchiser and franchisee, the prior business experience of the franchiser and other factors relevant to the franchise offered for sale.

(2) It is the intent of this Act (a) to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered for sale; and (b) to protect the franchisee and the franchiser by providing a better understanding of the business and the legal relationship between the franchisee and the franchiser.

[¶ 3130.03] Definitions
Sec. 3. As used in this Act:
"Franchise" means a contract or agreement, either express or implied, whether oral or written, between two or more persons by which:

(a) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and

(b) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(c) the person granted the right to engage in such business is required to pay, directly or indirectly, a franchise fee of $500 or more;

Provided that this Act shall not apply to any of the following persons, entities or relationships which may involve or acquire a franchise or any interest in a franchise:

(i) any franchised business which is operated by the franchisee on the premises of the franchiser or subfranchisor as long as such franchised business is incidental to the business conducted by the franchiser or subfranchisor at such premises, including, without limitation, leased departments and concessions;

(ii) a fractional franchise. A "fractional franchise" means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20%
of the sales in dollar volume of the franchisee for a period of at least one year after the franchisee begins selling the goods or products involved in the franchise; or

(iii) a franchise agreement for the use of a trademark, service mark, trade name, logo, type, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services.

(2) "Franchisee" means a person to whom a franchise is granted and includes, unless stated otherwise in this Act: (a) a subfranchisee with regard to its relationship with a franchisee and (b) a subfranchisee with regard to its relationship with a subfranchisee.

(3) "Franchisor" means a person who grants a franchise and includes a subfranchisee with regard to its relationship with a franchisee, unless stated otherwise in this Act.

(4) "Subfranchisee" means any contract or agreement between a franchisor and a subfranchisee whereby the subfranchisee is granted the right, in consideration of the payment of a franchise fee in whole or in part for such right, to sell or negotiate the sale of franchises. Where used in this Act, unless specifically stated otherwise, "franchise" includes "subfranchisee."

(5) "Subfranchisee" means a person to whom the right to sell subfranchises is granted.

(6) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the Attorney General Administrator.

(7) "Person" means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.

(8) "Rule" means any published regulation or standard of general application issued by the Administrator.

(9) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.

(10) "State" means the State of Illinois.

(11) "Fraud" and "deceit" are not limited to common law fraud or deceit.

(12) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise, any interest in a franchise, or an option to acquire a franchise for value.

(13) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television, or otherwise to disseminate to the public.

(14) "Franchise fee" means any fee or charge that a franchise is required to pay directly or indirectly for the right to enter into a business or sell, resell, or distribute goods, services or franchises under an agreement, including, but not limited to, any such payment for goods or services, provided that the Administrator may by rule define what constitutes an indirect franchise fee, and provided further that the following shall not be considered the payment of a franchise fee (a) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card; (b) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services; (c) the purchase or agreement to purchase goods for which there is an established market at a

bona fide wholesale price; (d) the payment for fixtures necessary to operate the business; (e) the payment of rent which reflects payment for the economic value of the property; or (f) the purchase or agreement to purchase goods for which there is an established market at a bona fide retail price subject to a bona fide commission or compensation plan. The Administrator may by rule define what shall constitute an established market.

(15) "Disclosure statement" means the document provided for in Section 16 of this Act and all amendments to such document.

(16) "Write" or "written" shall include printed, lithographed or any other means of graphic communication.

(17) "Advertisement" means any prospectus, circular, notice, advertisement, letter of communication, written or by radio or television, which offers any franchise for sale or confirms the sale of any franchise.

(18) "Marketing plan or system" means a plan or system relating to some aspect of the conduct of a party to a contract in conducting business, including but not limited to (a) specification of price, or special pricing systems or discount plans, (b) use of particular sales or display equipment or merchandising devices, (c) use of specific sales techniques, (d) use of advertising or promotional materials or cooperation in advertising efforts, provided that an agreement is not a marketing plan or system solely because a manufacturer or distributor of goods reserves the right to occasionally require sale at a special reduced price which is advertised on the container or packaging material in which the product is regularly sold, if the reduced price is absorbed by the manufacturer or distributor.

(19) "Administrator" means the Illinois Attorney General.

(20) (a) An offer to sell a franchise is made in this State when the offer either originates from this State or is directed by the offeror to this State and received at the place to which it is directed. An offer to sell is accepted in this State when acceptance is communicated to the offeror in this State, and acceptance is communicated to the offeror in this State when the offeror directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed.

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(b) An offer to sell a franchise is not made in this State merely because the
franchisor circulates or there is circulated in this State an advertisement in (i) a bona
fide newspaper or other publication of general, regular and paid circulation which has
had more than 1/2 of its circulation outside this State during the past 12 months, or (ii)
a radio or television program originating outside this State which is received in this
State.

(21) "Franchise broker" means any person engaged in the business of representing
a franchisor in offering for sale or selling a franchise and is not a franchisor or an
officer, director or employee of a franchisor with respect to such franchise. A franchisee
shall not be a franchise broker merely because it receives a payment from the
franchisor in consideration of the referral of a prospective franchisee to the franchisor.
If the franchisee does not otherwise participate in the sale of a franchise to the
prospective franchisee. A franchisee shall not be deemed to participate in a sale merely
because he responds to an inquiry from a prospective franchisee.

(22) "Salesperson" means any person employed by or representing a franchise
broker in effecting or attempting to effect the offer or sale of a franchise.

[§ 3130.04] Jurisdiction and Venue

Sec. 4. Any provision in a franchise agreement which designates jurisdiction or
venue in a forum outside of this State is void with respect to any cause of action which
otherwise is enforceable in this State, provided that a franchise agreement may provide
for arbitration in a forum outside of this State.

[§ 3130.05] Prohibited Practices

Sec. 5. (1) Sale of unregistered franchise unlawful. It is unlawful for any person to
offer or sell any franchise required to be registered under this Act unless the franchise
has been registered under this Act or is exempt under this Act.

(2) Failure to deliver a disclosure statement unlawful. It is unlawful for any
person to offer or sell any franchise which is required to be registered under this Act
without first providing to the prospective franchisee at least 10 business days prior to
the execution by the prospective franchisee of any binding franchise or other agree-
ment, or at least 10 business days prior to the receipt by such person of any
consideration, whichever occurs first, a copy of a disclosure statement meeting the
requirements of this Act and registered by the Administrator, together with a copy of
all proposed agreements relating to the sale of the franchise. For the purposes of this
Act, delivery of a disclosure statement to a general partner of a partnership shall
constitute delivery to the partnership and its partners and delivery of a disclosure
statement to a principal officer of a corporation shall constitute delivery to the
corporation and its shareholders.

(3) Sale of franchise by unregistered franchise broker unlawful. It is unlawful for
any franchise required to be registered under this Act to be offered for sale or sold in
this State by a franchise broker subject to this Act who is not first registered under this
Act unless exempt from registration.

(4) Filing of untrue report unlawful. It is unlawful for any person to make or cause
to be made any untrue statement of a material fact in any application, notice, or report
filed with the Administrator, or to omit to state in any application, notice, or report
any material fact, or to fail to notify the Administrator of any material change in such
application, notice, or report, as required by this Act and the rules and regulations
promulgated thereunder.
[§ 3130.06] Fraudulent Practices

Sec. 6. In connection with the offer or sale of any franchise made in this State, it is unlawful for any person, directly or indirectly, to:
(a) employ any device, scheme, or artifice to defraud;
(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

For the purposes of this Section 6, a sale of a franchise is made in this State when:
(i) an offer to sell or buy a franchise is made in this State and accepted within or outside of this State, or (ii) an offer to sell or buy a franchise is made outside of this State and accepted in this State, or (iii) the offeree is domiciled in this State, or (iv) the franchised business is or will be located in this State.

[§ 3130.07] Sale by Franchisee and Extension or Renewal of Existing Franchise

Sec. 7. There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the offer or sale of a franchise by a franchisee for its own account if the sale is not effected by or through a franchisor. Any sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee or requires payment of a reasonable transfer fee.

There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business by the franchisee.

[§ 3130.08] Exemptions

Sec. 8. There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the offer and sale of a franchise if the prospective franchisee qualifies as one of the following:
any bank as defined in Section 3(a)(2) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity or as an insurance company as defined in Section 2(13) of that Act.

[§ 3130.09] Exemptions from Disclosure Statement and Registration Requirements Granted by Administrator

Sec. 9. The Administrator may by rule or order provide that any information required by Section 10 of this Act to be included in the disclosure statement need not be included in respect of any class of franchises if he finds that the requirement of such information is inapplicable to such class and that disclosure fully adequate for the protection of prospective franchisees is otherwise required to be included within the disclosure statement. The Administrator may by rule or order, and subject to such terms and conditions as he may prescribe, exempt any franchise, franchisor, sub-franchisor, or franchise broker from Sections 5, 10, 11, 13 and 15 of this Act if he finds that the enforcement of this Act is not necessary (1) in the public interest, or (2) for the protection of any class of prospective franchisees, or (3) by reason of the investment involved, or (4) because of the limited character of the offering. The disclosure statement required by Section 10 need not be furnished to a franchisee who has already been furnished with a copy of such disclosure statement in connection with a prior purchase of a franchise by such franchisee, provided that no material amendments have been made to such disclosure statement since it was furnished to such franchisee.

[§ 3130.10] Registration and Annual Report

Sec. 10. No franchisor may sell or offer to sell a franchise in this State if (1) the franchisee is domiciled in this State or (2) the offer of the franchise is made or accepted in this State and the franchise business is or will be located in this State, unless the franchisor has registered the franchise with the Administrator by filing such form of application and disclosure statement as the Administrator may by rule or order require. The Administrator may require the filing with the Administrator of such other information or documents as are necessary or appropriate in the public interest or for the protection of prospective franchisees and may, but need not, require that such additional information or documents be furnished to prospective franchisees as part of the disclosure statement.
The registration of a franchise shall become effective on the 20th business day after the date of the filing of the required materials, unless prior thereto one of the following events has taken place: (1) the Administrator has entered an order suspending, terminating, prohibiting or denying the registration of the franchise or franchise broker; or (2) the Administrator has notified the franchisor or its representative that the materials filed do not meet the requirements of this Act, and the reasons therefor; or (3) the Administrator in his discretion upon written request of the franchisor, has granted acceleration so as to provide for an effective date prior to the 20th business day.

Annually, but not later than 30 days before the anniversary date of the registration, the franchisor shall file a report in a form prescribed by rule of the Administrator. The report shall contain such documents and information as the Administrator may by rule or order require including, without limitation, the disclosure statement updated as of a date within 120 days of the anniversary date of the registration. The Administrator may, in his discretion, review such report and disclosure statement and notify the franchisor that additional information or other modification of the disclosure statement be included or deleted from the report and disclosure statement, or issue an order under Section 23 of this Act, as may be necessary or appropriate in the public interest, or for the protection of prospective franchisees. The notice issued by the Administrator may, at the Administrator's discretion, suspend the right of the franchisor to offer to sell franchises until the specified deficiencies are cured.

§ 3130.11 Amendments

Sec. 11. Upon the occurrence of any material change in any facts required to be disclosed, a franchisor whose franchise is registered under this Act shall amend its disclosure statement and shall deliver to the Administrator, as well as to each franchisee, a copy of the amended disclosure statement. The amended disclosure statement shall be filed with the Administrator who may require additional information or other modification of the amended disclosure statement under Section 16 of this Act or issue an order under Section 23 of this Act. The notice issued by the Administrator may, at the Administrator's discretion, suspend the right of the franchisor to offer and sell franchises until the specified deficiencies are cured. An amendment shall not be required if the terms of the franchise agreement merely reflect changes from the franchisor's registered franchise made pursuant to negotiations between the franchisor and the franchisor.

§ 3130.12 Period of Effectiveness

Sec. 12. The registration of a franchise and the disclosure statement used in connection therewith shall continue to be effective unless the Administrator issues an order suspending, terminating, prohibiting or denying the sale or registration of the franchise under this Act.

§ 3130.13 Registration of Franchise Brokers

Sec. 13. A franchise broker shall not offer or sell a franchise which is required to be registered under this Act unless the franchise broker first registers under this Act by filing an application in a form prescribed by the Administrator and a consent to service.
When the disclosure statement is for a franchise offering by a subfranchisor, the disclosure statement shall include the information required by this Act with respect to the subfranchisor instead of the franchisor; however, if the franchisor from whom the subfranchisor acquired the right to grant franchises is required to provide the franchise with goods, training programs, advertising, promotion, supervision, assistance in site selections or other services, the Administrator may in his discretion require the disclosure statement for such franchise offering to include part or all of the information required by this Act with respect to both the subfranchisor and the franchisor from whom the subfranchisor acquired the right to grant franchises.

§ 3130.17 Participation in Trade Associations

Sec. 17. It shall be an unfair franchise practice and a violation of this Act for a franchisor to in any way restrict any franchisee from joining or participating in any trade association.

§ 3130.18 Discrimination

Sec. 18. It shall be an unfair franchise practice and a violation of this Act for any franchisor to unreasonably and materially discriminate between franchisees operating a franchised business located in this State in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, if such discrimination will cause competitive harm to a franchisee that competed with a franchisee that received the benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is:

(a) based on franchises granted at different times, and such discrimination is reasonably related to such differences in time;

(b) related to one or more programs for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;

(c) related to local or regional experimentation with or variations in product or service lines or business formats or designs;

(d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchise businesses or defaults in franchise agreements; or

(e) based on other reasonable distinctions considering the purposes of this Act and is not arbitrary.

§ 3130.19 Termination of a Franchise

Sec. 19. (a) It shall be a violation of this Act for a franchisor to terminate a franchise of a franchised business located in this State prior to the expiration of its term except for "good cause" as provided in subsection (b) or (c) of this Section.

(b) "Good cause" shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days.

(c) "Good cause" shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee:

(1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business;

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§ 3130.20 Nonrenewal of a Franchise

Sec. 20. It shall be a violation of this Act for a franchisor to refuse to renew a franchise of a franchised business located in this State without compensating the franchisee either by repurchase or by other means for the diminution in the value of the franchised business caused by the expiration of the franchise where:

(a) the franchisee is barred by the franchise agreement (or by the refusal of the franchisor at least 6 months prior to the expiration date of the franchise to waive any portion of the franchise agreement which prohibits the franchisee) from continuing to conduct substantially the same business under another trademark, service mark, trade name or commercial symbol in the same area subsequent to the expiration of the franchise;

(b) the franchisee has not been sent notice of the franchisor's intent not to renew the franchise at least 6 months prior to the expiration date or any extension thereof of the franchise.

§ 3130.21 Franchise Advisory Board

Sec. 21. There is created in the Office of the Administrator a Franchise Advisory Board. The Franchise Advisory Board shall consist of such members as the Administrator deems appropriate to advise him on franchising and franchise related matters. The members shall be persons who have knowledge and experience in franchising. The members of the Franchise Advisory Board shall serve at the pleasure of the Administrator. The Franchise Advisory Board from time to time shall make recommendations concerning the administration and enforcement of this Act. Members of the Franchise Advisory Board shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in their official capacities. The Board shall select its own chairman, establish rules and procedures, and keep a record of matters transpiring at all meetings.

§ 3130.22 Enforcement

Sec. 22. (a) The Administrator may suspend, terminate, prohibit or deny the sale of any franchise or registration of any franchise, or franchise broker or salesperson if it appears to him that: (1) there has been a failure to comply with any of the provisions of this Act or the rules or orders of the Administrator pertaining thereto; or (2) that the disclosure statement or any amendment thereto is incomplete or inaccurate in any material respect; or (3) that the disclosure statement or any amendment thereto includes any false or misleading statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or (4) that the sale of the franchise would constitute a misrepresentation, deceit or fraud upon prospective franchisees; or (5) that any person in this State is engaging in or about to engage in false, fraudulent or deceptive practices or any device, scheme, or artifice to defraud in connection with the offer or sale of the franchise; or (6) that any person identified in the disclosure statement or any person engaged in the...
offer or sale of the franchise in this State has been convicted of an offense, is subject to an order or civil judgment, or is a defendant in a proceeding required to be described in the disclosure statement and the involvement of such person creates an unreasonable risk to prospective franchisees; or (7) that anything prohibited by this Act has been used in connection with the offer or sale of the franchise; or (8) that the financial condition of the franchisee affects or would affect the ability of the franchisor to fulfill obligations under the franchise or other agreement and the franchisor is unable or unwilling to comply with a rule or order of the Administrator issued under Section 15 of this Act; or (9) that the franchisee's enterprise or method of business includes or would include activities which are illegal where performed; or (10) that there are conditions affecting the soundness of the franchise so that the sale thereof would be fraudulent, inequitable or would work or tend to work a fraud upon prospective franchisees; or (11) that an applicant has failed to diligently process its registration application with the Administrator.

In no case shall the Administrator, or any person designated by him, in the administration of this Act, incur any official or personal liability by issuing an order or other proceeding or by suspending, denying, prohibiting or terminating the registration of a franchise broker or salesperson, or by denying, suspending, terminating or prohibiting the registration of franchises, or prohibiting the sale of franchises, or by suspending or prohibiting any person from acting as a franchise broker or salesperson.

The Administrator may exercise any of the powers specified in Section 31 of this Act.

(b) The Administrator, with such assistance as he may have from time to time request of the state's attorneys in the several counties, may institute proceedings in the circuit court to prevent and restrain violations of this Act or of any rule or order prescribed or issued under this Act. In such a proceeding, the court shall have jurisdiction over any person who has violated this Act, and shall enter such judgment or decree as it considers necessary to prevent the persons from continuing or from being renewed in the future. In the discretion of the court, it may exercise all powers necessary for this purpose, including, but not limited to, injunction, revocation, forfeiture or suspension of the charter, franchise, certificate of authority or privileges of any corporation, association, limited partnership or other business organization operating under the laws of this State, dissolution of domestic corporations or associations, suspension or termination of the right of foreign corporations or associations to do business in this State, or restitution or payment of damages by a franchisee to persons injured by violations of this Act, including without limitation an award of reasonable attorneys fees and costs.

¶ 3130.23 Hearings and Notice of Order Suspending, Terminating, Prohibiting or Denying Sales or Registration

Sec. 23. The Administrator may summarily issue an order prohibiting, suspending, terminating or denying the sale of a franchise or registration of a franchise or franchise broker if such order is within the public interest and Section 22 of this Act, provided the Administrator shall promptly notify the person or entity affected, in writing, at the address of the person or entity, or the person or entity on record with the Administrator, or the person or entity on record with the Secretary of State, that the situation is under investigation, and upon receipt of a written request from such person or entity, the matter shall be set down for hearing to commence within 10 days after such receipt unless the franchisor, or franchise broker consents to a later date. If a hearing is not requested within 15 days from the date of the order and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice and hearing, may modify or vacate the order or extend it until its final determination.

¶ 3130.24 Civil Penalties

Sec. 24. In lieu of any penalty provided pursuant to Section 25 of this Act, and in addition to an action pursuant to subsection (b) of Section 22 of this Act, the Administrator may bring an action in the name and on behalf of the people of the State against any person, trustee, manager or other officer of the corporation, or against a corporation, domestic or foreign, to recover a penalty in a sum not to exceed $50,000 per violation for the doing in this State of any act herein declared illegal. The action must be brought within 3 years after the commission of the act upon which it is based.

¶ 3130.25 Criminal Prosecution

Sec. 25. Any person who willfully sells a franchise in this State without complying with Sections 5, 6, 10, 11, 13 or 15 of this Act or who in a disclosure statement or an amendment thereto willfully makes any false or misleading statement of a material fact or willfully omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, commits a class 2 felony and upon conviction shall be subject to the sentence provided by law. The Administrator, with such assistance as he may have from time to time request of the state's attorneys in the several counties, shall investigate suspected criminal violations of this Act and shall commence and try all prosecutions under this Act. Prosecutions under this Act may be commenced by information or indictment in the circuit court of the county where the crime is committed and trial of such prosecutions instituted by the Administrator, the Administrator shall have all of the powers and duties vested by law in the state's attorneys with respect to criminal prosecutions generally. A prosecution for any offense under this Act must be commenced within 3 years after the commission thereof. Nothing in this Act limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute.

¶ 3130.26 Private Civil Actions

Sec. 26. Any person who offers or sells a franchise in violation of this Act shall be liable to the franchisee for the damages caused thereby. In the case of a violation of Section 5, 6, 10, 11 or 15 of this Act, the franchisee may also sue for rescission.

No franchisee may sue for rescission under this Section 26 who shall fail, within 30 days from the date of receipt thereof, to accept an offer to return the consideration paid or to repurchase the franchise purchased by such person. Every offer provided for in this Section shall be in writing, shall be delivered to the franchisee or sent by certified mail addressed to the franchisee at such person's last known address, shall offer to return any consideration paid to repurchase the franchise for a price equal to the full amount paid less any net income received by the franchisee, plus or minus the legal rate of interest thereon, and may require the franchisee to return to the person making such offer all unsold goods, equipment, fixtures, leases and similar items received from such person. Such offer shall continue in force for 30 days from the date on which it was received by the franchisee and shall advise the franchisee of such rights and the period of time limited for acceptance thereof. Any agreement not to accept, or refusing or
waiving any such offer made during or prior to the expiration of said 30 days shall be void.

The term "franchisee" as used in this Section shall include the personal representative or representatives of the franchisee.

Every person who directly or indirectly controls a person liable under this Section 26, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, and every employee of a person so liable, who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless said person who otherwise is liable had no knowledge or reasonable basis to have knowledge of the facts, acts or transactions constituting the alleged violation.

¶ 3130.27 Periods of Limitation

Sec. 27. No action shall be maintained under Section 26 of this Act to enforce any liability created by this Act unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which it is based, the expiration of one year after the franchisee becomes aware of facts or circumstances reasonably indicating that he may have a claim for relief in respect to conduct governed by this Act, or 90 days after delivery to the franchisee of a written notice disclosing the violation, whichever shall first expire. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act. Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

¶ 3130.28 No Other Civil Liability

Sec. 28. Except as explicitly provided in this Act, no civil liability in favor of any person shall arise against any person by implication from or as a result of the violation of any provision of this Act. Nothing in this Act shall limit any liability which may exist by virtue of any other statute or under common law if this Act were not in effect. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act.

¶ 3130.29 Certificate of Registration or Filing of Annual Report; Admissibility in Evidence

Sec. 29. In any civil or criminal action brought under this Act, a Certificate under the seal of this State, signed by the Administrator, stating whether or not a franchise is registered, or whether or not an annual report of a franchisee has been filed under Section 10 of this Act, or whether or not a person has registered as a franchise broker under Section 13 of this Act, shall constitute prima facie evidence of such matter, and shall be admissible in evidence at trial without proof of foundation or additional authenticity.

¶ 3130.30 Advertising

Sec. 30. No person may publish, distribute or use in this State any advertisement offering to sell or to purchase a franchise required to be registered under this Act unless 2 true copies of the advertisement have been filed in the office of the Administrator at least 5 days prior to the first publication, distribution or use thereof or such shorter period as the Administrator by rule or order may allow, or unless the advertisement has been exempted from this Section by rule of the Administrator. The Administrator may by rule or order prohibit the use of advertising deemed false, fraudulent, misleading or deceptive.

¶ 3130.31 Powers of the Administrator

Sec. 31. (a) Investigations. The Administrator may in his discretion: (1) make such public or private investigations inside or outside this State as he deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this Act or any rule or order prescribed or issued under this Act or (2) to aid in the enforcement of this Act or in the prescribing of rules under this Act; and (2) publish information concerning the violation of this Act or any rule or order prescribed or issued under this Act. No actions taken or orders issued by the Administrator shall be binding on, nor in any way prejudice the Administrator from conducting any investigation or commencing any action authorized under this Act. The Administrator or any of his assistants may participate in any hearings conducted by the Administrator under this Act and the Administrator may provide such assistance as the Administrator believes necessary to effectively fulfill the purposes of this Act.

(b) Subpoenas. For the purpose of any investigation or proceeding under this Act and prior to the commencement of any civil or criminal action as provided for in this Act, the Administrator has the authority to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records or tangible things, hereafter referred to as "documentary material," which the Administrator deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as he shall prescribe. Any subpoena issued by the Administrator shall contain the following information: (1) the statute and section thereof; the alleged violation of which is under investigation; (2) the date, place and time at which the person is required to appear or produce documentary material in his possession, custody or control at a designated office of the Administrator, which date shall not be less than 10 days from date of service of the subpoena; and (3) where documentary material is required to be produced, the same shall be prescribed by class so as to clearly indicate the material demanded.

(c) Production of documentary material. The Administrator is hereby authorized, and may so elect to require the production, pursuant to this Section, of documentary material prior to the taking of any testimony of the person subpoenaed, in which event such documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be agreed upon by the person served and the Administrator. When documentary material is demanded by subpoena, said subpoena shall not: (1) contain any requirement which would be unreasonable or improper if it contained in a subpoena duces tecum issued by a court of this State; or (2) require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

(d) Service of subpoenas. Service of a subpoena of the Administrator as provided herein may be made by (1) delivery of a duly executed copy thereof to the person served or if a person is not a natural person, to the principal place of business of the person to be served, or (2) mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in this State, or, if said person has no place of business in this State, to his principal office.
(e) Examination of witnesses. The examination of all witnesses under this Section shall be conducted by the Administrator, or by his deputy designated by him, before an officer authorized to administer oaths in this State. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

(f) Fees. All persons served with a subpoena by the Administrator under this Act shall be paid the same fees and mileage as are paid to witnesses in the courts of this State.

(g) Judicial enforcement of subpoenas. In the event a witness served with a subpoena by the Administrator under this Act fails or refuses to obey any or to produce documentary material as provided herein or to give testimony relevant or material to the investigation being conducted, the Administrator may petition any circuit court for an order requiring said witness to attend and testify or produce the documentary material demanded. Thereafter, any failure or refusal on the part of the witness to obey such order of court may be punishable by the court as a contempt thereof.

(h) Immunity from prosecution. No person is excused from attending and testifying or from producing any document or records before the Administrator in obedience to the subpoena of the Administrator, in any proceeding instituted by the Administrator and authorized by this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(i) Administrator entitled to recover costs. In any action brought under the provisions of this Act, the Administrator is entitled to recover costs for the use of this State.

¶ 3130.32 Rules and Interpretive Opinions

Sec. 32. The Administrator may make and enforce such reasonable rules as are necessary to administer and enforce this Act. Such rules and regulations shall conform to and comply with “The Illinois Administrative Procedure Act”, approved September 22, 1972, as amended. The Administrator may in his discretion honor requests for interpretive opinions. The Administrator shall maintain a complete collection of his interpretive opinions which is properly indexed, a copy of which shall be made available to any person upon request and payment of a reasonable fee to be determined by the Administrator.

¶ 3130.33 Hearings

Sec. 33. (a) Notice required. If a hearing is requested or ordered under any provision of this Act, the Administrator shall set the matter for hearing and notice of the time and place for the hearing shall be sent to the franchisor at least 7 days prior to the hearing.

(b) Manner of giving notice. Notice required by this Section is sufficient if sent by registered or certified mail and addressed to the franchisor at the address designated in the disclosure statement.

¶ 3130.37 Illinois

(c) Opportunity to be present and heard. The parties to any hearing shall be accorded ample opportunity to present, in person or by counsel, such statements, testimony, evidence and argument as may be pertinent.

(d) Record. All testimony taken at any hearing before the Administrator shall be reported stenographically or by a sound recording device and a full and complete record shall be kept of all proceedings.

(e) Written decisions required. After a hearing, the Administrator shall issue a written decision modifying, vacating or extending the order and shall state the reasons for his decision.

¶ 3130.34 Judicial Review

Sec. 34. All final administrative decisions of the Administrator hereunder shall be subject to judicial review pursuant to the Administrative Review Law, as amended, and any rules adopted pursuant thereto. The term “administrative decision” is defined as in Section 5-101 of the Code of Civil Procedure.

¶ 3130.35 Service of Process

Sec. 35. Sufficient service of any process in any action brought under this Act may be made by serving a copy thereof with the agency designated to receive process in the disclosure statement filed with the Administrator or in the absence of such agent at the principal business address set forth in the disclosure statement. Where no disclosure statement has been filed and personal jurisdiction cannot otherwise be obtained in this State over a person who engaged in conduct prohibited or made actionable by this Act or any rule or order hereunder, that conduct shall be considered equivalent to the appointment of the Administrator to be such person’s attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor, or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (a) the plaintiff forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice and (b) the plaintiff’s affidavit of compliance with this Section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

¶ 3130.36 Books and Records

Sec. 36. Every franchisor selling franchises in this State shall at all times keep and maintain a complete set of books, records and accounts of such sales.

¶ 3130.37 Public Inspection

Sec. 37. (a) Generally. All disclosure statements and other papers and documents received by the Administrator under this Act shall be open to public inspection, except that the Administrator may, in his discretion, withhold from public inspection any information the disclosure of which is, in the judgment of the Administrator, not necessary in the public interest or for the protection of franchisees. The Administrator may publish any information filed with him or obtained by him, if in the judgment of the Administrator such action is in the public interest. No provision of this Act authorizes the Administrator or any of his assistants, clerks or deputies to disclose any information withheld from public inspection except among themselves or when neces-
sary or appropriate in a proceeding or investigation under this Act or to other federal or State regulatory agencies. No provision of this Act either creates or derogates from any privilege which exists as common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Administrator or any of his assistants, clerks or deputies.

(b) Restrictions on use. The Administrator and his employees may not use for personal benefit any information which is obtained by them under this Act and which is not then generally available to the public.

¶ 3130.38 Copies To Be Furnished

Sec. 38. On request and at such reasonable charges as he prescribes by rule, the Administrator shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any document which is retained as a master of public record. He shall not charge or collect any fee for copies of any document furnished to public officials for use in their official capacity. In any judicial proceeding or prosecution, any copy so certified is prima facie evidence of the contents of the document certified.

¶ 3130.39 Destruction of Records

Sec. 39. (a) Period of retention. The Administrator may destroy any disclosure statements or orders, together with the files and folders, as useless or obsolete, 4 years after the date of receipt or issuance. A permanent record shall be maintained of any civil or criminal enforcement of this Act by the Administrator.

(b) Microfilm. Copies on microfilm or in other form which may be retained by the Administrator in his discretion of any records destroyed under authority of this section shall be accepted for all purposes as equivalent to the original when certified by the Administrator.

¶ 3130.40 Fees

Sec. 40. (a) The Administrator shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the State Treasurer at least weekly, accompanied by a detailed statement thereof. Such fees and charges shall be refundable at the discretion of the Administrator.

(b) The fee for the initial registration of a franchise shall be $500.

(c) The fee for filing an amended disclosure statement shall be $100 if the amendment pertains to a material change; otherwise $25.

(d) The fee for an interpretive opinion shall be $50.

(e) The fee for registration of a franchise broker shall be $100 with a renewal fee of $100.

(f) The fee for filing an annual report shall be $100.

¶ 3130.41 Waivers Void

Sec. 41. Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive any provision of this Act is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code.

¶ 3130.38 Illinois

1988, Commerce Clearing House, Inc.

Business Franchise Guide

¶ 3130.44 Illinois
FRANCHISE INVESTMENT LAW

(Hawaii Revised Statutes, Title 82E, Sections 482E-1 through 482E-5.
482E-8, 482E-9, 482E-11, and 482E-12; amended by Laws of 1988, Public
Law 88-335, approved and effective June 13, 1988.)

(§ 310.01) Purpose and Intent

Section 482E-1. The purpose of this chapter is to regulate the sale of franchises in the State to minimize losses to the franchisee in cases where the franchisor or the franchisor's representatives has not provided full and complete information regarding: (1) the franchisee-franchisee relationship; (2) the details of the contract between franchisor and franchisee; and (3) the prior business experience of the franchisor.

It is the intent of the legislature to: (1) provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered, (2) prohibit the sale of franchises which would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled, and (3) protect the franchisee or subfranchisee by providing a better understanding of the relationship between the franchisor or subfranchisee and the franchisee with regard to their business relationship.

(§ 310.02) Definitions

Sec. 482E-2. As used in this chapter and unless a different meaning appears from the context:

"Franchise" means any contract or agreement between a franchisor or subfranchisor whereby the franchisee is granted the right to sell or negotiate the sale of franchisees in the name or on behalf of the franchisor.

"Community interest" means a continuing financial interest between the franchisor and franchisee in the operation of the franchise business.

"Director" means the director of commerce and consumer affairs.

"Franchise" means an oral or written contract or agreement, either expressed or implied, in which a person grants to another person, a license to use a trade name, service mark, trademark, logo, or related character in which there is a community interest in the business of offering, selling, or distributing goods or services at wholesale or retail, leasing, or otherwise, and in which the franchisee is required to pay, directly or indirectly, a franchise fee.

"Franchise broker or selling agent" means a person who directly or indirectly engages in the sale of franchises.

"Franchise fee" means any fee or charge that a franchisee or subfranchisee is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charge based upon the amount of goods or products purchased by the franchisee from the franchisor or subfranchisor, any fee or charge based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for goods or services, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (1) the purchase or agreement to purchase goods at a bona fide wholesale price; (2) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale

reflect only the bona fide wholesale price of such goods; (3) a bona fide loan to the franchisee from the franchisor; (4) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (5) the purchase or agreement to purchase supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market value; (6) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market value.

"Franchisee" means a person to whom a franchise is offered or granted.

"Franchisor" means a person who grants a franchise to another person.

"Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

"Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it includes any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of such entity.

"Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

"Subfranchisee" means a person to whom an area franchise is granted.

[¶ 3110.03] Offering Circular

Sec. 482E-5. (a) It is unlawful for any person to sell a franchise in this State unless such person has presented to the prospective franchisee or the franchisee's representative, at least seven days prior to the sale of the franchise, an offering circular containing the following information:

1. The name of the franchisor, the name under which the franchisor is doing business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.

2. The franchisor's principal business address and the name and address of the franchisor's agent in the State authorized to receive process.

3. The business form of the franchisor whether corporate, partnership, or otherwise.

4. Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers and selling agents as the director may by rule prescribe.

5. A statement whether any person identified in the offering circular, within ten years preceding the date of the offering circular:

(A) Has been found guilty of a felony or held liable in a civil action by final judgment if the civil action involved fraud, misrepresentation, fraud or misappropriation of property; or

(B) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order or any national security association or national securities exchanges (as defined in the Securities and Exchange Act of 1934) suspending or expelling such person from membership of such association or exchange; or

(C) Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to the business activity as a result of an action brought by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed, or damages assessed, or the date, nature, and issue of such order.

6. A statement of when, where, and how long the franchisor has

(A) Conducted a business of the type to be operated by the franchisee;

(B) Has granted franchises for such business; and

(C) Has granted franchises in other lines of business.

7. A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date thereof. The director may describe:

(A) Form and content of the financial statements required under this chapter;

(B) The circumstances under which consolidated financial statements can be filed; and

(C) The circumstances under which financial statements shall be audited by independent, certified public accountants.

8. A copy of the typical franchise contract or agreement proposed for use in this State.

9. A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

10. A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisee is required to pay to the franchisor including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties.

11. A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor.

12. A statement of the conditions under which the franchise may be sold transferred, or assigned.

13. A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisee is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee.

14. A statement of any restriction or condition imposed by the franchisor whereby the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by the franchisor.

15. A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
such offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section.

¶ 3110.04 Exemptions

Sec. 482E-4. (a) Sections 482E-3, 482E-5(a) and 482E-5(c) shall not apply to:

(1) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(2) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(3) Any motor vehicle franchise subject to chapter 437.

(4) The offer or sale to a franchise or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this State and where the business enterprise will not be operated in this State.

(5) The extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement or the transfer of the location of a franchise where there is no interruption in the operation of the franchise business of the franchisee, and no material change in the franchise relationship.

(6) The offer or sale of an additional franchise to an existing franchisee of the same franchisee.

(7) The offer or sale of a franchise by a franchisee for the franchisee's own account, or the issuance of a new franchise agreement pursuant to a sale by a franchisee for the franchisee's own account, if the sale is an isolated sale and not part of a plan of distribution of franchises.

(b) The director may by rule or order exempt from sections 482E-3, 482E-5(a) and 482E-5(c) in whole or in part, any transaction or person, firm, corporation, or industry. In determining whether such exemption shall issue, the director shall consider whether information which would be required to be disclosed would be material in determining whether the prospective franchisee has a reasonable chance of success and whether the exemption is in the public interest.

¶ 3110.05 General Provisions

Sec. 482E-5. (a) Every person selling franchises in this State shall at all times keep and maintain a complete set of books, records, and accounts of such sales and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by him and the proceeds derived therefrom.

(b) It is unlawful for any person in connection with the offer, sale, or purchase of any franchise directly or indirectly:

(1) To make any untrue statement of a material fact in any offering circular or report filed with the director under this chapter or willfully to omit to state in any offering circular or report, any material fact which is required to be stated therein.

(2) To sell or offer to sell a franchise in this State by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.
To employ any device, scheme, or artifice to defraud.

To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

To violate any order of the director.

(c) Any person who is engaged or hereafter engaged directly or indirectly in the sale of a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to this chapter, shall be amenable to the jurisdiction of the courts of this State and shall be amenable to the service of process as provided by law and rule. Every person who sells a franchise in this State, other than a Hawaii corporation, shall file with the director in such form as the director by rule prescribed, an irrevocable consent appointing the director or the director's successor in office to be the person's attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, administrator, or personal representative which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous sale under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not effective unless:

1. The plaintiff, who may be the director, in a suit, action, or proceeding instituted by the plaintiff forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the director; and

2. The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows.

(d) In any proceeding under this chapter, the burden of proving an exception or an exemption from a definition is upon the person claiming it.

(¶ 3110.06) [Sec. 482E-6 governs the franchise relationship; see ¶ 4110 for text of the provision.—CCH]

(¶ 3110.07) [Sec. 482E-7 repealed by Laws of 1978, Chapter 242, Section 8, approved and effective June 17, 1978.—CCH]

(¶ 3110.06) Duties of the Director

Sec. 482E-8. (a) The director may issue a stop order prohibiting the sale of a franchise if the director finds that the order is in the public interest and that:

1. The offering circular is incomplete in any material respect or contains any statement which in the light of the circumstances under which it is or may be made is false or misleading with respect to any material fact.

2. Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the sale of a franchise by the franchisor, any partner, officer or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

3. The offer or sale of the franchise is the subject of a permanent or temporary injunction of any court of competent jurisdiction or an administrative order prohibiting

offer or sale of the franchise entered under any federal or state act applicable to the franchise but the director may not enter an order under this subparagraph on the basis of an injunction entered under any other law unless that order or injunction is based on facts that currently constitute a ground for a stop order under this section.

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed.

(5) The offer or sale of the franchise has worked or tended to work a fraud upon purchasers or would so operate.

(b) Upon the entry of a stop order under any part of subsection (a), the director shall promptly notify the franchisor or subfranchisor that the order has been entered and the reasons therefor and that within fifteen days after receipt of a written request, the master will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter the director's written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director shall give notice of an opportunity for hearings to the franchisor or subfranchisor and shall enter the director's written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if the director finds that the conditions which prompted the director's entry have changed or that it is otherwise in the public interest to do so.

(c) The director shall refer such evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in the attorney general's or prosecuting attorney's discretion with or without such a reference institute the appropriate criminal proceeding under this chapter.

(d) The director may, in accordance with chapter 91, from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out this chapter including rules and forms governing offering circulars and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter.

(e) If the director finds that the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in the franchise proposed to be sold, the director may require the escrow or impoundment of franchise fees and other funds paid by the franchisee or subfranchisor, until the obligations are fulfilled, or furnish the furnishing of a surety bond approved by the director, if the director
finds that the requirement is necessary and appropriate to protect prospective franchisees or subfranchisees.

¶ 3110.09 Civil Liability

Sec. 482E-9. (a) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by section 482E-6 shall constitute an unfair or deceptive act or practice under chapter 480.

(b) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisee who may sue for damages caused thereby or for rescission or other relief as the court may deem appropriate. In the case of a violation of section 482E-5(b) rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the truth or admission or that the defendant exercised reasonable care and did not know or if the defendant had exercised reasonable care would not have known of the untruth or admission.

(c) The suit authorized under subsection (b) may be brought to recover the actual damages sustained by the plaintiff together with the cost of the suit including reasonable attorneys' fees and the court may in its discretion increase the award of damages to an amount not to exceed three times the actual damages sustained.

(d) Any person who becomes liable to make payments under this section may recover contributions in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(e) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceeding under the United States anti-trust laws, under the Federal Trade Commission Act, or this chapter shall be regarded as evidence against such persons in an action brought by any party against such person under subsections (a) and (b) as to all matters which said judgment or decree would be an estoppel between the parties thereto.

¶ 3110.10 Penalties

Sec. 482E-10. [Sec. 482E-10 repealed by Laws of 1988, Public Law 88-339, approved and effective June 13, 1988—CCH.]

¶ 3110.11 Civil Penalty

Sec. 482E-10.5. (a) The director may bring an action to recover a civil penalty against any person who violates this chapter or who has knowingly violated a rule or order made pursuant to this chapter. A civil penalty of not more than $100,000 may be assessed.

(b) No civil action may be brought under this chapter later than five years subsequent to the date of the violation or two years subsequent to the discovery of facts constituting the violation, but in no event shall any civil action be brought more than seven years subsequent to the date of the violation.

¶ 3110.12 Criminal Penalties

Sec. 482E-10.6. (a) Violations of this chapter shall be as follows:

(1) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to less than $5,000, shall be a class C felony.

(2) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to $5,000 or more, shall be a class B felony.

(b) In addition to the penalties provided in subsection (a), any person who violates this chapter shall forfeit to the State any interest or property acquired or maintained in connection with the violation, and any interest, security, claim, or property or contractual right of any kind arising in the course of the violation shall be seized, operated, controlled, conducted, or joined in connection with the violation.

(c) The value of all money and anything else of value paid or lost by more than one victim pursuant to the same scheme, plan, or representation, or to the same entity, may be aggregated in determining the class or grade of the offense.

(d) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, as the case may be, to seize all property or other interest declared forfeited pursuant to subsection (b) upon such terms and conditions as the court shall specify. The State shall dispose of such property or other interest as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable so as to be of value to the State, it shall remain in the possession of the State and the director shall dispose of it as deemed proper by the director; provided that the violator shall not benefit from any such disposal.

(e) Notwithstanding any other law to the contrary, a person who has been convicted of a felony under this section, or has had a prior conviction for a crime which would constitute a felony under this section, shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to impose any maximum period of imprisonment provided under chapter 706.

(f) Notwithstanding any other law to the contrary, the following time limitations shall apply to prosecutions of felony violations of this chapter:

(1) Prosecution for a felony under this chapter shall be commenced within five years after the offense is committed.

(2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved person or by the court, but in no event shall prosecution commence more than six years after the offense is committed.

¶ 3110.13 Violation of Chapter; Cease and Desist Order

Sec. 482E-10.7. (a) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter, or any order or rule issued or adopted thereunder, the director may issue a cease and desist order to enforce compliance with this chapter or any such order or rule. The director shall have the discretion to determine the disposition of any executory contracts entered into by the respondent and shall specify in the order whether existing executory contracts shall be suspended or completed.

(b) Upon the issuance of an order under subsection (a), the director shall promptly notify the respondent that the order has been issued and the reasons therefor; that the respondent shall have thirty days to request a hearing in writing; and that if a hearing is requested, the hearing shall commence within fifteen business days of the request.
unless extended by the director for good cause. During the pendency of any hearing requested, the cease and desist order shall remain in effect unless vacated or modified by the director.

(c) After the hearing, the director shall issue a final order that shall affirm, vacate, or modify the order in effect during the pendency of the hearing. If no hearing is requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated by the director.

(d) All hearings and rehearings shall be public.

(e) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the respondent or the respondent's assets. The court shall not require the director to post a bond.

[§ 3110.14] Fees

Sec. 482E-11. The director shall charge and collect a fee of $50 at the time of the filing of the offering circular or the amended offering circular pursuant to section 482E-3(c).

[§ 3110.15] Administration

Sec. 482E-12. (a) Chapter 91 shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter.

(b) The director shall appoint, subject to applicable civil service laws, a competent person to administer this chapter. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter.

[The next page is 2541.]
Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures


SUPPLEMENTARY INFORMATION:
The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 et seq., and the provisions of subpart B, part I, of the Commission’s procedures and rules of practice, 16 CFR 1.11 et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule relating to Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures. Notice of this proceeding, including a proposed rule, was published in the Federal Register on November 11, 1971 (36 FR 21607). Interested parties were thereafter afforded an opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule. The Commission conducted public hearings on the rule from February 14 through March 1, 1972.

After having considered the suggestions, criticisms, objections, and other pertinent information on the record, the Commission on August 22, 1974, published a revised proposed rule in a notice in the Federal Register (39 FR 30360). This notice extended to interested parties an opportunity to submit data, views or arguments regarding the revised proposed rule. A period of 90 days was allowed for the submission of written comments on the revised proposed rule, with the record being held open for reception of comments until November 20, 1974.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notices of proposed rulemaking, as prescribed by law, and has determined that the promulgation of the Trade Regulation Rule and its Statement of Basis and Purpose set forth herein is in the public interest.

Accordingly, the Commission hereby amends Subchapter D, Trade Regulation Rules, Chapter I of 16 CFR by adding a new part 436 as follows:

Sec. 436.1 The Rule.

436.2 Definitions.

436.3 Severability.


[§ 6090] The Rule [Franchisors or Franchise Brokers]

§ 436.1. In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any franchise, or any relationship which is represented either orally or in writing to be a franchise, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for any franchisor or franchise broker.

§ 6100 [Disclosure Requirement and Document]

(a) To fail to furnish any prospective franchisee with the following information:

(i) The official name and address and principal place of business of the franchisor, and whether the parent firm or holding company of the franchisor, if any;

(ii) The name under which the franchisor is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other commercial symbols (hereinafter collectively referred to as "marks") which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective franchisee, or under which the prospective franchisee will be operating.

§ 6102 [Business Experience of Officers]

(2) The business experience during the past 5 years, stated individually, of each of the franchisor's current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, franchise marketing, training and service officers). With regard to each person listed, those persons principal occupations and employers must be included.

§ 6103 [Business Experience of Franchisor]

(3) The business experience of the franchisor and the franchisor's parent firm (if any), including the length of time each: (i) Has conducted a business of the type to be operated by the franchisor; (ii) Has offered or sold a franchise for such business; (iii) Has conducted a business or offered or sold a franchise for a business (A) operating under a name using any mark set forth under paragraph (a)(1)(iii), or (B) involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(iii); and (iv) Has offered for sale or sold franchises in other lines of business, together with a description of such other lines of business.

§ 6104 [Criminal Convictions, Civil Liability, Agency Actions]

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (a)(3) of this section:

(i) Has, at any time during the period of the previous 7 fiscal years, been convicted of a felony or pleaded no contest to a felony charge if the felony involved fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous 7 fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action, or is a party to any civil action (A) involving allegations of fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or (B) which was brought by a present or former franchisee or franchisees which involves or involved the franchise relationship, Provided, however, That only material individual civil actions need be so listed pursuant to this subparagraph (4)(ii), including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting franchise activities or the franchisor-franchisee relationship, or involving fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issue of each such order or ruling. A franchisor may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

§ 6105 [Bankruptcy History]

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (a)(3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

§ 6106 [Description of Franchise]

(6) A factual description of the franchise offered to be sold by the franchisor.

§ 6107 [Franchisee Payments]

(7) A statement of the total funds which must be paid by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the franchise operation, such as initial franchise fees, deposits, downpayments, prepaid rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

§ 6108 [Recurring Payments]

(8) A statement describing any recurring funds required to be paid, in connection with the franchise business, by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

§ 6109 [Franchisee Business with Franchisor Affiliates]

(9) A statement setting forth the name of each person (including the franchisor) the franchisee is directly or indirectly required or advised to do business with, and that such persons are affiliated with the franchisor.
(10) A statement describing any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the franchisee), a list of the names and addresses of such persons. Such list may be made in a separate document delivered to the prospective franchisee with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the franchisor or persons affiliated with the franchisor from suppliers to the prospective franchisee in consideration for goods or services which the franchisor requires or advises the franchisee to obtain from such suppliers.

(12) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the franchisor, or any person affiliated with the franchisor, to the prospective franchisee; and

(ii) A description of the terms by which any payment is to be received by the franchisor from (A) any person offering financing to a prospective franchisee; and (B) any person arranging for financing for a prospective franchisee.

(13) A statement describing the material facts of whether, by the terms of the franchise agreement or other device or practice, the franchisee is:

(i) Limited in the goods or services he or she may offer for sale;

(ii) Limited in the customers to whom he or she may sell such goods or services;

(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or

(iv) Granted territorial protection by the franchisor, by which, with respect to a territory or area, (A) the franchisor will not establish another, or more than any fixed number of, franchises or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section, or (B) the franchisor or its parent will not establish other franchises or company-owned outlets selling or leasing the same or similar products or services under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the franchisee requires the franchisee (or, if the franchisee is a corporation, any person affiliated with the franchisee) to participate personally in the direct operation of the franchise.

(15) A statement disclosing, with respect to the franchise agreement and any related agreements:

(i) The term (i.e., duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;

(ii) The conditions under which the franchisee may renew or extend;

(iii) The conditions under which the franchisor may refuse to renew or extend;

(iv) The conditions under which the franchisee may terminate;

(v) The conditions under which the franchisor may terminate;

(vi) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor, and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee and after the expiration of the franchise;

(vii) The franchisee's interest upon termination of the franchise, or upon refusal to renew or extend the franchise, whether by the franchisor or by the franchisee;

(viii) The conditions under which the franchisor may repurchase, whether by right of first refusal or at the option of the franchisor (and if the franchisor has the option to repurchase the franchise, whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee);

(ix) The conditions under which the franchisee may sell or assign all or any part of its interest in the ownership of the franchise, or of the assets of the franchise business;

(x) The conditions under which the franchisee may sell or assign, in whole or in part, its interest under such agreements;

(xi) The conditions under which the franchisee may modify;

(xii) The conditions under which the franchisor may modify;

(xiii) The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee; and

(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the franchisor and as to the particular named business being offered:

(i) The total number of franchises operating at the end of the preceding fiscal year;

(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;

(iii) The names, addresses, and telephone numbers of (A) the 10 franchised outlets of the named franchise business nearest the prospective franchisee's intended location; or (B) all franchised outlets of the franchisor, or (C) all franchised outlets of the franchisor in the State in which the prospective franchisee lives or where the proposed franchise is to be located, Provided, however, That there are more than 10 such franchised outlets.
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number of franchises of the franchisee to the franchisee while the franchisee was a franchisee, the franchisee shall:

(iii) The amount of any financial assistance or advice, or other assistance, the franchisor shall provide to the franchisee, the franchisee shall:

10276

(2) A balance sheet, if the franchisee was not otherwise known to the franchisee, shall include a statement of financial position for the most recent 3 years, and an income statement for the most recent 3 years, and a statement of changes in financial position for the most recent 3 years, for the franchisee and the franchisee's predecessors.

(3) A list of the franchisee's officers and directors, and a statement of the relationship of each officer and director to the franchisee.

(4) A statement of the franchisee's financial condition, including the financial condition of the franchisee's predecessors, if any, and the financial condition of the franchisee's subsidiaries, if any.

(5) A statement of the franchisee's operating expenses, including the operating expenses of the franchisee's predecessors, if any, and the operating expenses of the franchisee's subsidiaries, if any.

(6) A statement of the franchisee's capital expenditures, including the capital expenditures of the franchisee's predecessors, if any, and the capital expenditures of the franchisee's subsidiaries, if any.

(7) A statement of the franchisee's debt, including the debt of the franchisee's predecessors, if any, and the debt of the franchisee's subsidiaries, if any.

(8) A statement of the franchisee's cash flow, including the cash flow of the franchisee's predecessors, if any, and the cash flow of the franchisee's subsidiaries, if any.

(9) A statement of the franchisee's assets, including the assets of the franchisee's predecessors, if any, and the assets of the franchisee's subsidiaries, if any.

(10) A statement of the franchisee's equity, including the equity of the franchisee's predecessors, if any, and the equity of the franchisee's subsidiaries, if any.

(11) A statement of the franchisee's investments, including the investments of the franchisee's predecessors, if any, and the investments of the franchisee's subsidiaries, if any.

(12) A statement of the franchisee's income, including the income of the franchisee's predecessors, if any, and the income of the franchisee's subsidiaries, if any.

(13) A statement of the franchisee's expenses, including the expenses of the franchisee's predecessors, if any, and the expenses of the franchisee's subsidiaries, if any.

(14) A statement of the franchisee's taxes, including the taxes of the franchisee's predecessors, if any, and the taxes of the franchisee's subsidiaries, if any.

(15) A statement of the franchisee's losses, including the losses of the franchisee's predecessors, if any, and the losses of the franchisee's subsidiaries, if any.

(16) A statement of the franchisee's gains, including the gains of the franchisee's predecessors, if any, and the gains of the franchisee's subsidiaries, if any.

10376

(3) In the event of the termination of a franchise agreement, the franchisee shall:

(a) Provide the franchisor, or its authorized representative, with a copy of the financial records of the franchisee, including:

(1) A balance sheet, if the franchisee was not otherwise known to the franchisee, shall include a statement of financial position for the most recent 3 years, and an income statement for the most recent 3 years, and a statement of changes in financial position for the most recent 3 years, for the franchisee and the franchisee's predecessors.

(b) A list of the franchisee's officers and directors, and a statement of the relationship of each officer and director to the franchisee.

(c) A statement of the franchisee's financial condition, including the financial condition of the franchisee's predecessors, if any, and the financial condition of the franchisee's subsidiaries, if any.

(d) A statement of the franchisee's operating expenses, including the operating expenses of the franchisee's predecessors, if any, and the operating expenses of the franchisee's subsidiaries, if any.

(e) A statement of the franchisee's capital expenditures, including the capital expenditures of the franchisee's predecessors, if any, and the capital expenditures of the franchisee's subsidiaries, if any.

(f) A statement of the franchisee's debt, including the debt of the franchisee's predecessors, if any, and the debt of the franchisee's subsidiaries, if any.

(g) A statement of the franchisee's cash flow, including the cash flow of the franchisee's predecessors, if any, and the cash flow of the franchisee's subsidiaries, if any.

(h) A statement of the franchisee's assets, including the assets of the franchisee's predecessors, if any, and the assets of the franchisee's subsidiaries, if any.

(i) A statement of the franchisee's equity, including the equity of the franchisee's predecessors, if any, and the equity of the franchisee's subsidiaries, if any.

(j) A statement of the franchisee's investments, including the investments of the franchisee's predecessors, if any, and the investments of the franchisee's subsidiaries, if any.

(k) A statement of the franchisee's income, including the income of the franchisee's predecessors, if any, and the income of the franchisee's subsidiaries, if any.

(l) A statement of the franchisee's expenses, including the expenses of the franchisee's predecessors, if any, and the expenses of the franchisee's subsidiaries, if any.

(m) A statement of the franchisee's taxes, including the taxes of the franchisee's predecessors, if any, and the taxes of the franchisee's subsidiaries, if any.

(n) A statement of the franchisee's losses, including the losses of the franchisee's predecessors, if any, and the losses of the franchisee's subsidiaries, if any.

(o) A statement of the franchisee's gains, including the gains of the franchisee's predecessors, if any, and the gains of the franchisee's subsidiaries, if any.

10386

(3) In the event of the termination of a franchise agreement, the franchisee shall:

(a) Provide the franchisor, or its authorized representative, with a copy of the financial records of the franchisee, including:

(1) A balance sheet, if the franchisee was not otherwise known to the franchisee, shall include a statement of financial position for the most recent 3 years, and an income statement for the most recent 3 years, and a statement of changes in financial position for the most recent 3 years, for the franchisee and the franchisee's predecessors.

(b) A list of the franchisee's officers and directors, and a statement of the relationship of each officer and director to the franchisee.

(c) A statement of the franchisee's financial condition, including the financial condition of the franchisee's predecessors, if any, and the financial condition of the franchisee's subsidiaries, if any.

(d) A statement of the franchisee's operating expenses, including the operating expenses of the franchisee's predecessors, if any, and the operating expenses of the franchisee's subsidiaries, if any.

(e) A statement of the franchisee's capital expenditures, including the capital expenditures of the franchisee's predecessors, if any, and the capital expenditures of the franchisee's subsidiaries, if any.

(f) A statement of the franchisee's debt, including the debt of the franchisee's predecessors, if any, and the debt of the franchisee's subsidiaries, if any.

(g) A statement of the franchisee's cash flow, including the cash flow of the franchisee's predecessors, if any, and the cash flow of the franchisee's subsidiaries, if any.

(h) A statement of the franchisee's assets, including the assets of the franchisee's predecessors, if any, and the assets of the franchisee's subsidiaries, if any.

(i) A statement of the franchisee's equity, including the equity of the franchisee's predecessors, if any, and the equity of the franchisee's subsidiaries, if any.

(j) A statement of the franchisee's investments, including the investments of the franchisee's predecessors, if any, and the investments of the franchisee's subsidiaries, if any.

(k) A statement of the franchisee's income, including the income of the franchisee's predecessors, if any, and the income of the franchisee's subsidiaries, if any.

(l) A statement of the franchisee's expenses, including the expenses of the franchisee's predecessors, if any, and the expenses of the franchisee's subsidiaries, if any.

(m) A statement of the franchisee's taxes, including the taxes of the franchisee's predecessors, if any, and the taxes of the franchisee's subsidiaries, if any.

(n) A statement of the franchisee's losses, including the losses of the franchisee's predecessors, if any, and the losses of the franchisee's subsidiaries, if any.

(o) A statement of the franchisee's gains, including the gains of the franchisee's predecessors, if any, and the gains of the franchisee's subsidiaries, if any.
To protect you, we've required your franchisor to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a franchise is a complicated investment. Take your time to decide. If possible, show your contract and this information to an attorney, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on franchising in your state. Ask your state agencies about them.

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Provided, that the obligation to furnish such disclosure statement shall be deemed to have been met for both the franchisor and the franchise broker if either such party furnishes the prospective franchisee with such disclosure statement.

¶ 6122 [Currency Requirement for Prospectus]

(22) All information contained in the disclosure statement shall be current as of the close of the franchisor's most recent fiscal year. After the close of each fiscal year, the franchisor shall be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the franchisor or relating to the franchise business of the franchisor, about which the franchisor or franchise broker, or any agent, representative, or employee thereof, knows or should know. Each prospective franchisee shall have in his or her possession, at the "time for making of disclosures," the disclosure statement and quarterly revision for the period most recent to the "time for making of disclosures" and available at that time. Information which is required to be audited pursuant to paragraph (e)(20) of this section is not required to be audited for quarterly revisions. Provided, however, that the unsupervised information be accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

¶ 6123 [Table of Contents]

(23) A table of contents shall be included within the disclosure statement.

¶ 6124 [Response To Every Item]

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

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§ 6132

(i) The number and percentage of outlets of the named franchise business which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented, and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(5)(i) of this section. Provided, however, That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

Except, That representations of the sales, income or profits of existing franchise outlets need not comply with this paragraph (b).

§ 6133

(c) To make any oral, written or visual representation to a prospective franchisees which states a specific level of sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business, or which states other facts which suggest such a specific level, unless:

§ 6134

(1) At the time such representation is made, such representation is relevant to the geographic market in which the franchise is to be located;

§ 6135

(2) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand. Provided, however, That in immediate conjunction with such representation, the franchisor discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and Provided, further, That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective franchisee of the identity of any specific franchisee or of information reasonably likely to lead to the disclosure of such person’s identity; and Provided, further, That no additional representation as to the sales, income, or gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business may be made later than the “time for making of disclosures”.

§ 6136

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective franchisee to whom the representation is made shall be furnished with such document no later than the “time for making of disclosures”. Provided, however, That if the representation is made at or prior to a “personal meeting” and such meeting occurs before the “time for making of disclosures,” the document shall be furnished to the prospective franchisee to whom the representation is made at that “personal meeting”.

§ 6137

(1) The number and percentage of outlets of the named franchise business which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and

§ 6138

(2) The beginning and ending dates for the corresponding time period referred to by subparagraph (ii). Provided, however, That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

§ 6139

(1) A cover sheet distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document and the following notice imprinted therein in upper and lower case boldface type of not less than twelve point size:

INFORMATION FOR PROSPECTIVE FRANCHISEES ABOUT FRANCHISE [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we’ve required the franchisor to give you this information. We haven’t checked it and don’t know if it’s correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that’s been left out, let us know about it. It may be against the law.

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There may also be laws on franchising in your State. Ask your State agencies about them.

[Federal Trade Commission
Washington, D.C.]

[Table of Contents]

(2) A table of contents.

Provided, however, That each prospective franchisee to whom the representation is made shall be notified at the "time for making of disclosures" of any material change (about which the franchisor, franchise broker, or any of the agents, representatives, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

[General Dissemination of Sales, Earnings, Profits]

c) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraphs (b) or (c) of this section) which states a specific level of sales, income, gross or net profits, either actual or potential, of existing or prospective outlets (whether franchised or company-owned) of the named franchise business or which states other facts which suggest such a specific level, unless:

[Reasonable Basis]

(1) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in his possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

[Underlying Data—Generally Accepted Accounting Principles]

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

[Mandatory Information About Outlets]

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named franchise business which the franchisor or the franchisee broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

[Cautionary Statement; Inexperienced Franchisor]

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

Provided, however, That if such representation is not based on actual experience of existing outlets of the named franchise business, that fact also should be disclosed;

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[Written Document; Timing; "Personal Meeting"]

(5) No later than the earlier of the first "personal meeting" or the "time for making of disclosures," the franchisor shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other than that provided for by this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions thereof;

(ii) The number and percentage of outlets of the named franchise business which the franchisor or the franchisee broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance that you'll do well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the franchisor lacks prior franchising experience as to the named franchise business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the franchisor has not been in business long enough to have actual business data and figures;

(vii) A cover sheet, distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document; and the following notice printed thereon in not less than 12 point upper and lower case boldface type:

INFORMATION FOR PROSPECTIVE FRANCHISEE ABOUT FRANCHISE [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we've required the franchisor to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be law about franchising in your State. Ask your State agencies about them.

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(viii) A table of contents:

¶ 1647 [Notice of Changes]
(6) Each prospective franchisee shall be notified at the "time for making of disclosures" of any material changes that have occurred in the information contained in this document.

¶ 1648 [Contradictory Claims]
(7) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

¶ 1649 [Delivery of Prospectus—Franchisor or Broker]
(g) To fail to furnish the prospective franchisee with a copy of the franchisor's franchise agreement and related agreements with the document, and a copy of the completed franchise and related agreements intended to be executed by the parties at least 3 business days prior to the date the agreements are to be executed.

Provided, however, That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the franchisor and the franchise broker if either such person furnishes the prospective franchisee with the written disclosures required thereby.

¶ 1650 [Return of Funds or Deposits]
(b) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

¶ 1660 Definitions
§ 436.2. As used in this part, the following definitions shall apply:

¶ 1661 ["Franchise"]
(a) The term "franchise" means any continuing commercial relationship created by any arrangement or arrangements whereby:

¶ 1662 [Offer, Sale, Distribution of Goods, Commodities, Services]
(1)(x) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

[Mark, Name, Symbol]

(1) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

[Quality Standards]

(2) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

[Control]

(1) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the

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franchisee's business organization, promotional activities, management, marketing plan or business affairs; or

[Assistance]

(2) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including, but not limited to, the franchisor's business organization, management, marketing plan, promotional activities, or business affairs; Provided, however, That assistance in the franchisee's promotional activities shall not be the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance; or

[Offer, Sale, Distribution of Goods, Commodities, Services]

(ii)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

[Supplier]

(1) Supplied by another person (hereinafter "franchisor"), or

[Designated Supplier]

(2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

[Affiliated Supplier]

(3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

[Securing of Outlets or Accounts]

(1) Secures for the franchisee retail outlets or accounts for said goods commodities, or services; or

[Locations or Sites]

(2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale or distribution of said goods, commodities, or services; or

[Third-Party Location Service]

(3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (a)(1)(ii)(B)(1) and (2) above; and

¶ 1663 [Payouts]

(2) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

¶ 1664 [Exemptions]

(3) Exemptions. The provisions of this part shall not apply to a franchise:

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[Fractional Franchise]

(i) Which is a "fractional franchise"; or

[Department Store Departments]

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly (A) required to do business with by the retailer-grantor or (B) advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor, or

[Minimal Payments]

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than $500; or

[Absence of Writing]

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

¶ 6165 [Exclusions]

(4) Exclusions. The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

[Employment]

(i) The relationship between an employer and an employee, or among general business partners; or

[Cooperative]

(ii) Membership in a bona fide "cooperative association"; or

[Certification]

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers, on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

[Unique License]

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

¶ 6166 [Representation of Franchise]

(5) Any relationship which is represented either orally or in writing to be a franchise (as defined in this paragraph (a)(1) and (2) of this section) is subject to the requirements of this part.

¶ 6167 ["Person"]

(b) The term "person" means any individual, group, association, limited or general partnership, corporation, or any other business entity.

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¶ 6168 ["Franchisor"]

(c) The term "franchisor" means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (a) of this section.

¶ 6169 ["Franchisee"]

(d) The term "franchisee" means any person (1) who participates in a franchise relationship as a franchisee, as denoted in paragraph (a) of this section, or (2) to whom an interest in a franchise is sold.

¶ 6170 ["Prospective Franchisee"]

(e) The term "prospective franchisee" includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a franchisor or franchise broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a franchise relationship involving such a person.

¶ 6171 ["Business Day"]

(f) The term "business day" means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

¶ 6172 ["Time for Making of Disclosures"]

(g) The term "time for making of disclosures" means ten (10) business days prior to the earlier of (1) the execution by a prospective franchisee of any franchise agreement or any other agreement imposing a binding legal obligation on such prospective franchisee; about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise, or (2) the payment by a prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.

¶ 6173 ["Fractional Franchise"]

(h) The term "fractional franchise" means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the franchisee.

¶ 6174 ["Affiliated Person"]

(i) The term "affiliated person" means a person (as defined in paragraph (b) of this section):

¶ 6175 [Control]

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or
Federal Trade Commission Rule

§ 6176 [Stock Equity]
(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or

§ 6177 [Interlocks]
(3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

§ 6178 ["Franchise Broker"]
(f) The term “franchise broker” means any person other than a franchisor or a franchisee who sells, offers for sale, or arranges for the sale of a franchise.

§ 6179 ["Sale of Franchise"]
(k) The term “sale of a franchise” includes a contract or agreement whereby a person obtains a franchise or interest in a franchise for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee, unless the new contracts or agreements contain material changes from those in effect between the franchisor and franchisee prior thereto.

§ 6180 ["Cooperative Association"]
(1) A “cooperative association” is either (1) an association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or (2) an organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

§ 6181 ["Fiscal Year"]
(m) The term “fiscal year” means the franchisor’s fiscal year.

§ 6182 ["Material", "Material Fact", "Material Change"]
(n) The terms “material,” “material fact,” and “material change” shall include any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchise business or which has any significant financial impact on a franchise or prospective franchise.

§ 6183 ["Personal Meeting"]
(o) The term “personal meeting” means a face-to-face meeting between a franchisor or franchisee or franchise broker (or any agent, representative, or employee thereof) and a prospective franchisee which is held for the purpose of discussing the sale or possible sale of a franchise.

§ 6190 [Severability]
§ 436.3. If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

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The Rule

§ 6191 [Note 1: Legality of Practices]
Note 1.—The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure should not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission’s intention not to enforce any applicable statute.

§ 6192 [Note 2: Other Regulation]
Note 2.—By taking action in this area, the Federal Trade Commission does not intend to annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of any State, municipality, or other local government with respect to franchising practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective franchisee is equal to or greater than that provided by this part. Examples of provisions which provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the franchisor or the disclosure of more complete information to the franchisee.

Note 3.—(As per § 436.1(a)(24) [§ 6124] of this part):

§ 6193 [Disclosure Statement]
Disclosure Statement:
Pursuant to 16 CFR 436.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, the following information is set forth in [name of franchise] for your examination:
1. Identifying information as to franchisor.
2. Business experience of franchisor’s directors and executive officers.
4. Litigation history.
5. Bankruptcy history.
6. Description of franchise.
7. Initial funds required to be paid by franchisee.
8. Recurring funds required to be paid by franchisee.
9. Affiliated persons the franchisee is required or advised to do business with by the franchisor.
10. Obligations to purchase.
11. Revenues received by the franchisor in consideration of purchases by a franchisee.
13. Restriction of sales.
14. Personal participation required of the franchisee in the operation of the franchise.
15. Termination, cancellation, and renewal of the franchise.
Uniform Franchise and Business Opportunities Act

(¶ 3600)

(Final version, approved by the National Conference of Commissioners on Uniform State Laws at its July 31—August 7, 1987 meeting, Newport Beach, California. Includes prefatory note and comments prepared by the Drafting Committee on Franchise and Business Opportunities Act.)

Prefatory Note

Procedural History

The National Conference of Commissioners on Uniform State Laws (NCCUSL) decided in the summer of 1983 to undertake the drafting of a Uniform Act in the field of franchising. The decision to make this Act part of the Conference program followed a year of work by a study committee that explored the need for and feasibility of such an Act.

The drafting effort moved ahead with one drafting meeting in 1983, two in 1984, four in 1985, two in 1986, and two in 1987. Successive drafts of the Act were considered line-by-line at each of these meetings. Drafts were also considered line-by-line by the Commissioners sitting in Committee on the Whole at Annual Meetings of the NCCUSL in August of 1985 and 1986. The Conference promulgated the Act at its annual meeting in August, 1987 after a third line-by-line reading.

The Need for a Uniform Act

The NCCUSL starts each drafting project expecting to produce an Act that will be useful to its legislator constituents. Four elements especially seem to point toward a successful NCCUSL project. First, the Conference has had its greatest success in commercial law. Second, the Conference has done well with Acts that set rules governing long-term business relationships. A third factor identifying the most successful NCCUSL undertakings is complexity, for when a project is complex, legislatures welcome the help offered by the NCCUSL, a group that is willing to study a thorny subject in great detail over several years.

Finally, the Conference does best when the need for uniformity of law among the states is manifest. Legislators understand the legal hazards that arise whenever business affairs flow across state lines while the law does not. Legislators then see the value of enacting a uniform act that minimizes the aggravation of shifting legal rules.

Applying these four criteria to the law of franchising and business opportunities, we find that on this topic the Conference has addressed legal rules that: affect commercial life, regulate long-term relationships, involve complex policy judgments, and cover activities that, although interstate, are now controlled by state laws of great variety. Promulgating a Uniform Act on franchises and business opportunities, therefore, is an undertaking within the profile of NCCUSL success.

Franchising plays a major role in the distribution of goods and services in the American economy. Many franchisors operate nationally and franchisees may do business in more than one state. Legislative consideration of bills affecting the field of franchising has been continuous for a decade and a half. Twelve states regulate franchise offerings with registration laws enacted in the early 1970s (New York's law...
was enacted in 1980). The Federal Trade Commission promulgated a Trade Regulation Rule on Franchising and Business Opportunities in 1979. Twenty-three states regulate "business opportunities" to some degree. Legislative activity continues to the present time, as illustrated by the bills introduced in legislatures around the nation during 1985 and 1986.

During those two years, bills on dealer relationships in the field of distribution, usually including franchise relationships were introduced (but not enacted) in Alaska, Arizona, California, Connecticut, Iowa, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New York, Rhode Island, and Tennessee. Legislation (minor corrective amendments to an older statute) was enacted in Connecticut. In 1984, Michigan repealed its franchise registration statute in favor of a simple disclosure and anti-fraud requirement.

Bills amending franchise sales practices laws were introduced in California, Illinois, Indiana, and Minnesota.

Bills on business opportunities were introduced in Indiana, Maine, New York, Ohio, Oklahoma, South Dakota, South Carolina, and Texas. Amendments to older statutes were enacted in Indiana, Maine, and South Carolina.

Legislative activity in these areas may be expected to continue.

The Draft

The NCCUSL Drafting Committee worked to construct an act that balances the interests of franchisors, franchisees, and the public—an act that provides sensible law for franchising arrangements. Too many state laws now in effect have arisen out of political power struggles; the statutes in many cases represent a legislative victory for one side or the other based on political strength, rather than being the considered outcome of an effort to produce efficient, fair, and balanced law. Current law, in many instances, misses a fair balance between the interests of franchisor and franchisee and often ignores altogether the interests of consumers, other franchisees in the particular franchise system, or prospective franchisees in that system.

The Uniform Franchise and Business Opportunities Act contains five Articles. The first Article includes definitions and other general provisions. The second Article codifies certain minimum standards of conduct in franchise and business opportunity relationships. The third Article covers franchise sales practices. The fourth Article covers business opportunities sold on the strength of representations of near certain profitability. The business opportunities Article is subject to extensive exceptions, however, including an exception for businesses that meet the franchise criteria. The fifth Article includes the administrative provisions of the Act, as well as sanctions for violations of its provisions. Discussion of the main substantive themes of Articles II, III, IV, and V follow.

Article II

Article II imposes a general duty of good faith on parties to a franchise or business opportunity relationship. The duty is derived from the common law, Section 205 of the Restatement (Second) of Contracts, and the Uniform Commercial Code. Article II generally reflects current case law. It makes no unwarranted economic or political assumptions. It prevents surprise and, in combination with Sections 105 and 106, enhances the likelihood that the justified expectations of parties to a franchise or business opportunity will be fulfilled.

Article III

Article III governs offers and sales of franchises. It requires the franchisor to disclose material information so that a person is considering the purchase of a franchise may make an informed investment decision. The Act provides a private right of action and strong public agency enforcement power to encourage compliance in lieu of the regulatory regime under the 12 state laws that now regulate franchise sales through a pre-sale registration process.

Franchise law currently in place varies from a self-implementing disclosure requirement under a 1979 Federal Trade Commission Rule, to similar disclosure requirements under state law in Oregon and Michigan, to full pre-sale registration requirements in 12 states (California, Illinois, Indiana, Maryland, Michigan, Minnesota, North Dakota, New York, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin). All but the New York statute were enacted in the early 1970's. Hawaii has a filing and disclosure requirement. Michigan repealed its registration law in 1984 but retained pre-sale disclosure and anti-fraud requirements. The remaining 35 states have no franchise registration or disclosure law of general applicability. The registration process in the 12 states constitutes a review of the disclosure document and in some states includes a screen for forbidden contract terms. Unlike state securities regulation, state currently do not conduct "merit" evaluation of proposed franchise offerings.

Varying regulatory attitudes in the registration states combined with varying state policies on such subjects as choice of law and choice of forum clauses, post-termination covenants not to compete, flexible franchise fee structures, etc., result in an inability of multistate franchisors to administer uniform franchise offerings across some state lines. "Red tape" in one or two states adds needless delay and expense to franchise offerings. This Act does away with the regulatory burden of registration in the maturing area of franchising, while preserving the process in the much newer area of "business opportunities."

Article IV

Article IV, the business opportunity article, should have a salutary effect in controlling the purveyors of various get-rich-quick schemes. It is designed to have relatively little impact on mainstream commercial enterprises.

Article IV relies for its effectiveness primarily on a requirement of pre-sale registration by the promoter/seller of a business opportunity. Experience has demonstrated that shady operators do not in fact register, but nonregistration provides the means by which the enforcement authorities can force fraudulent promoters out of the market immediately upon discovery. That is, nonregistration provides a basis for a cease and desist order and there is then no need actually to show the fraudulent nature of the particular business opportunity.

The second control device is a requirement that the promoter maintain a bond, escrow deposit, or letter of credit to back up any promise to buy-back goods or to guarantee profit. The promoter can avoid this requirement by refraining from making the kind of representation that is the hallmark of offensive practices in the sale of business opportunities.

Article V

Remedies and administrative provisions are collected in Article V. The rationale for reducing the regulatory barrier to entry to the use of franchising as a method of distribution is the ready availability of effective private and public recourse against transgressions. Article V provides a clear and straightforward civil right of action and powerful public investigatory and enforcement power. The remedial provisions should
provide both substantial deterrence against business opportunities abuses and modest hope for recovery from violators, but without establishing insurmountable barriers for legitimate users of distribution techniques that may also fall under the definition of "business opportunities." The private right of action makes up for the most glaring shortcoming of the FTC Trade Regulation Rule, the long-recognized absence of a private cause of action for violation of the Federal Trade Commission Act or rules promulgated thereunder.

The illogic and impracticality of operating national distribution systems under widely varying state laws should be obvious. The Conference believes that this Act represents a middle ground of thoughtful accommodation to competing interests. It is a forward step for the law.

Advisors

The Committee had assistance from a number of advisors throughout its work.

Official liaisons to the Committee from the American Bar Association were Martin Fern, Los Angeles, and Rupert Barkoff, Atlanta.

In addition, Byron E. Fox of New York served as liaison from the ABA Forum Committee on Franchising.

Andrew A. Caflery of Washington was official advisor to the committee from the International Franchise Association, a trade association representing franchisors.

Timothy Fine of San Francisco was the official advisor to the committee on behalf of the National Association of Franchises and Dealers.

Alan Kerényi of Wisconsin was the official advisor to the committee on behalf of the North American Securities Administrators Association, Inc., the securities commissioners and other officials who regulate franchising and business opportunities in the various states. Early in the project Cheryl Friedman of Iowa served in that advisory role.

In addition to these official advisors, the committee had the assistance of numerous observers who participated in advising the committee. Particularly active were:


COMMENT

Although divided into separate Articles for ease of reference and understanding, no part of the Act is intended for separate enactment.

Article I

General Provisions

Section 101. Definitions.

As used in this [Act]:

(1) "Administrator" means the [title of enforcement official].

(2) "Advertisement" means information published or disseminated to the public to promote the sale of a franchise or business opportunity.

(3) "Affiliate" means a person controlling, controlled by, or under common control with another person.

(4) "Business day" means a day other than a Saturday, Sunday, or legal holiday under the laws of this State.

(5) "Business opportunity:" means:

(a) a plan, agreement, or transaction, oral or written, between two or more persons, under which:
   (A) a purchaser pays or agrees to pay an initial payment of $500 or more;
   (B) a promoter or its affiliate or designee disposes, or offers or attempts to dispose, of goods or services to the purchaser, whether or not for resale, to assist the purchaser to begin a business; and
   (C) the promoter or its affiliate or designee represents that:
      (I) the promoter or its affiliate or designee will refund all or a substantial part of the purchaser's initial payment if the purchaser is unsuccessful or dissatisfied with the business opportunity;
      (II) the promoter or its affiliate or designee will reimburse the purchaser for, or will purchase from the purchaser, goods the purchaser produces, grows, or modifies, or services the purchaser performs, using goods or services supplied by the promoter or its affiliate or designee, or resulting from those goods or services;
      (III) the purchaser's success with the business opportunity is ensured because the promoter or its affiliate will provide, or will assist the purchaser in finding, locating or securing customers, or providing the use, operation, or maintenance of equipment, including premises the purchaser does not own or lease;
      (IV) the purchaser's success with the business opportunity is ensured by a marketing plan prescribed in substantial part by the promoter or its affiliate under which the promoter or its affiliate will provide to the purchaser training or marketing assistance, in the purchaser's method of operation; or
      (V) the business opportunity is free from risk or certain to produce profits, which representation may arise from all of the assurances taken as a whole; but

(i) the term does not include:
   (A) a franchise;
   (B) a security or a transaction in a security that is registered or qualified under or otherwise complies with [state securities act];
   (C) a plan by a retailer of goods or services for the operation of a leased department within premises controlled by the retailer;
   (D) a bona fide liquidation of a business; or
   (E) a disposition of an interest in real property.

(6) "Designee" means a person whom a promoter designates as a source of goods or services to be used by a purchaser of a business opportunity and who gives consideration to the promoter or its affiliate in connection with either the designation or the disposition of goods or services to the purchaser.

(7) "Franchisee" means:

(i) an agreement, express or implied, oral or written, between two or more persons by which:
(A) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by the franchisor;

(B) operation of the franchisee's business pursuant to the marketing plan is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the franchisor or its affiliate; and

(C) the franchisee pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee or

(ii) a master franchise.

(8) "Franchise fee" means a fee or charge for the right to enter into or maintain a business under a franchise, including a payment or deposit for goods, services, rights, or training, but not including:

(i) payment for a reasonable quantity of inventory goods at a bona fide wholesale price;

(ii) payment at fair market value for purchase or lease of real property, fixtures, equipment, or supplies necessary to enter into or to maintain a business;

(iii) payment for goods on consignment, if the proceeds remitted by the consignee from sale of the goods constitute only the bona fide wholesale price of the goods;

(iv) payment of a reasonable service charge or discount to the issuer of a credit card by a person honoring the credit card or to a trading stamp company by a person issuing trading stamps;

(v) payment of a commission or compensation in a transaction constituting in substance only a bona fide wholesale transaction;

(vi) repayment of a bona fide loan;

(vii) payment of a bona fide security deposit for real or personal property; or

(viii) payment of a bona fide rental or cooperative advertising charge by a tenant in a shopping center to the shopping center or to a person designated by the operator of the shopping center.

(9) "Franchisee" means a person to whom a franchise is granted.

(10) "Franchisor" means a person who grants a franchise and includes a subfranchisee with respect to a franchise the subfranchisor offers or sells.

(11) "Initial payment" means an amount the purchaser of a business opportunity pays or is obligated to pay to the franchisor or its affiliate or designee before the end of the sixth month after the date of the business opportunity agreement, but does not include:

(i) payment for a reasonable quantity of inventory goods at a bona fide wholesale price;

(ii) payment of a bona fide security deposit in connection with the bailment of goods for demonstration, sample, or similar purposes, in an amount not in excess of the greater of the fair market value or reasonably anticipated replacement cost of the goods; or...
result, or it may enforce the remainder of the agreement without the unconscionable provision, or if necessary it may refuse to enforce the agreement.

(b) Before making a finding of unconscionability under subsection (a), the court, on motion of a party or its own motion, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, application, and effect of the agreement, provision, or conduct complained of.

COMMENT
1. This section does not prevent a court from granting preliminary injunctive relief. Subsection (b) requires a court to take evidence only as a prerequisite to finding a contract term to be unconscionable. A summary finding that a provision of a franchise or business opportunity is unconscionable is permitted by Section 106.

2. Section 106 is based upon the corresponding provisions of Article 2 of the Uniform Commercial Code. The standard of unconscionability, articulated in subsection (a), is applied as of the time of the formation of the contract, but may be established by evidence that includes subsequent conduct. Frivolous or groundless claims of unconscionability are not addressed by this Act but may be dealt with under general rules of civil procedure.

Section 107. Nonretroactivity.

This [Act] does not apply to a claim for relief arising before the effective date of this [Act].

Section 108. Short Title.

This [Act] may be cited as the "Uniform Franchise and Business Opportunities Act".

Section 109. Application and Construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this [Act] among states enacting it. This [Act] shall be liberally construed to effectuate its purposes.

Section 110. Effective Date.

This [Act] takes effect on [__________], 19[___].

COMMENT
At least 180 days should be allowed from enactment before the Act takes effect. The effective date should be stated as a date certain.

Section 111. Severability.

If a provision of this [Act] or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to that end the provisions of this [Act] are severable.

Section 112. Repeals.

The following acts and parts of acts are repealed:

(1) 

(2) 

(3) 

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Appendix A: Exemption Section 301

(1) A franchise or business opportunity is exempt from the disclosure requirement if it is a franchise that is "minimum"-size franchise, as defined in Section 6130(f). This exemption applies to all franchises, other than the following:

(a) Franchises for personal services, as defined in Section 6130(f)

(b) Franchises for the sale of goods or services to the public

(c) Franchises for the sale of goods or services to the public

(d) Franchises for the sale of goods or services to the public

(e) Franchises for the sale of goods or services to the public

(f) Franchises for the sale of goods or services to the public

(g) Franchises for the sale of goods or services to the public

(h) Franchises for the sale of goods or services to the public

(i) Franchises for the sale of goods or services to the public

(j) Franchises for the sale of goods or services to the public

(k) Franchises for the sale of goods or services to the public

(l) Franchises for the sale of goods or services to the public

(m) Franchises for the sale of goods or services to the public

(n) Franchises for the sale of goods or services to the public

(o) Franchises for the sale of goods or services to the public

(p) Franchises for the sale of goods or services to the public

(q) Franchises for the sale of goods or services to the public

(r) Franchises for the sale of goods or services to the public

(s) Franchises for the sale of goods or services to the public

(t) Franchises for the sale of goods or services to the public

(u) Franchises for the sale of goods or services to the public

(v) Franchises for the sale of goods or services to the public

(w) Franchises for the sale of goods or services to the public

(x) Franchises for the sale of goods or services to the public

(y) Franchises for the sale of goods or services to the public

(z) Franchises for the sale of goods or services to the public

(A) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(B) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(C) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(D) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(E) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(F) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(G) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(H) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(I) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(J) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(K) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(L) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(M) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(N) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(O) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(P) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(Q) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(R) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(S) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(T) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(U) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(V) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(W) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(X) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(Y) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).

(Z) The franchise for the sale of goods or services to the public is a "minimum"-size franchise, as defined in Section 6130(f).
will constitute less than 20 percent of the franchisee's total sales in all lines of business during the first 12 months of operation of the franchise;

(3) to an officer, director, partner, principal, or affiliate of the franchisor, and the offer is not pursuant to a public offering;

(4) in exchange for one or more existing franchises and the terms and conditions of the exchange are approved by a court pursuant to the United States Bankruptcy Code;

(5) by or to a state or a subdivision of a state or other governmental agency, or

(6) by a franchisee, including a subfranchisor selling the entire master franchise, for the franchisee's account and the sale is not effected by or through the franchisor.

(b) A sale for purposes of subsection (a)(6) is not effected by or through the franchisor solely because the franchisor has or exercises a right to consent to the transaction, to approve or disapprove a proposed buyer of the franchise, or to charge a transfer fee under the franchise.

**Comment**

1. Caution should be exercised in transactions that may be exempt under Section 301 but not under the FTC Rule (16 CFR Part 436).

2. The exemption in subparagraph (a)(2) is based upon the "fractional franchise" exemption from the FTC Rule, which assumes that investors with the prescribed level of experience and the lack of dependence on the franchise do not need customary precommitment disclosure. All business interests of the franchisee are to be taken into account in determining the universe against which the 20% standard is to be applied.

3. The bankruptcy exemption is based on the idea that contractual exchanges supervised by a bankruptcy court do not require the precommitment disclosure required under other circumstances.

**Section 302. Precommitment Disclosure.**

(a) A person may not offer or sell a franchise in this State without furnishing the prospective franchisee at the time required by subsection (b) an offering circular complying with Section 303.

(b) A franchisor shall furnish an offering circular to a prospective franchisee at the earliest of (i) ten business days before the prospective franchisee executes an enforceable agreement relating to the franchise, (ii) ten business days before the franchisor receives consideration for the franchise, or (iii) the first personal meeting held with the prospective franchisee for the purpose of discussing the offer or sale of the franchise.

(c) A signature on an acknowledgment of receipt for an offering circular by an officer or agent of a corporation or by a general partner in a partnership is effective as against the corporation and its shareholders or the partnership and its partners.

(d) The franchisor shall furnish to the prospective franchisee a completed copy of the franchise agreement and each related agreement not later than five business days before its execution. This subsection does not require postponement of execution of the agreements if changes in the agreements are made at the request of the prospective franchisee.

(e) A franchisor who receives from a prospective franchisee consideration or a signed document relating to the franchise earlier than is permitted by subsection (b) does not violate this section if the franchisor immediately and unconditionally returns the consideration or document.

(f) Furnishing an offering circular complying with Section 303 not less than ten business days before the franchisor accepts consideration or an enforceable agreement from a prospective franchisee cures (i) previous inadvertent failure to furnish to the prospective franchisee an offering circular complying with Section 303 or (ii) an inadvertent failure to furnish an offering circular at the time required by this section.

(g) Subsections (b) and (d) are satisfied if the offering circular and agreements are furnished in compliance with applicable requirements of the Federal Trade Commission Trade Regulation Rule on Franchising and Business Opportunity Ventures. [A change in delivery requirements under the Federal Trade Commission Rule which is promulgated after the effective date of this Act becomes effective for purposes of this Article 90 days after its promulgation, unless the [Administrator] by rule earlier finds the change to be inconsistent with this Act.]

**Comment**

1. Subsection (b) is based upon the Federal Trade Commission Trade Regulation Rule on Franchising and Business Opportunity Ventures (16 CFR Part 436). The "first personal meeting" rule of subsection (b) is a variation of the parallel requirement of the FTC Rule.

2. The first sentence of subsection (d) is based on the parallel requirement of the Federal Trade Commission Rule (16 CFR Part 436). The requirement as to related agreements applies to agreements to be entered into essentially contemporaneously with the franchise and does not apply to agreements entered into later during the term of the franchise.

3. Subsection (f) rejects the holding of Gimpel v. Red Carpet Corp. of America, et al., 167 Cal. App. 3d 336 (Cal. Ct. App. 1985), to the effect that erroneous disclosures that violated the state franchise disclosure law could not be corrected by a subsequent accurate disclosure that preceded the purchaser's payment of a fee or execution of an enforceable agreement. Because this section applies only to inadvertent errors, it does not provide a mechanism for knowing or intentional violation of this Article.

4. The bracketed language in subsection (g) is only for states where automatic acceptance of future revisions in the FTC Rule might constitute an unconstitutional delegation of legislative or administrative authority. To enhance uniformity, Administrators should follow a strong presumption against modifying or rejecting changes.

**Section 303. Offering Circular.**

(a) The offering circular required by Section 302(a) must contain:

(1) a statement of all material information relating to the franchise, the franchisor, and the circumstances of the offering;

(2) except as provided in subsection (d), a copy of the franchisor's most recent audited financial statements, including statements of income and loss for the franchisor's most recent three fiscal years;

(3) a specimen of each agreement proposed for use in connection with the franchise; and
(4) duplicate acknowledgment of receipt pages to be signed and dated by the prospective franchisee, one of which, when completed, must be detached and retained by the franchisor.

(b) The cover of the offering circular must state conspicuously that the [Administrator] has not approved, recommended, or endorsed the franchise described in the offering circular and that the [Administrator] has not reviewed the offering circular or the adequacy or accuracy of the information contained in the offering circular.

(c) A franchisor that is a subsidiary of another person may use the audited financial statements of the other person to satisfy subsection (a)(2) if (i) the person whose audited financial statements are used has unconditionally guaranteed in writing all franchise obligations of the franchisor and the offering circular so states, and (ii) the franchisor also includes in the offering circular its balance sheet, which may be unaudited, as of a date within 90 days before the date of the offering circular.

(d) Unaudited statements of income and loss may be used under subsection (a)(2), but only to the extent audited statements have not been made. If an unaudited statement of income and loss is used, it must be clearly and conspicuously labeled as unaudited. Audited statements of income and loss must be used as soon as practicable but not later than 120 days after the end of the franchisor's first full fiscal year after the date on which the franchisor must comply with this Article.

(e) This section is satisfied by a Uniform Franchise Offering Circular prepared in accordance with the Guidelines for the Preparation of the Uniform Franchise Offering Circular promulgated by the North American Securities Administrators Association or its successor, or by a disclosure document prepared in accordance with the content and format requirements of the Federal Trade Commission Trade Regulation Rule on Franchising and Business Opportunity Ventures. [A change in the requirements for the Uniform Franchise Offering Circular or for disclosure documents under the Federal Trade Commission Rule which is promulgated after the effective date of this [Act] becomes effective for purposes of this Article 90 days after its promulgation, unless the [Administrator] by rule earlier finds the change to be inconsistent with this [Act].]

(f) This section is satisfied by delivery of a single offering circular complying substantially with this section or with the franchise disclosure law of another state if this [Act] and the similar laws of the other state have concurrent application.

COMMENT

1. Subsection (a) (3): The requirement as to each agreement proposed for use in connection with the franchise applies to agreements to be entered into essentially contemporaneously with the franchise, and does not apply to agreements entered into later during the term of the franchise.

2. Subsections (c) and (d): The term "financial statements" is used in its common accounting sense, denoting a balance sheet, a statement of income and loss, a statement of changes in financial condition, and notes. The term "audited" means examination of the financial statements in accordance with generally accepted auditing standards, and expression of an opinion on the financial statements, by an independent certified or licensed public accountant.

3. Subsection (d) is based upon the "phase-in" rule for audited financial statements under the Federal Trade Commission Rule (16 CFR Part 436).

4. The bracketed language in subsection (c) is only for states where automatic acceptance of future revisions in either disclosure format by its promulgating agency might constitute an unconstitutional delegation of legislative or administrative authority. Administrators should use a strong presumption against modifying or rejecting changes.

Section 304. Changes.

A franchisor shall promptly revise its offering circular to reflect a material change in the information it contains. If an offering circular is revised under this section, the franchisor, before selling a franchise to a prospective franchisee who received an earlier version of the offering circular, shall deliver a revised offering circular to the prospective franchisee not later than two business days before the franchisor accepts consideration or an enforceable agreement from the prospective franchisee. The prospective franchisee, on the advice of its legal counsel, may waive the two-business-day requirement.

Section 305. Notice to [Administrator].

(a) Before offering or selling a franchise in this state, a franchisor or subfranchisor shall file with the [Administrator] a notice that states the name of the franchisor, the name under which the franchisor conducts business, and the franchisor's telephone number and principal business street address.

(b) While a franchisor continues to offer or sell franchises in this State, the franchisor shall immediately notify the [Administrator] of any change in the information contained in the franchisor's notice on file with the [Administrator].

(c) A notice filed under subsection (a) remains in effect until modified or withdrawn by the franchisor or canceled by the [Administrator].

(d) The [Administrator] may cancel a notice filed under subsection (a) upon finding that the franchisor cannot be located at the address or telephone number stated in the notice. Cancellation is without prejudice to the franchisor's right to file a new notice and does not invalidate an offer or sale made before the franchisor receives notice of the cancellation. The [Administrator] shall notify a franchisor that its notice has been canceled by mailing a notice of cancellation stating the factual grounds for the cancellation to the address stated in the franchisor's notice and to another address, if any, at which the [Administrator] has reason to believe the franchisor is more likely to receive the notice.

COMMENT

In addition to filing a notice under subsection (a), a franchisor must file a consent to service of process under Section 502(a) and pay the filing fee under Section 511.

Section 306. Negotiated Change Permitted.

This Article does not preclude negotiation of the terms and conditions of a franchise before or after it is sold. A franchisor need not amend its offering circular to negotiate with an offeree, or make supplementary disclosure to that offeree, by reason of a change negotiated in the terms and conditions of a franchise.

COMMENT

1. This section rejects the policies adopted by some state franchise administrators that the terms of franchise agreements cannot be negotiated to differ from what was presented in the offering circular, or cannot be negotiated without a cumbersome amendment and redisclosure process. One of the principal purposes of precommitment disclosure is to give a prospective investor information to make
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an informed investment decision, and to bargain for the best and most suitable terms available. Such negotiation in individual cases does not require separate, prior, or serial disclosures to the offeree. The franchisor's willingness to bargain on certain terms of the offering may itself be material information that should be disclosed in the offering circular.

2. A pattern of negotiating variations of the same terms may call into question the accuracy of the offering circular's disclosure of the terms of the offering. Where a disclosure item is required to reflect whether certain features of franchises offered contemporaneously are uniform, such as in the area of initial and continuing franchise fees, an individual negotiation may give rise to a duty to modify the offering circular subsequently provided to others.

3. No inference should be drawn from the absence from Article IV of a counterpart to Section 506.

Article IV
Business Opportunities

COMMENT

See Comment to Section 101(5), regarding the differing definition in this Act of "business opportunity" from that in the FTC Rule (16 CFR Part 480). The exemptions provided in Section 401 and the exclusions provided in Section 101(5) do not correspond precisely to those in the FTC Rule.

Section 401. Exemptions.

(a) The following are exempt from this Article:

1. A disposition of goods or services to a business that has been engaged in a business for at least six months in distributing other goods or services not supplied by or through the promisor or its affiliate or assignee, if the parties reasonably expect the goods or services supplied by the promisor or its affiliate or assignee to constitute less than one-third of total sales by the purchaser during the first 12 months after the disposition;

2. A disposition of goods or services in connection with the sale of an ongoing business or segment of a business that has actively conducted the business for six months next preceding the disposition; or

3. An offer or sale of a business opportunity by or to a state or a subdivision of a state or other governmental agency.

(b) A business opportunity is exempt from Sections 402 through 407 and Section 411 if (i) it is offered by a promisor whose net worth exceeds $5,000,000 according to the promisor's most recent audited balance sheet as of a date within 15 months before the transaction, or (ii) the promisor is 80 percent or more owned by another person whose net worth exceeds $5,000,000 according to its most recent audited balance sheet as of a date within 15 months before the transaction and that person in writing unconditionally guarantees the promisor's performance.

COMMENT

1. Exemption under subsection (a) is only from Article IV, and not from other provisions of the Act, including Section 505.

2. Businesses that are subject to comprehensive regulation under other statutes may petition the Administrator under Section 501 for exemption from all or part of Article IV.
Ventures, (ii) a disclosure document prepared in accordance with a uniform disclosure format promulgated by the North American Securities Administrators Association or its successor, or (iii) a disclosure format approved for use by five or more states. [A change in the requirements for disclosure under the Federal Trade Commission Rule or the North American Securities Administrators Association or state-approved disclosure format which is promulgated after the effective date of this [Act] becomes effective for purposes of this Article 90 days after its promulgation unless the [Administrator] by rule earlier finds the change to be inconsistent with this [Act].]

(d) The disclosure document must set forth conspicuously on its cover a statement substantially reproducing Section 404(a).

(e) The disclosure document must contain duplicate acknowledgment of receipt pages to be signed and dated by the prospective purchaser, one of which, when completed, must be detached and retained by the promoter.

COMMENT

1. The bracketed language in subsection (c) is for states where automatic acceptance of future revisions in a disclosure format by its promulgating agency might constitute an unconstitutional delegation of legislative or administrative authority. Administrators should use a strong presumption against modifying or rejecting changes.

2. No inference should be drawn from the absence of a counterpart in Article IV to Section 306. See Sections 103 and 411.

Section 404. Furnishing Disclosure Document.

(a) A person may not offer or sell a business opportunity in this State without furnishing to the prospective purchaser at the time required under subsection (b) a copy of a disclosure document on file under Section 402 and complying with Section 403.

(b) The promoter shall furnish the disclosure document to the prospective purchaser at the earliest of (i) ten business days before the prospective purchaser executes an enforceable business opportunity agreement, (ii) ten business days before the promoter or its affiliate or designee receives consideration for the business opportunity, or (iii) the first personal meeting held with the prospective purchaser for the purpose of discussing the offer or sale of the business opportunity.

(c) Subsection (b) is satisfied if the disclosure document is delivered in accordance with the requirements relating to the time for making disclosure in the Federal Trade Commission Trade Regulation Rule on Franchising and Business Opportunity Ventures. [A change in the delivery requirements under the Federal Trade Commission Rule which is promulgated after the effective date of this [Act] becomes effective for purposes of this Article 90 days after its promulgation, unless the [Administrator] by rule earlier finds the change to be inconsistent with this [Act].]

COMMENT

1. The “first personal meeting” rule of Section 404(b) is a variation of the parallel requirement of the Federal Trade Commission Trade Regulation Rule (16 CFR, Parts 435).

2. The bracketed language in subsection (c) is only for states where automatic acceptance of future revisions in the FTC Rule might constitute an unconstitutional delegation of legislative or administrative authority. To enhance

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uniformity, Administrators should follow a strong presumption against modifying or rejecting changes.

Section 405. Denial, Suspension, or Cancellation of Registration.

(a) The [Administrator] may issue an order denying, suspending, or canceling a registration under Section 402 if the [Administrator] reasonably believes that (i) the registration filing or disclosure document is incomplete or contains a false or misleading statement or omits material information, or (ii) the applicant or its affiliate has violated or is about to violate this Article. The order must state the factual grounds for its issuance.

(b) The [Administrator] may vacate or modify an order if conditions that led to its issuance have changed or the action is otherwise in the public interest. The [Administrator] shall state the factual grounds for the vacation or modification.

COMMENT

Subsection (b) does not authorize the Administrator to conduct merit review of business opportunity offerings. The reference to the public interest facilitates changes in administrative policy independent of the facts of a particular matter. See Comment to Section 509(d).

Section 406. Effect of Registration.

(a) Registration under this Article does not mean that a document or application filed under this Article is true, complete, or not misleading, or that the [Administrator] has approved, recommended, or endorsed the business opportunity, or reviewed the disclosure document or the adequacy or accuracy of the information contained in the disclosure document.

(b) A person may not make a representation inconsistent with subsection (a).

(c) A promoter may not refer to its compliance with this Article in connection with an offer or sale of a business opportunity, except to state that the offering of the business opportunity is registered in this State.

COMMENT

Subsection (c) should be interpreted to prohibit a promoter from employing a representation concerning the provision of financial assurance under Section 408 (a) (3) or 409.

Section 407. Changes in Registration and Disclosure Document.

(a) A promoter of a registered business opportunity offering shall promptly notify the [Administrator] of (i) a material change in information contained in the promoter’s application for registration or disclosure document and (ii) information necessary to make statements in the application or disclosure document true, complete, and not misleading in the circumstances or context in which they are made. Notification must be made by an application to amend the disclosure document or the application for registration, accompanied by the filing fee required by Section 511 and a revised application or disclosure document.

(b) A promoter shall promptly revise its disclosure document to reflect any material change in the information it contains. A promoter shall revise its disclosure document by substituting new audited financial statements in the disclosure document not later than 120 days after the end of the promoter’s fiscal year.
(c) If the [Administrator] finds the application to amend to be complete and has no reason to believe the amended disclosure document is in violation of Sections 403 or 505(a) and there is no order outstanding under Section 405(a), the [Administrator] shall issue an order of amended registration. The amended registration and disclosure document become effective automatically on the 15th day after the application to amend is filed if the [Administrator] has not issued an order granting or denying the application. The [Administrator] may not routinely ask applicants for amendment to registration to waive or defer the automatic registration of an amendment.

Section 408. Minimum Standards.

(a) If a promoter or its affiliate, in connection with the offer or sale of a business opportunity, makes a representation that it will refund or repurchase, as described in Section 101(5) (i) (C) (I) or (II), the promoter shall:

1. include the representation in the disclosure document required by Section 404;

2. include in the business opportunity agreement required by Section 411 a specific statement of the terms and conditions of the refund or repurchase provision and of the promoter’s unqualified and enforceable obligation to the purchaser to honor the provision, and

3. provide financial assurance in conformity with Section 409.

(b) If a purchaser invokes a refund provision described in Section 101(5) (i) (C) (I), the promoter shall immediately refund the purchaser’s initial payment plus the purchase price of all goods or services the purchaser obtained from the promoter or its affiliate or designee under the business opportunity which the purchaser made available to the promoter.

(c) If the purchaser invokes a repurchase provision described in Section 101(5) (i) (C) (II), the promoter shall immediately repurchase from the purchaser (i) all items the purchaser obtained from the promoter or its affiliate or designee under the business opportunity and (ii) all goods produced, grown, or modified, or services rendered, by the purchaser using goods or services supplied by the promoter or its affiliate or designee, in each case for the greater of its fair market value or the amount represented in the business opportunity.

Section 409. Financial Assurance.

(a) A promoter who makes a representation that it will refund or repurchase, as described in Section 101(5)(K)(C)(I) or (II), shall obtain a bond or irrevocable letter of credit, or establish an escrow account, complying with this section. The promoter shall file with the [Administrator] a copy of the bond or letter of credit or a notice stating the name of the depository and the account number of the escrow account.

(b) A surety bond must be written by a corporate surety authorized to do business in this State, under terms and conditions established by the [Administrator] by rule or order and be in favor of the [Administrator] for the benefit of persons damaged by failure to perform a refund or repurchase obligation as described in Section 101(5)(K)(C)(I) or (II) by the promoter or its affiliate or designee, and also directly in favor of persons so damaged.

(c) A letter of credit must be issued or confirmed by, and an escrow account must be established in, a state or national [bank] located in this State, under terms and conditions established by the [Administrator] by rule or order.

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(d) In addition to the person’s other rights and remedies, a person damaged by failure to perform a refund or repurchase obligation, as described in Section 101(5)(K)(C)(I) or (II), has a claim for relief against the promoter and against an affiliate or designee of the promoter who violates this Article or the business opportunity. The person damaged also has a claim for relief against the surety, issuer, or confirming [bank], or escrow agent on the bond, letter of credit, or escrow account, for an amount equal to 50 percent of the initial payment made by the person damaged. The aggregate liability of the surety, issuer, or confirming [bank], or escrow agent to all persons damaged by failure to perform a purchase or refund obligation by a promoter or its affiliate or designee is limited to the amount of the bond, letter of credit, or escrow account. The surety, issuer, or confirming [bank], or escrow agent is not liable for punitive or exemplary damages awarded against the promoter or its affiliate or designee.

(c) The amount of the bond, letter of credit, or escrow account must exceed the greater of $10,000 or 50 percent of the total amount of the initial payments under all business opportunities the promoter has entered into in this State during the preceding 12 months that include a refund or repurchase provision as described in Section 101(5)(K)(C)(I) or (II). As necessary, the promoter shall adjust the amount of financial assurance monthly during the first six months of its operations in this State and quarterly thereafter. The total amount of the financial assurance need not exceed $30,000. Except to the extent of outstanding obligations, the promoter may cancel the escrow account or terminate an outstanding bond or letter of credit [90] days after the promoter ceases to offer the business opportunity in this State, but cancellation of the account or termination of the bond or letter of credit is without prejudice to rights or claims of purchasers then accrued.

Comment

1. Subsection (c): “Bank” is bracketed to allow discretion to enacting states to add reference to savings and loan associations or to change reference to “regulated financial institution” or similar designation as may be appropriate in that state.

2. Subsection (d): This Act takes no position on the advisability of punitive damages generally, but in no case should they be awarded against one who acts in effect as a trustee for affected investors, or from the funds held by that person.

3. Subsection (e): The $100,000 maximum amount of financial assurance relates only to the bond, letter of credit or escrow under Section 411 and does not limit the total liability or obligation of the promoter.


(a) A promoter or its affiliate may not represent that a business opportunity provides income, profit, or earning potential of any kind or amount unless the promoter has a documented reasonable basis for the representation. The promoter shall disclose information concerning the earnings claim to the purchaser in accordance with the requirements of the disclosure document format the promoter selected under Section 403(c), or a disclosure format approved by the [Administrator] by rule.

(b) A promoter or its affiliate may not use the trademark, service mark, trade name, advertising, or other commercial symbol of another person who does not either (i) own a controlling interest in the promoter or (ii) unconditionally guarantee in writing all representations made by the promoter in regard to the business opportunity, unless the nature of the promoter’s relationship to that person is set forth immediately
adjacent to and with equal prominence to the depiction of the commercial symbol of that person. This subsection does not prohibit a promoter from using a trademark of a trade association of which the promoter is a member or a certification mark in accordance with its requirements and federal trademark law.

(c) A promoter or its affiliate or designee may not take a negotiable instrument, other than a check, as evidence of the purchaser's obligation unless the instrument on its face negates holder in due course status of its holder.

(d) A business opportunity agreement may not require payment of more than 25 percent of the initial payment before delivery to the purchaser of the goods to be supplied by the promoter or its affiliate or designee unless the portion greater than 25 percent is placed in escrow to be held until the purchaser advises the escrow agent in writing of the delivery of the goods or the promoter presents the escrow agent with a bill of lading or receipt signed by the purchaser which proves delivery of the goods. The purchaser may not unreasonably withhold notice of delivery.

Section 411. Requirements for Agreement:

(a) The promoter shall reduce each business opportunity to a written agreement. The agreement must state legibly:

1. the terms and conditions of the purchaser's rights and obligations, including the initial payment, additional payments, and any down payment required;
2. a detailed description of the acts or services the promoter or its affiliate or designee undertakes to perform for the purchaser;
3. the promoter's name, telephone number, principal business street address, and the name and address of its agent in this State authorized to receive service of process;
4. the business form of the promoter and the jurisdiction of its incorporation or organization;
5. the estimated delivery dates of each installment and whether the goods or services are to be furnished to the purchaser at premises owned or managed by the purchaser or at premises owned or managed by persons other than the purchaser;
6. the terms and conditions of any refund or repurchase obligation of the promoter under Section 408(a);
7. the name and address of the suppliers of the goods and services the promoter or its affiliate or designee is to furnish to the purchaser, and
8. a conspicuous notice, in substantially the following form, that the purchaser has the following rights and obligations:

Cooling Off Period

If you change your mind, you have three business days in which you may cancel this agreement.

To cancel, you must mail or deliver a written notice to ____________________ (Seller's name and street address) by ______ (last date to mail or deliver notice). If mailed, the notice must be postmarked by the above date. Or, if you deliver the notice, it must be delivered by the end of the normal business day on the above date.

If you cancel, we must promptly refund your payments, and, until the fifth business day after you receive your refund, you must allow us to pick up anything we provided to you under this agreement.

If you cancel, we may deduct from your refund the price of goods we delivered to you that you do not return or make available for us to pick up.

Other Rights

If we mislead you in connection with the offer or sale of this business opportunity, or if we fail to deliver goods or perform services promised to you, you may have certain rights, including the right to cancel. Consult a lawyer or [name of state agency].

(b) A promoter shall furnish to the purchaser when the purchaser signs them a copy of the completed agreement and all other documents the promoter requires the purchaser to sign. If the promoter or its affiliate does not sign the agreement or other documents at the same time as the purchaser, the promoter shall also furnish signed copies to the purchaser promptly after the promoter or its affiliate signs them.

Comment

A business opportunity can be created and come under the Act even if only in oral form (Section 101(5)), but it is a violation of Section 411 to fail to reduce it to a written agreement.

Section 412. Preservation of Rights.

A successor or assignee of the promoter's interest or rights in a business opportunity is subject to all rights, claims, and defenses of the purchaser against the promoter or its affiliate or designee.

Section 413. Purchaser's Right To Cancel.

(a) A purchaser has the rights described in Section 411(a)(8), including the right to cancel described in that paragraph, whether or not they are contained in an agreement with the promoter.

(b) If a promoter or its affiliate fails to comply with this Article, or uses, in connection with the offer or sale of a business opportunity, a false or misleading statement of a material fact or omits material facts necessary to make the statements made, in the circumstances in which they are made, not misleading, a purchaser affected, within one year after the date of the business opportunity agreement, may cancel the business opportunity and related agreements by written notice to the promoter.

(c) If a promoter or its affiliate inadvertently fails to make disclosures required under this Article or inadvertently uses a business opportunity agreement that fails to comply with this Article, the promoter may furnish the purchaser with the correct disclosure statement or correct agreement and a written notice that the purchaser may cancel the agreement within 30 days after receipt of the correct disclosures or agreement. The notice must state the purchaser's right to receive a refund under subsection (d). If the purchaser does not cancel the business opportunity within the 30-day period, the purchaser may not later base cancellation of the agreement on violations corrected by the new disclosure document or agreement.

(d) If a promoter or its affiliate or designee within one year after the date of the business opportunity agreement fails to deliver goods or perform services within 30 days after the delivery or performance date stated in the agreement, the purchaser may give notice of the failure to the promoter, and, if the delivery is not made within 30 days after the notice or the promoter fails to show that the failure to deliver was due to causes beyond its control, the purchaser may cancel the business opportunity by written notice to the promoter.
(e) If a purchaser cancels under this section, the promoter shall promptly refund all amounts paid by the purchaser under the business opportunity, less the price or fair market value, whichever is less, of goods delivered to the purchaser by the promoter or its affiliate or designee and not returned or made available to the promoter. For five days after receipt of the refund, the purchaser shall make available to the promoter the goods delivered by the promoter or its affiliate or designee.

Section 501. Rulemaking.

(a) Except as limited in Section 510(d), the [Administrator] may promulgate in accordance with the [Administrative Procedure Act] any necessary to implement this Act. In order to enhance uniformity among the states, the [Administrator] shall take into account the rules of other states on the same subject.

(b) The [Administrator] may exempt transactions and persons, and classes of transactions and persons, from one or more of Sections 302, 303, 304, 305, 402, 403, 404, 409, and 411 upon finding that the exemption is consistent with this Act and in the public interest and that compliance with those sections is not necessary for the protection of prospective franchisees or purchasers.


(a) A person who offers or sells a franchise or business opportunity in this State shall file with the [Administrator] an irrevocable consent to service of process appointing the [Administrator] as the person's agent to receive service of process in a civil action or proceeding arising under this Act.

(b) A person who offers or sells a franchise or business opportunity in this State without filing a consent to service of process is deemed to appoint the [Administrator] as the person's agent to receive service of process in a civil action or proceeding arising under this Act.

(c) A person may effect service of process under this section by service on the [Administrator] The time to respond begins to run when the person sends notice of the service and a copy of the process by certified mail to the defendant or respondent at its last known address.

Section 503. Records.

A person who offers or sells a franchise or business opportunity shall maintain records of sales and offers directed to specific persons made in this State and keep them for four years after the date of the offer or sale. The records must contain the signed acknowledgment of receipt for each disclosure document delivered to a prospective purchaser under Article III or IV. Those records must be made available to the [Administrator] at the office of the [Administrator] on demand of the [Administrator]. Records required by this section may be kept on photographic or electronic media but must be printed out if the [Administrator] requests.

Section 504. Access To Information.

Documents filed with the [Administrator] under this Act are documents of public record.

Section 505. Misrepresentation Prohibited.

(a) A person may not offer or sell a franchise or business opportunity in this State by means of a false or misleading statement of a material fact or omission of a material fact necessary to make the statements made, in the circumstances in which they are made and taking into account all information available to the prospective purchaser, not materially misleading.

(b) Information is material if it would reasonably be expected to influence a prospective purchaser of a franchise or business opportunity to purchase or forgo the purchase of the franchise or business opportunity. The determination of materiality must be made with reference to all information available to the prospective purchaser.

Section 506. Civil Liability.

(a) A person injured or threatened with injury by a violation of this Act or a rule promulgated or order issued under this Act has a claim for relief for damages caused by the violation and other applicable relief.

(b) The court may award reasonable attorney's fees to a person who prevails in an action or proceeding under this Act.

Comment

1. Subsection (a) "Appropriate relief" may include declaratory judgment, customary forms of equitable relief, such as injunctive relief (mandatory or prohibitory), or rescission in appropriate circumstances, taking into account the duration of the relationship, the harm suffered, the willfulness of the violation and similar factors.

2. Despite the fact that the FTC's Guides to the Trade Regulation Rule (16 C.F.R. Part 436), a private right of action is not available under the FTC Rule. " ”Chilton v. Oregonian Publishing Co., 1981, TRADE CASES (CCER) 64,531 (D. Ore. 1981); Freedom v. Medley, Inc., 887 F. Supp. 658 (E.D. Va., 1997). This section provides private recourse, although a private cause of action may also be available under other state law such as a "little FTC" Act or other general unfair trade practices act. See Section 105.

3. A causal relationship must exist between the violations complained of and the injury alleged. This Act takes no position on whether or not punitive damages should be awarded or, except as provided in Section 507, issues relating to the burden of proof.

4. Section 506 is not the exclusive source of relief. See Section 105.

Section 507. Burden of Proving Exemption.

In a civil action or proceeding under this Act, the burden of proving an exemption is on the person claiming it.

Section 508. Limitation of Actions.

A civil action or proceeding for a violation of this Act may be commenced only within two years after the earlier of one year after the plaintiff discovers the facts constituting the violation or three years after the act or transaction constituting the violation.

Comment

1. The one year limitations period commences when the plaintiff either (i) becomes aware of facts of circumstances reasonably indicating that the plaintiff benefits from the violation.
has a claim for relief against the defendant in regard to conduct governed by applicable provisions of Article II, III, or IV, rather than upon the plaintiff's mere awareness of certain facts, or (ii) reaches a specific legal conclusion that this Act has been violated.

2. This section is a statute of limitations and is subject to such doctrines as tolling, waiver, and equitable estoppel.

Section 509. Jurisdiction.

A civil action or proceeding arising out of a franchise or business opportunity may be commenced wherever jurisdiction over the parties and subject matter exists, even if the agreement limits actions or proceedings to a designated jurisdiction or venue. The doctrine of inconvenient forum must be considered.

Section 510. Action by [Administrator].

(a) If the [Administrator] reasonably believes that a person has violated or is about to violate Article III or IV or Section 505, the [Administrator] may issue an order to cease and desist from practices that violate or would violate Article III or IV or Section 505 and may [maintain an action] [request the Attorney General to maintain an action] in the [general jurisdiction] court to enjoin the acts or practices or to enforce compliance with Article III or IV or Section 505. Upon a proper showing, the court may grant a permanent or preliminary injunction, a restraining order, or other appropriate relief and may appoint a receiver or conservator for the defendant or the defendant's property. The court may not require the [Administrator] [Attorney General] to post a bond.

(b) The [Administrator] may make public or private investigations in or outside this State to aid in the enforcement of Article III or IV or Section 505 and to aid in the promulgation, amendment, or repeal of rules or issuance, modification, or vacation of orders, or to determine whether a person has violated or is about to violate Article III or IV or Section 505. The [Administrator] may subpoena persons to testify or produce evidence in connection with an investigation. The [Administrator] may share the findings of an investigation with other public agencies and officials. The [Administrator] may publish the findings of an investigation but may not be compelled to do so.

(c) The [Administrator] shall refer information or evidence concerning a violation or impending violation of Article III or IV or Section 505 to the [Attorney General] [and to] [the prosecuting attorney of the county in which the violation occurred or is about to occur]. The [Attorney General] [and the] [prosecuting attorney], with or without a reference, may commence appropriate criminal proceedings.

(d) The [Administrator] may not promulgate rules or issue orders under, or take action to enforce, Sections 105 or 106, or Article II.

(e) The [Administrator] shall conduct investigations or proceedings in accordance with the [Administrative Procedure Act], and the [Administrator] has the powers and duties designated in the [Administrative Procedure Act].

COMMENT

1. A state should select the bracketed language in subsection (a) that reflects its normal allocation of prosecutorial responsibilities.

2. A court may require a receiver or conservator to post bond as a condition to obtaining equitable relief under subsection (a).

[The next page is 4725.]
Uniform Franchise Offering Circular

APPENDIX A—UNIFORM FRANCHISE OFFERING CIRCULAR

UNIFORM FRANCHISE REGISTRATION
APPLICATION—INSTRUCTIONS

The following instructions must be adhered to with respect to all applications for registration, registration renewal and amendment:

1. Completion of Application: An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page;
   A. Filing page;
   B. Supplemental information page(s);
   C. Statement disclosing form for all states except Washington;
   D. A copy of the proposed offering circular.

The following shall be attached to the application:
   A. A second copy of the proposed offering circular;
   B. A cross reference sheet showing the location in the franchise agreement of information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is not responsive and is omitted, a statement to that effect shall be made in the cross reference sheet.
   C. Two copies of any advertising to be used in connection with the offer or sale in this state of franchises.
   D. A consent to service of process.

2. Definitions: A. "Predominant," for the purposes of the disclosure required by Item 1 in the body of the offering circular, is defined as follows: A "predominant" of a franchise is (i) a person that the major portion of whose assets have been acquired directly or indirectly by the franchisee, or (ii) a person from whom the franchisee acquired directly or indirectly the major portion of its assets.
   B. "Franchise broker," for the purposes of the disclosure required by the body of the offering circular, is defined as follows: A franchise broker is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except where such identity and business experience is otherwise required to be disclosed at Item 2 in the body of the offering circular.

3. Disclosure: Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.

4. Subfranchise: When the person filing the application for registration of a subfranchisees, the application shall include the same information concerning the subfranchisee as is required from the franchisee; the franchisor, as well as the subfranchisor, shall execute a signature page.

5. Signing of Application: The application shall be signed by an officer or general partner of the applicant, however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

6. Mailed Signed Consent of Accountant: All applications shall be accompanied by manually signed consent of the independent public accountant for the use of their audited financial statements as such statements appear in the offering circular.

7. Application to Amend the Registration: An amendment to an application filed after the effective date of registration shall contain only the information being amended, identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a filing page in the form prescribed on which the applicant shall indicate that the filing is an amendment and the number of the amendment, if more than one.

8. Note: This Uniform Franchise Registration Application is an alternative means of complying with the state franchise registration requirements. The Uniform Application form was designed to satisfy the varied requirements of a number of states, it may

UNIFORM FRANCHISE OFFERING CIRCULAR

FOR PREPARATION OF A UNIFORM FRANCHISE OFFERING CIRCULAR

The following information shall be included in the offering circular:

1. The name and address of the franchisor.
2. The nature and extent of the services and products offered.
3. The terms of the franchise agreement.
4. The amount and method of payment required.
5. The training and support provided.
6. The rights and obligations of the franchisee.
7. The territorial and time restrictions.
8. The procedure for franchisee to terminate or renew the franchise agreement.
9. The franchisee's right to sublicense.
10. The financial statements of the franchisor.

NOTE: The above information is subject to the requirements of the FTC and state laws governing franchise transactions.
8704 Uniform Franchise Offering Circular

1. The title in boldface type: Franchise Offering Circular for Preparation Prospective Franchisees Required to Receive (name of State).

2. The name, type of business organization, business address and telephone number of the franchisor or franchise broker offering to this State the herein described franchise.

3. If different from that above, the name, principal business address and telephone number of the franchisor or franchise broker offering to this State the herein described franchise.

4. The name of the primary business trademark, trade name, or commercial label under which the franchisor markets its products or services and under which the franchise will conduct its business. (Place in upper left hand corner of the cover page.)

5. A brief description of the franchise to be offered.

6. A summary of items 5 and 7 of the offering circular, to wit: Franchisee's Initial Franchise Fee or Other Payment and Franchisee's Initial Investment, respectively. (See page 4.)

7. Effective Date: (Leave blank until notified of effectiveness by State regulatory authority.)

8. The following statement in boldface type:

This offering circular is provided for your own protection and contains a summary only of certain material terms of the franchise agreement. This offering circular and the foregoing offer of agreement should be read carefully in their entirety by the prospective recipient of all rights and obligations of both the franchisor and the franchisee. All persons subscribing to or purchasing shares of common stock in such business pursuant to the offering circular shall receive written copy of the franchise agreement.

9. A list of names and addresses of the franchisor's registered agent in this State authorized to receive service of process on behalf of the franchisor.

10. The name and address of the franchisee or franchise broker offering this franchise and of all franchise brokers with whom the franchisee or franchise broker is associated and who are offering or have offered this franchise or other franchise(s) in this State.

11. Table of Contents: Include a table of contents that lists the sections of this offering circular. (See page 4.)


FRTC Presentation 8705

1. The name and address of the franchisor's registered agent in this State authorized to receive service of process on behalf of the franchisor.

2. The name and address of the franchisee or franchise broker offering this franchise and of all franchise brokers with whom the franchisee or franchise broker is associated and who are offering or have offered this franchise or other franchise(s) in this State.

3. A description of the franchise to be offered.

4. A statement that the franchise is an initial franchise fee or other initial payment for the franchise, if any, charged upon the signing of a franchise agreement or renewal of a franchise agreement, and whether payable in lump sum or installments.

5. A description of the franchise fee or other initial payment, if any, and whether such payment is refundable and, if so, under what conditions.

6. A description of all other fees, charges, or fees or payments, including but not limited to royalties, service fees, franchise fees, and payments for advertising and other services.

7. Effective Date: (Leave blank until notified of effectiveness by State regulatory authority.)

8. The following statement in boldface type:

This offering circular is provided for your own protection and contains a summary only of certain material terms of the franchise agreement. This offering circular and the foregoing offer of agreement should be read carefully in their entirety by the prospective recipient of all rights and obligations of both the franchisor and the franchisee. All persons subscribing to or purchasing shares of common stock in such business pursuant to the offering circular shall receive written copy of the franchise agreement.

9. A list of names and addresses of the franchisor's registered agent in this State authorized to receive service of process on behalf of the franchisor.

10. The name and address of the franchisee or franchise broker offering this franchise and of all franchise brokers with whom the franchisee or franchise broker is associated and who are offering or have offered this franchise or other franchise(s) in this State.

11. Table of Contents: Include a table of contents that lists the sections of this offering circular. (See page 4.)


13. Other information required to be submitted in the offering circular at this point:
THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE.

8. Obligations of Franchisee. To Purchase or Lease From Designated Source: State the name, address, and location of any such source or the approximate location from which the franchise relates to, sell, assign, or discount to a third party, any such term, license, contract or other instrument executed by the franchisee or sublicenses.

9. Obligations of Franchisee: Sale of Any Agreement, License, or Contract: To purchase or lease from the franchisee any property, inventory, facilities, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased from the franchisee or its designee.

10. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

11. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

12. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

13. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

14. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

15. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

16. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

17. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

18. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

19. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

20. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

21. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

22. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

23. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

24. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

25. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

26. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

27. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

28. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

29. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

30. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

31. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

32. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

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34. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

35. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

36. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

37. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

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43. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

44. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

45. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

46. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

47. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

48. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

49. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

50. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

51. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

52. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

53. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

54. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.

55. To the extent known or estimable by the franchisee, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make either by the franchisee or its affiliated franchisees.

56. To the extent known or estimable by the franchisee, the approximate location from which the franchisee will make such purchases and leases.

57. The obligations of the franchisee to the franchisor or other person for the franchisee's or its affiliated franchisees' use of all proprietary information, trade secrets, trademarks, designs, or other confidential or sensitive information.

58. Whether, and if so, the precise basis by which the franchisee, the parent or persons affiliated with the franchisee will or may derive income based on or as a result of any such required purchases or leases.
right of first refusal or at the option of the franchisee. If the franchisor has the option to repurchase the franchise state whether there will be an independent appraisal of the property neither the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given in case the franchise is terminated.

2. The conditions under which the franchisee may sell or assign all or any interest in the ownership of the franchise, and the franchisee's right to transfer the franchise or the assets of the franchise business.

3. The conditions under which the franchise may sell or assign in whole or in part.

4. The conditions under which the franchisee may modify: (a) furnish the franchisee's book or personal representative upon the death of the franchisee.

5. The provisions of any covenant not to compete.

6. Arrangements with Public Figures: State the following: (a) any compensation or other benefit given or promised to a public figure arising out of the franchise or in part from:

   (1) use of the public figure in the name or symbol of the franchise, or
   (2) endorsement or recommendation of the franchise in a public figure in advertisements.

7. The franchisee may have to use the name of a public figure in its promotional efforts or advertising and any other acts to be made to the franchise in connection with such usage.

8. The involvement of such a public figure in the actual management or control of the franchise.

9. The amount of investment of the public figure.

10. Actual Average. Projected or Forecasted Franchisee Sales: Projected, forecasted or actual average sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

11. The use of the public figure will not be limited to an estimate of sales, profits or earnings that does not exceed the actual average sales, profits or earnings of franchisees, an exact copy of the same will be included in or as an exhibit to the offering circular for sales, profits or earnings that will be determined by a predetermined formula.

12. If the projections or forecasts of sales, profits or earnings must include a break even analysis of sales expenses and salaries and gross amounts earned. (b) Franchisee shall include a statement that substantiation of all actual, average, projected or forecasted sales, profits or earnings will be made available to prospective franchisees upon reasonable demand.

13. The franchisor is not required to report the following as the close of franchisor's most recent fiscal year:

   A. The total number of franchisees, both those who bought franchises and those who sold franchises, including those who bought a franchise similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   B. The number of franchisees in this state, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   C. The total number of franchisees substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   D. The number of franchisees in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   E. The names, addresses and telephone numbers of all franchisees under franchise agreements of the franchisee, if not currently in operation, if the name of the franchisee, its projected average, actual, or forecasted sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

   F. Franchisees have not been involved in the actual management or control of the franchise.

   G. The total number of franchisees, both those who bought franchises and those who sold franchises, including those who bought a franchise similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   H. The total number of franchisees substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   I. The names, addresses and telephone numbers of all franchisees under franchise agreements of the franchisee, if not currently in operation, if the name of the franchisee, its projected average, actual, or forecasted sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

   J. Franchisees have not been involved in the actual management or control of the franchise.

   K. The total number of franchisees, both those who bought franchises and those who sold franchises, including those who bought a franchise similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   L. The number of franchisees in this state, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   M. The total number of franchisees substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   N. The number of franchisees in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   O. The names, addresses and telephone numbers of all franchisees under franchise agreements of the franchisee, if not currently in operation, if the name of the franchisee, its projected average, actual, or forecasted sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

   P. Franchisees have not been involved in the actual management or control of the franchise.

   Q. The total number of franchisees, both those who bought franchises and those who sold franchises, including those who bought a franchise similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   R. The number of franchisees in this state, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   S. The total number of franchisees substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   T. The number of franchisees in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   U. The names, addresses and telephone numbers of all franchisees under franchise agreements of the franchisee, if not currently in operation, if the name of the franchisee, its projected average, actual, or forecasted sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

   V. Franchisees have not been involved in the actual management or control of the franchise.

   W. The total number of franchisees, both those who bought franchises and those who sold franchises, including those who bought a franchise similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   X. The number of franchisees in this state, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

   Y. The total number of franchisees substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   Z. The number of franchisees in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

   AA. The names, addresses and telephone numbers of all franchisees under franchise agreements of the franchisee, if not currently in operation, if the name of the franchisee, its projected average, actual, or forecasted sales, profits or earnings must be prepared in accordance with the franchise's accounting principles and the amounts reported may not be in excess of sales, profits or earnings actually achieved by existing franchisees.

   BB. Franchisees have not been involved in the actual management or control of the franchise.
Alberta
[7010]
THE FRANCHISES ACT
R.S.A. 1980, c. F-17, as amended.

[7010.01]
Sec. 1. Definitions.—(1) In this Act,
(a) "franchise" means a contract, agreement or arrangement between a franchisor and a subfranchisor whereby the subfranchisor for consideration given or agreed to be given, in whole or in part for that purpose, is granted the right to engage in the business of offering, selling or distributing any goods or services under a marketing plan or system prescribed or controlled by the franchisor;
(b) "associate", when used to indicate a relationship with any person, includes
(i) a company of which that person beneficially owns, directly or indirectly, equity shares carrying more than 10% of the voting rights attached to all equity shares of the company for the time being outstanding,
(ii) an associated corporation within the meaning of the Income Tax Act (Canada),
(iii) an affiliated company,
(iv) a trust or estate in which that person has a beneficial interest or as to which that person serves as trustee or in a similar capacity,
(v) a relative or spouse of that person or a relative of that person who, in any such case, has the same home as that person, or
(vi) any partner, fellow member of a syndicate or joint trustee;
(c) "Commission" means the Alberta Securities Commission;
(d) "company" means an incorporated corporation, incorporated association or other incorporated organization;
(e) "Director" means the Director or a Deputy Director of the Commission;
(f) "franchise" means a contract, agreement or arrangement, either expressed or implied, written, oral or in writing, between 2 or more persons by which a franchisee is required to pay directly or indirectly a franchise fee in consideration for any of the following:
(i) the right to engage in the business of offering, selling or distributing the goods manufactured, processed or distributed or the services organized and directed by the franchisor;
(ii) the right to engage in the business of offering, selling or distributing any goods or services under a marketing plan or system prescribed or controlled by the franchisor;
(iii) the right to engage in a business which is associated with the franchisor's trademark, service mark, trade name, logotype, advertising or any business symbol designating the franchisor or its associate;
(iv) the right to engage in a business in which the franchisee is reliant on the franchisor for the continued supply of goods or services, or
(v) the right to engage in a business under a franchise agreement;
but excluding contracts, arrangements or agreements between manufacturers or wholesalers and the franchisor or the Crown; a Crown agency or a municipal corporation;
(g) "franchisee" means a person to whom a franchise is granted;
(h) "franchise fee" means any consideration exchanged or agreed to be exchanged for the granting of the franchise agreement, and, without limiting the generality of the foregoing, the consideration may include,
(i) any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay,
(ii) any payment for goods or services,
(iii) any service which the franchisor or subfranchisor is required to perform or agrees to perform, or
(iv) any loan, guarantee or other commercial consideration exigible from the franchisor or subfranchisor at the discretion of the franchisor or subfranchisor for the right to engage in business under a franchise agreement.

but the following are not franchise fees:
(v) the purchase of or agreement to purchase goods in a reasonable amount at the current wholesale market rate,
(vi) the purchase of or the agreement to purchase services in a reasonable amount at the current market rate,
(vii) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honouring the credit card;
(i) "franchisor" means a person who grants a franchise;
(j) "Minister" means the Minister of Consumer and Corporate Affairs;
(b) "officer" means the chairman or any vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;
(f) "person" means an individual, partnership, unincorporated association, unincorporated organization, syndicate, trustee, executor, administrator or other legal representative, corporation or company;
(a) "pyramid sales franchise" means a scheme, arrangement, device or other means whereby a participant pays a franchise fee and
(i) is required or receives the right to recruit one or more other persons as participants who are subject to a similar requirement or who obtain a similar right, and
(ii) has the right to receive money, credits, discounts, goods or any other right or thing of value the amount of which is dependent on the number of participants;
(a) "register" means register in accordance with this Act;
(b) "registrant" means a person registered or required to be registered under this Act;
(c) "Registrar" means the Registrar of the Commission;
(d) "salesman" means an individual who engages on behalf of a franchisor in negotiating or concluding a trade in a franchise;
(e) "subfranchisor" means a person to whom an area franchise is granted;
(f) "trade" or "trading" includes
(i) a purchase or sale or disposition of or other dealing in or a solicitation in respect of a franchise for valuable consideration whether the terms of the payment are by instalment or otherwise, or any attempt to do any of the foregoing,
(ii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in subclause (i).

(2) [Affiliate company].—A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person.

(3) [Controlled company].—A company shall be deemed to be controlled by another person or persons if
(a) equity shares of the company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other person or persons, and
(b) the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors of the company.

(4) [Subsidiary company].—A company shall be deemed to be a subsidiary of another company if
(a) it is controlled by
(i) that other,
(ii) that other and one or more companies each of which is controlled by that other, or
(iii) 2 or more companies each of which is controlled by that other, or
(b) it is a subsidiary of a company that is that other's subsidiary.

(5) [Holding or parent company].—A company shall be deemed to be another's holding company or parent company if that other is its subsidiary.

exemptions

Sec. 2. Statutory exemptions.—Any trade in a franchise other than a pyramid sales franchise is exempt from section 6
(a) if the franchisor has a net worth on a consolidated basis, according to its most recent audited financial statement,
(i) of not less than $5,000,000, or
(ii) of not less than $1,000,000 if the franchisor is at least 80% owned by a corporation which meets the requirements of subclause (i), and
(b) if the franchisor
(i) has had at least 25 franchisees conducting business at all times during the 5-year period immediately preceding the trade,
(ii) has conducted business which is the subject of the franchise continuously for not less than 5 years immediately preceding the trade, or
(iii) is at least 80% owned by a corporation which meets the requirements of subclause (i) or (ii).

Sec. 3. [Conditions].—(1) The Director may, if he is satisfied that to do so would not be prejudicial to the public interest, make an order exempting a trade from any or more of the following provisions:
(a) section 4;
(b) section 5 or any part thereof;
(c) section 6;
(d) a regulation or part thereof made under this Act.

(2) [Application].—An order under subsection (1) may be made by the Director on his own motion or on an application of a person or company directly affected by the trade in respect of which the application is being made.

(3) [Conditions].—An order under subsection (1) may be subject to these terms and conditions that the Director considers necessary.

(4) [Revocation].—An order made under subsection (1) may, at the direction of the Director, come into force on a date prior to the date on which the order is made.

[1981, Bill 53, s. 2.]

Sec. 4. [Exemptions].—(1) No franchisor who claims an exemption under section 2 shall trade in a franchise until the franchisor has obtained an acknowledgement of the exemption under section 2 from the Director and has filed with the Commission a copy of the statement of material facts.

[1981, Bill 53, s. 3.]

Sec. 5. [Conditions].—(1) The Director may, if he is satisfied that to do so would not be prejudicial to the public interest, make an order exempting a trade from any or more of the following provisions:
(a) section 4;
(b) section 5 or any part thereof;
(c) section 6;
(d) a regulation or part thereof made under this Act.

(2) [Application].—An application for renewal of a franchise may be made by the Director on his own motion or on an application of a person or company directly affected by the trade in respect of which the application is being made.

(3) [Notice of change].—When a material adverse change occurs after the date of the application for acknowledgment of an exemption or the submission of an application for renewal that may have an effect on the granting of the acknowledgment or renewal, notice of the change shall be filed with the Director as soon as practicable and in any event within 10 days from the date the change occurs.

[1983, Bill 53, s. 3.]
Sec. 5. Statement of material facts.—
(1) When a trade in a franchise is exempt without subsection 2, the franchisee shall nevertheless at least 4 days (exclusive of Saturdays, Sundays, and holidays) prior to
(e) the execution by the prospective franchisee of any binding franchise or any other agreement, or
(b) the receipt of any consideration, supply each prospective franchisee with a statement of material facts.

(2) The statement of material facts shall contain the following information:
(a) the name of the franchisee, the name under which the franchisee is doing or intends to do business, and the name of any associate that will engage in business transactions with the franchisee;
(b) the franchisor’s principal business address and the name and address of his agent for service in Alberta;
(c) the business form of the franchisee, whether corporate, partnership or otherwise;
(d) the business experience of the franchisee, including the length of time the franchisee has been in business;

(3) If the franchisor has granted franchises for that business or the business of another business;

(a) a copy of the typical franchise contract or agreement proposed for use or in use in Alberta;

(4) A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisee and the formula by which the amount of the fee is determined if the fee is not the same in all areas, together with a notation concerning the existence of any continuing royalties;

(b) a statement describing any payments or fees other than franchise fees that the franchisee is required to pay to the franchisor, including royalties and payments or fees which the franchisee collects in whole or in part on behalf of a third party or parties, together with the names of the third party or parties;

(c) a statement indicating whether the cash investment required for the franchise covers payment for fixtures and equipment;

(d) a statement of the conditions under which the franchise agreement may be terminated or renewal refused, or rescinded at the option of the franchisee;

(e) a statement as to whether the franchisee is able to sell the franchise and if so, what conditions, if any, attach to the sale;

(f) a statement as to whether the franchisor is subject to the jurisdiction or to the courts of Alberta and if so, the nature, extent and cost of the assistance;

(g) a statement as to whether any franchise has, whether by contract, agreement, arrangement or otherwise, agreed with a third party or parties that the products or services of the third party or parties will be made available to the franchisee or subfranchisor on a different or lesser basis;

(h) a statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his associate;

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Sec. 6. Registration.—(a) No person shall trade in a franchise in Alberta or have on his own account or on behalf of any other person until there have been filed with the Commission both an application for registration in the prescribed form and a prospectus in respect to the offer or sale of that franchise and until a receipt for the prospectus has been obtained from the Registrar.

(2) Prospects shall be made to comply as to form and content with the requirements of this Act and the regulations.
(3) [Additional Information].—The Director may require any additional information which he considers necessary to be included in the prospectus.

(4) [Filing of prospectus].—The applicant shall file with a prospectus such documents, financial statements, reports and material, in a form satisfactory to the Director, and pay the fees prescribed by the regulations.

[7010.09]
Sec. 9. Certificate of full disclosure. — An application for registration, prospectus, registration renewal statement, and any amendments to them, shall contain a certificate in the following form:

The foregoing constitutes full, plain and true disclosure of all material facts relating to the franchise offered by this prospectus as required by Part 1 of the Franchisees Act of Alberta and the regulations thereunder.

(2) The certificate shall be signed
(a) by the sole proprietor, partners, salaried employees, or
(b) in the case of a company, by the chief executive officer and the chief financial officer and on behalf of the board of directors by any 2 directors of the company, authorized to sign,
and by any other person who has a substantial interest in the franchise.

[7010.10]
Sec. 10. Comments of experts. — (1) If any solicitor, auditor, accountant, engineer, attorney, or any other person or company whose profession gives authority to a statement made by him, is named as having prepared or certified any part of a prospectus or statement of material facts, the written consent of that person or company to the inclusion of that part of the prospectus or statement of material facts shall be filed with the Commission not later than the time the prospectus or statement of material facts is filed.

(2) [Exemption from filing consent].—The Director may dispense with the filing of a consent required by subsection (1) if, in his opinion, the filing is impracticable or involves undue hardship.

(3) [Contents].—The consent of an auditor or accountant referred to in subsection (1)
(a) shall refer to the report required to be made by him under the regulations, stating the date of it and the dates of the financial statements on which the reports are made, and
(b) shall contain a statement that he has read the prospectus or statement of material facts and that the information contained in the prospectus or statement, which is derived from the financial statements contained in the prospectus or statement of material facts or which is within his knowledge, is, in his opinion, presented fairly and is not misleading.

(4) [Disclosure of financial interests].—If a solicitor, auditor, accountant, engineer, attorney, or any other person or company referred to in subsection (1)
(a) has directly or indirectly received or expects to receive any benefit, direct or indirect, in the property of the franchisor or an affiliate,
(b) beneficially owns, directly or indirectly, any securities of the franchisor or an affiliate,
(c) that interest or ownership shall be disclosed in the prospectus or statement of material facts.

(5) [Disclosure of other interests].—If a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer, employee of the franchisor or an affiliate, that fact shall be disclosed in the prospectus or statement of material facts.

(6) [Director may refuse to issue receipt for prospectus].—Notwithstanding subsections (4) and (5), the Director may direct the Registrar not to issue a receipt for a prospectus if a person or company referred to in subsection (1) is not acceptable to him.

(7) [Further consent].—When a change is proposed to be made in a prospectus or statement of material facts that in the opinion of the Director materially affects any consent required by subsection (1), the Director may require that a further consent be filed with the Commission before a receipt for the amended prospectus or statement of material facts is issued.

[7701.11]
Sec. 11. Sale for performance. — If the Director finds that the applicant for registration has failed to demonstrate that adequate financial arrangements have been made to fulfil the franchisor's obligations to provide improvements, equipment, inventory, training or other items included in the offering, the Director may by order require
(a) the payment or imposition of franchise fees and other funds paid by franchisees or subfranchisees,
(b) or at the option of the franchisor, the furnishing of a surety bond in the form and amount required by the Director,
until no later than the time of opening by the franchisor of the franchise business or
(c) the Director finds that such a requirement is necessary and appropriate to protect prospective franchisees or subfranchisees.

[7010.13]
Sec. 12. Receipt for prospectuses. — (1) The Director may in his discretion direct the Registrar to issue a receipt for any prospectus filed under this Part unless it appears to the Director that
(a) the paid-up capital and surplus,
(b) the liquidity of assets,
(c) the ratio of debts to paid-up capital and surplus,
(d) the audit procedures,
(e) the furnishing of interim financial statement, and
(f) the qualifications and obligations of the franchisor.

(2) [Time limit]. — A determination by the Director under subsection (1) shall be made in writing within 30 days of the receipt of the application for registration, the prospectus and any amending document and the person who filed the prospectus has a prior opportunity to be heard.

[7010.13]
Sec. 13. Limitation on receipt. — No receipt shall issue for a prospectus relating to a proposed trade in a pyramid sales franchise unless the Director is satisfied
(a) the total income of the persons involved will derive from the sale of goods or services to the public,
that franchisees who obtain goods pursuant to the franchise agreement may receive a refund of the cost price of unsold inventory on termination of the franchise,

(c) that there is a solvency limitation on the number of franchisees to be located in any area in relation to the population within the area, and

(d) as to any other requirements of this Act and the regulations have been complied with.

Section 16. Bond—The Director may, and when so directed by the Commission shall, (a) require any applicant or registrant to deliver a bond to the Commission within a specified time, or

(b) require a registrant who has previously delivered a bond to deliver a new bond to the Commission, and the bond or new bond shall be in the prescribed form and shall be approved by the Director as to amount and otherwise.

Section 15. Revocation—If an application for registration is refused the applicant may reapply on other or additional material or on the same material when there has been a significant change in circumstances.

Section 10. Order to cease trading—(1) When it appears to the Commission,

(a) that any of the circumstances set out in section 12 exist,

(b) that there has been a failure to comply with this Act or the regulations or any rule of order of the Commission, or

(c) that the trade would constitute deceit or fraud of the purchaser, the Commission may order that all trading in the franchise shall cease.

(2) [Hearing]—No order shall be made under subsection (1) without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest.

Section 17. Application to amend registration—(1) A franchisor shall advise in writing, in an application to amend the registration and prospectus of any material change in the information contained in the application or prospectus as originally submitted, amended or renewed and the application shall be filed with the Registrar as soon as practicable and in any event within 10 days from the date the change occurs.

(2) The Director shall determine whether any changes as submitted pursuant to subsection (1) are to be accepted, but in no case shall a refusal be made without an opportunity to be heard.

[§7010.18]

Section 18. Expiry or registration—The registration of a franchise offering expires one year from the date of registration unless the Director by order specifies a different period.

Section 19. Renewal of registration—The registration of a franchise offering may be renewed for additional periods of one year each by submitting to the Director a registration renewal statement in the prescribed form no later than 30 business days prior to the expiration of the registration unless that period is waived by the order of the Director.

Section 20. Registration of salesmen—(1) No person shall act as a salesman on behalf of a franchisee whose franchise is registered under this Act unless

(a) he is listed on the franchisee's application for registration as a prospectus, and

(b) he is registered under this Act.

Section 21. Expiry of registration—Subject to sections 20 and 24, the registration of the salesman expires one year from the date of registration.

Section 22. Renewal of registration—The registration of a salesman may be renewed for additional periods of one year each by submitting to the Director a registration renewal statement in the prescribed form no later than 30 business days prior to the expiration of the registration unless that period is waived by the order of the Director.

Section 23. Bond—(1) The Director shall grant registration or renewal of registration to a prospective salesman when in the opinion of the Director the applicant is suitable for registration and the proposed registration is not objectionable.

Section 24. Suspension or cancellation of registration—(1) The Director, after giving the registered salesman an opportunity to be heard, shall suspend or cancel a salesman registration or registration of a salesman when in his opinion that action is in the public interest.

Section 25. Hearing—(1) The hearing and review shall be deemed to be a hearing and review under section 50.
PART 2

Enforcement

Offences and Penalties

Sec. 34. Offences and penalties. — (1) A person who
(a) in any material, evidence or information
submitted or given under this Act or the regulations to the Commissioner, its representative, the Director or the Registrar or to a person appointed to make an investigation or audit under this Act makes a statement,
(1) that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact, or
(2) that omits to state a material fact, the omission of which makes the statement false or misleading,
(b) in an application, report, prospectus, return, financial statements or other document required to be filed or furnished under this Act or the regulations
(1) that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact, or
(2) that omits to state a material fact, the omission of which makes the statement false or misleading,
(c) contravenes this Act or the regulations,
(d) fails to observe or comply with an order, ruling, direction or other requirement made under this Act or the regulations
is guilty of an offence and liable to
(e) a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both,
(f) in the case of a company, a fine of not more than $25,000.

(2) [No liability].—No person is guilty of an offence under subsection (1)(a) or (b) if he establishes that he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

(3) [Officer of guilty company]. — If a company is found guilty of an offence under subsection (1) every director or officer of the company who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Sec. 35. Commencement of proceedings.—No proceedings under section 34 shall be commenced more than one year after the facts on which proceedings are based first came to the knowledge of the Commissioner.

Civil Remedies and Liabilities

Sec. 36. Withdrawal from trade-agreement.—(1) A person not acting as an agent of the purchaser who receives an order for a franchise or a sale referred to in subsection (1) may apply to the Commissioner to have the trade-agreement withdrawn from the purchaser, and—
(a) before entering into an agreement or purchase and sale resulting from the order,
(b) not later than midnight on the 4th day, exclusive of Saturdays, Sunday and holidays, after entering into the agreement,
(2) [Giving of notice].—An agreement is not binding on the purchaser if the person from whom the purchaser purchased the franchise or upon whom the notice is served or delivered, the notice is given to the person or entitles the purchaser to a refund of any consideration paid by the purchaser to the person named in the agreement or the order or to purchase a franchise or other real or personal property in accordance with the agreement or order.

(1) A person not acting as an agent of the purchaser who receives an order for a franchise or a sale referred to in subsection (1) may apply to the Commissioner to have the trade-agreement withdrawn from the purchaser, and—
(a) before entering into an agreement or purchase and sale resulting from the order,
(b) not later than midnight on the 4th day, exclusive of Saturdays, Sunday and holidays, after entering into the agreement,
the sale not later than midnight on the 4th day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the statement of material facts, prospects or amended prospectus, whichever is the last required to be filed with the Commission.

[Withdrawn condition].—Subsection (2) does not apply if the purchaser is a registrant of the purchaser or other-wise transfers beneficial ownership of the franchise referred to in subsection (3), otherwise than to secure indebtedness before the expiration of the time referred to in subsection (2).

(4) [Statement deemed received].—For the purpose of this section, a statement of material facts, prospectus or amended prospectus is sent by prepaid mail, the statement of material facts, prospectus or amended prospectus shall be deemed conclusively to be received in the ordinary course of mail by the person or company to whom it was addressed.

(5) [Purchaser's receipt of statement].—The receipt of a statement of material facts, prospectus or amended prospectus by a person who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, received by the purchaser as of the date on which the agent received the statement of material facts, prospectus or amended prospectus.

(6) [Vendor's receipt of notice].—The receipt of the notice referred to in subsection (1) by a person who acts as agent of the vendor with respect to the sale of a franchise referred to in subsection (1) shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received the notice.

(7) [When person not purchaser agent].—For the purpose of this section, a person shall not be considered to be acting as agent of the purchaser unless the person or company is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the purchaser with respect to the purchase and sale.

(8) [Onus on franchisor].—The onus of proving that the time for giving notice under subsection (2) has expired is on the person from whom the purchaser agreed to purchase the franchise.

(9) [Statement of rights].—Every statement of material facts or prospectus shall contain a statement of the rights given to a purchaser by this section.

Sec. 37. Rescission of trade agreement.

(1) A person who is a party to a contract for the purchase of a franchise referred to in section 5 or 17 and to which a person who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, a party to the contract shall, on demand of the purchaser, be entitled to rescind the contract.

(2) [Time limit].—No action shall be commenced under this section after the expiration of 2 years from (a) the delivery to the purchaser of material facts, prospectus or amended prospectus by the franchisor, or (b) the date of the contract referred to in subsection (1), whichever is the later.

(3) [Untrue statement or omission].—Subsection (1) does not apply to an untrue statement or [sic] a material fact or an omission to state a material fact (a) if the truth of the statement or the fact of the omission was unknown to the person whose franchise is being offered or (b) if the material fact or omission was known to the person from whom the purchaser agreed to purchase the franchise.

(4) [Statement of right of rescission].—Every statement of material facts or prospectus shall contain a statement of the right of rescission provided by this section.

Sec. 25. Subfranchises. (1) When a franchise has been registered under this Act, a subfranchisor may under sale or otherwise transfer to a person any right or interest in the franchise granted to the franchisor under this Act, and the provision of this Act applicable to the franchise granted to the franchisor shall also be deemed to be applicable to the franchise granted to the subfranchisor except as it may be varied in writing by the subfranchisor.

(2) [When franchise exempt].—When a franchise is exempt or has been exempted from registration under this Act, a subfranchisor shall provide to a prospective franchisee a copy of the franchisor's statement of material facts and the statement binds the subfranchisor except as it may be varied in writing by the subfranchisor.

(3) [Duty of franchisor].—The franchisor shall provide each subfranchisor with a copy of the statement of material facts and the statement binds the subfranchisor except as it may be varied in writing by the subfranchisor.

Sec. 30. Reliance on prospectus. (1) When a receipt for a prospectus has been issued by the Registrar, notwithstanding that the receipt is thereafter revoked, every purchaser of the franchise to which the prospectus relates shall be deemed to have relied on the statements made in the prospectus whether the purchaser has received the prospectus or not, and, if a material false statement is contained in the prospectus, every person who, at the time of the issue of a receipt for the prospectus, is director of a company issuing the franchise or a person who signed the certificate required by section 9 is liable to pay compensation to all persons who have purchased the franchise for any loss or damage those persons have sustained as a result of such purchase unless it is proved.
(a) that the prospectus was filed with the Commission in a statement of fact, and that, on becoming aware of its filing with the Commission, he, forthwith gave reasonable public notice that it was so filed,

(b) that, after the issue of a receipt for the prospectus and before the purchase of the franchise by the purchaser, on becoming aware of any false statement therein, he withdrew his consent thereto

(c) that, with respect to every false statement, he had reasonable grounds to believe and did believe that the statement was true,

(d) that he had no reasonable grounds to believe that an expert who made a statement in a prospectus or whose report or valuation was produced or fairly summarized in it was not competent to make the statement, valuation or report, or

(e) that, with respect to every false statement purporting to be a statement made by an official person or corporation to be made by an official person or corporation to be made by or for the company, it was a correct and fair representation of the statement or copy of or extract from the document.

(2) [Joint and several liability].—The liability under subsection (1) of a person as a director or as a signatory of the certificate of incorporation is joint and several with all other such persons and with the company.

Sec. 40. Protection from action.—(1) Except with the consent of the Attorney General, no action whatever and no proceeding by way of injunction, mandamus, prohibition or other extraordinary remedy lies or shall be instituted against any person, whether in his public capacity, in respect of any act or omission in connection with the administration of the carrying out of the provisions of this Act or the regulations when that person is a member of the Commission, a representative of the Commission or the Director or Registrar, when that person or company was proceeding under the written or oral direction or consent of any one of them or under an order of the Minister made

under this Act.

(2) [No liability].—No person has any rights or remedies and no proceedings lie or shall be brought against any person in respect of any act or omission of that person done or omitted in compliance or intended compliance with

(a) any requirement, order or direction under this Act of

(i) the Commission or any member of it,

(ii) the Director,

(iii) the Registrar,

(iv) any person appointed by order of the Minister,

(v) the Minister,

(vi) any representative of the Minister, the Commission, the Director or Registrar or of any person appointed by the Minister,

or

(3) this Act and the regulations.

PART 3

INVESTIGATION AND ACTION BY THE COMMISSION

Sec. 41. Examination of financial affairs.—(1) The Commission or person to whom as its representative it, in writing, delegates the authority to do so, may at any time make an examination of the financial affairs of a registrant or of any person whose franchise has been the subject of a filing with the Commission, and prepare a balance sheet as of the date of the examination and any other statements and reports required by the Commission.

Sec. 42. Experts.—(1) The Commission may appoint one or more experts to assist the Commission in any manner which it considers expedient,

(b) committed an offence under the Criminal Code (Canada), in connection with which the Commission may by order appoint a person to make any investigation it considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) [Appointment of investigators].—The Commission may, in its own name or in the name of any person appointed by it, appoint one or more persons to make

investigation for the due administration of this Act or into any matter relating to trading in franchises, and in the order shall determine and prescribe the scope of the investigation

Sec. 43. Investigations.—(1) When on a statement made under oath it appears probable to the Commission that any person has

(a) contravened this Act or the regulations, or

or

(3) [Scope of investigation].—For the purposes of an investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine

(a) the affairs of the person in respect of whom the investigation is being made and any agreements, contracts, correspondence, communications, negotiations, transactions, investigation loans, borrowings and payments to, or in behalf of, or in relation to or connected with that person and any property, assets or things possessed or alienated in whole or in part by the person or by any person acting as agent for that person and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with any such person and the relationship that may at any time exist or have existed between that person and any other person by reason of sale or an agreement of purchase

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(1) [Power of investigation].—The person making an investigation under this section has the same power to summon and question the attendance of witnesses and compel the production of written or oral evidence on oath or otherwise, and to produce documents, records, and things, as is vested in the Queen of Queen's Bench under the Crown in right of the Crown in right of either or both of the Crown in right of either or both of the provinces of Alberta or British Columbia, and the failure or refusal of a person to attend or to answer any questions, or to produce the documents, records, and things that are in his custody or possession makes him liable to be committed for contempt by a Judge of the Court of Queen's Bench if in breach of any of said judgment of the Court of Queen's Bench, and no provision of the Alberta Evidence Act exempts any bank or any officer or employee of a bank from the operation of this section.

(2) [Power of investigative officer].—A person giving evidence at an investigation under this section may be represented by counsel.

(3) [Seized documents available to persons].—When any documents, records, securities, or other property are seized under subsection (2), the documents, records, securities, or other property must be made available for inspection and copying by the person from whom seized at a mutually convenient time and place:

(a) [Appointments of experts].—When an investigation is ordered under this section the Commission may appoint an accountant or other expert to examine documents, records, properties, and matters of the persons whose affairs are being investigated.

(b) [Reports to Commission].—Every person appointed under subsection (1), (2) or (8) shall report the result of his investigation or examination to the Commission.

(c) [Report of court or law inapplicable].—The provisions of any rule of court or any law not applicable to the service of summons on witnesses and to the payment of court costs or witness fees do not apply with respect to investigations under this section or section 45.

(11) [Number of investigators].—An order under subsection (1) or (2) may provide for the appointment of 2 or more persons to make the investigation.

[7010.44] Sec. 48. Order to preserve funds.—(1) When an investigation has been made under section 45, the person making the investigation shall, report the result of the investigation, including the evidence, findings, comments and recommendations, to the Minister and to the Attorney General, and the Minister, with the consent of the Attorney General, may publish the report in whole or in part in any manner he considers proper.

[7010.49] Sec. 49. Application for receiver, etc.—(1) When the Commission is about to order an investigation under section 45 or during or after an investigation under section 45 or 43, the Commission may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any funds or securities of the person referred to in clause (a), (b) or (c) to hold those funds or securities for the use and benefit of the person referred to in clause (a), (b) or (c).

(a) [Reports to Commission].—Every person appointed under subsection (1), (2) or (8) shall report the result of his investigation or examination to the Commission.

(b) [Evidence].—Every person giving evidence at an investigation under this section shall be entitled to receive reasonable compensation for his services.

(c) [Counsel].—Nothing in this section shall affect the right of any person to be represented by counsel.

(d) [Confidentiality].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(e) [Interpleader].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(f) [Confidentiality].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(g) [Interpleader].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(h) [Confidentiality].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(i) [Interpleader].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(j) [Confidentiality].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

(k) [Interpleader].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.

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(z) [Confidentiality].—Nothing in this section shall prevent any person from giving evidence under oath at an investigation under this section or at any other investigation, or from giving any information or evidence obtained at an investigation under this section to any other person.
PART 4

APPEALS

§ 7010.50

Sec. 50. Appeals to Commission.—(1) Any person primarily affected by a direction, decision, order or ruling of the Commission may appeal to the Commission any order under subsection (2) appointing a receiver or receiver and manager or a trustee of the property of any person in the best interest of the creditors of that person or of persons whose property is in the possession or under the control of that person, appoint a receiver or a receiver and manager or a trustee of the property of that person.

(2) [Procedure].—An appeal shall be made within 30 days after the mailing of the notice of the order, and the practice and procedure on and in relation to the appeal shall be in accordance with the procedures of the Court of Queen's Bench.

(3) [Registrar or commission].—The Registrar of the Court of Appeal shall certify to the Court of Queen's Bench any statement or reason for it, the record of the appeal, and all written submissions to the Commission or other material that is relevant to the appeal.

(4) [Right to counsel].—The Commission may appear and be represented by counsel appointed by the Attorney General for that purpose in the hearing of any appeal under this section.

(5) [Order of Court of Appeal].—When an appeal is taken under this section, the Court of Appeal may by its order direct the Commission to make a direction, decision, order or ruling or to do other things in the Commission is authorized and empowered to do under this Act or the regulations and as the Court considers proper, having regard to the material and submissions before it and to the terms of the regulations, and the Commission shall make such direction, decision, order or ruling.

(6) [Additional powers of Commission].—Notwithstanding an order of the Court of Appeal, the Commission has power to make any further direction, decision, order or ruling on new material or when there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to this section.

PART 5

ADMINISTRATION

§ 7010.52

Sec. 52. Rules re hearings.—For the purposes of the hearing required or permitted under this Act to be held before the Commission or the Director, the following rules apply:

(a) in addition to any person to whom notice is required to be given, notices in writing of the time, place and purpose of the hearing shall be given to any person who, in the opinion of the Commission or the Director, is primarily affected by the hearing, and the notice is sufficient if sent to the person by prepaid mail or to an address at which the person has been served with process; and

(b) the hearing shall be held at such time and place as the Director shall fix the record; and

(c) the direction, decision, order or ruling made at the hearing, the person presiding shall receive all evidence submitted by any person to whom notice has been given or by any other person submitting evidence that is relevant to the hearing, but the person presiding is not bound by the legal or technical rules of evidence; and

(d) at the hearing or hearing and review by the Commission, all oral evidence received shall be taken down in writing and together with the documentary evidence and things received in evidence by the Commission shall form the record; and

(e) the direction, decision, order or ruling made at the hearing, the person presiding at the hearing shall, at the request of the person, issue written reasons for the direction, decision, order or ruling; and

(f) notice of every direction, decision, order or ruling, together with a copy of the written reasons for it, if any, shall be given on the issuance of it to every person to whom notice of the hearing was given and to any person who, in the opinion of the person who presided at the hearing, is primarily affected by it, and the notice is insufficient if sent to the person by prepaid mail or to an address at which the person has been served with process.
Sec. 55. Order to comply with Act.—(1) When it appears to the Commission that a person has failed to comply with or is contravening any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of the contravention and in addition to any other rights or remedies that may have, the Commission may apply to the Court of Queen’s Bench by way of an originating notice of motion for an order directing that person to comply with the provision or for an order restraining that person from contravening the provision, and on the application the Court may make that order or any other order that it thinks fit.

(2) [Notice of hearing.—The originating notice shall be served at least 2 clear days before the day named in the notice for hearing the application.

(3) [Appeal to Court of Appeal.—An appeal lies to the Court of Appeal from an order made under subsection (1).]

Sec. 56. Warrant from another province.—(1) If a judge or justice of another province issued a warrant for the arrest of a person on a charge of contravening any statute of that province similar to this Act, such judge or justice of Alberta within whose jurisdiction that person is to be, may, on satisfactory proof of the existence of the warrant from the provincial judge or justice who issued the warrant, issue warrant in form prescribed by the regulations.

(2) [Sufficient authority.—A warrant endorsed pursuant to subsection (1) to a person on a charge of contravening any statute of that province similar to this Act, and such judge or justice of Alberta within whose jurisdiction that person is to be, may, on satisfactory proof of the existence of the warrant from the provincial judge or justice who issued the warrant, issue warrant in form prescribed by the regulations.

(3) [Re estimation of accused.—A peace officer of Alberta or of any other province of Canada who is passing through Alberta having in his custody a person arrested in another province under a warrant endorsed pursuant to subsection (1) is entitled to have the accused arrested anywhere in Alberta under that warrant with or without proof of the warrant or the endorsement of it.

(4) when judgment based on a finding of fraud has been given against a registered person or an officer or partner of a registered company, in respect of whose conduct the bond is conditioned, or

(5) when proceedings by or in respect of a registered person or an officer or partner of a registered company, in respect of whose conduct the bond is conditioned, has been taken under the Bankruptcy Act (Canada), the Judicature Act, the Companies Act, the Business Corporations Act, or the Winding-up Act (Canada) for the appointment of an interim receiver, custodian, trustee, receiver or liquidator. (1981, c. B-35, s. 284(9)).

[6] [Bond held in trust.—The Lieutenant Governor in Council may direct the Provincial Treasurer to assign any bond forfeited under subsection (1) and transfer the collateral security, if any, to pay over any money recovered under such a bond, or to pay over any money realized from the sale of the collateral security under subsection (4), to any person, or to the clerk of the Court of Queen’s Bench in trust for persons who may become judgment creditors of the person bonded for or to any trustee, receiver, or liquidator of such person.

[7] [When no creditor.—When

(a) a bond has been forfeited under subsection (1), in respect of a conviction or judgment under subsection (3)(a) or (b), and

(b) the Commission has not within 2 years of the conviction or judgment having become final, or

(ii) within 2 years of the registered person in respect of whom the bond was furnished, having ceased to carry on business and

(4) [Sale of collateral security.—When a bond secured by the deposit of collateral security with the Provincial Treasurer is forfeited under subsection (1) the Lieutenant Governor in Council may direct the Provincial Treasurer to sell the collateral security at the current market price.

(5) [Debt owing to Crown.—When Her Majesty becomes a creditor of any person in respect of a debt to the Crown arising from the provisions of subsection (1), the same procedures as are provided for in subsection (3) shall be followed.]

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to that person or to any person who
on forfeiture of the bond made any pay-
ments under it, after first deducting
the amount of any expenses that have
been incurred in connection with any
investigation or other matter relating
to that person.
(1961, c. B-15, s. 284.)

§ 7010.57
Sec. 57. Regulations.—The Lieutenant
Governor in Council may make regula-
tions
(a) prescribing the form and content of
prospectuses to be filed with the Com-
misson by persons in accordance with
the Act;
(b) prescribing requirements respecting
applications for registration and renewal
of registration;
(c) regulating the trading in franchises
and records relating to that trading;
(d) governing the furnishing of informa-
tion to the public or to the Commission
by a registrant in connection with
franchises or trades in them;
(e) governing the keeping of accounts and
records, the preparation and filing of
financial statements of franchise issuers
and the audit requirements with respect
thereto;
(j) prescribing the fees payable to the
Commission, including fees for filing,
fees on applications for registration,
fees in respect of audits made by the
Commission and other fees in connection
with the administration of this Act
and the regulations;
(k) prescribing the documents, reports,
statements, agreements and other infor-
mation and the form, content and other
particulars relating to them that are
required to be filed, furnished or
delivered under this Act and the
regulations;
(l) prescribing the practice and procedure
of investigations under sections 43 and
45;
(m) prescribing the forms for use under
this Act and the regulations;
(n) prohibiting or otherwise regulating
the distribution of written or printed
material by a person in respect of a
franchise whether in the course of
trading or otherwise;
(o) respecting any matter necessary or
advisable to carry out effectively the
intend and purpose of this Act.

[The next page is 9835.]

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§ 7015.03

Business Franchise Guide
Prospectus

Sec. 5. Unless the Director otherwise permits or requires, the body of a printed prospectus or a statement of material facts shall be in roman type at least as large as ten point modern type, except that, to the extent necessary for convenient presentation, financial statements and other statistical, tabular data and the notes thereto may be in roman type at least as large as eight point modern type.

Sec. 6. (1) No reference need be made in a prospectus to inapplicable items contained in the forms and negative answers to any items contained in the forms may be omitted.

(2) No inference shall be drawn from the items of disclosure called for by the various prospectus forms that in any way qualifies or limits the discretion granted to the Director or the Commission, as the case may be, by the Act.

(3) No inference shall be drawn from the items of disclosure called for by the various prospectus forms that in any way qualifies or limits the obligation to provide full, true and plain disclosure of all material facts relating to the franchise or subfranchise proposed to be offered.

(4) The information required to be disclosed in answer to any item of a prospectus form or any part thereof may be omitted if such information is, in the opinion of the Director, immaterial.

Sec. 7. (1) The information contained in a prospectus shall be presented in narrative form.

(2) All information contained in an application for registration except paragraphs 5 to 8 thereof shall be included in the prospectus.

(3) The information required by more than one applicable item of a prospectus form need not be repeated.

Section 8. The outside front cover page on every prospectus shall contain the information required by the Director and, without limiting the generality of the foregoing, shall include:

(a) a warning concerning speculative risks;

(b) a warning concerning the right to receive a prospectus; and

(c) a warning concerning selling rights, and

(d) the following statement:

No regulatory body in the Province of Alberta has in any way passed upon the merits of the franchise offered hereunder and any representation to the contrary is an offence.

(A. Reg. 37/73, s. 2)

Sec. 9. There shall be filed with the Commission at the time a prospectus is filed a cross-reference sheet showing the location in the prospectus, as the case may be, of the information required to be included therein in response to the items contained in the forms and reference shall be made in the cross-reference sheet to any item that is inapplicable or the answer to which is in the negative and is omitted from the prospectus.

Sec. 10. If the registration renewal statement or any amendment to an application for registration alters the text of the prospectus, or of any item, exhibit or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of underlining or in some other appropriate manner.

Financial Statements

Sec. 11. (1) Financial statements required to be filed under the Act or the regulations shall be prepared in accordance with generally accepted accounting principles and shall be acceptable to the Director as to form and content.

(2) The financial statements shall be reported upon by a person acceptable to the Director who is the auditor of the franchise or subfranchise or in an accountant eligible for appointment as the auditor.
(4) The financial statements required to be filed refer to the comparative balance sheet on the last two complete years, and statements of income and expenses, and of source and application of funds for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of such fiscal years and the date of the balance sheet.

(5) If the current balance sheet was not prepared within 120 days prior to the date of filing it shall be accompanied by an unaudited financial statement as of a date not exceeding 90 days prior to the date of filing and a comfort letter relative thereto.

Purchase Receipts

[[7015.12]]

Sec. 12. In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill its obligation to provide real estate, improvements, equipment, inventory, training or other items in the prospectus, and the Director imposes as a condition of registration the imposes of franchise thereof as already collected, the franchisee shall deliver to the franchisee or subfranchisee a purchase receipt in a form approved by the Director, and a copy of such purchase receipt shall be filed with the Commission.

[[7015.13]]

Sec. 13. The Director shall authorize the release to the franchisee of the imposed fees applicable to a specified franchise or subfranchise upon a showing that the franchisor has fulfilled its obligations under the agreement or if, in the opinion of the Director, the imposition is no longer required for the protection of the franchisee or subfranchisee.

[[7015.14]]

Sec. 14. Where a franchisee proposes to post a surety bond pursuant to the terms of section 9 of the Act, such bond shall be issued by an insurer licensed under the Alberta Insurance Act to undertake guarantee insurance as defined in that Act and shall be conditioned on the completion by the franchisor of his obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

Advertisements

[[7015.15]]

Sec. 15. (1) An advertisement for a franchise should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely or that earnings and profits are assured.

(2) An advertisement should not normally contain a projection of future franchise earnings unless such projection is:

(a) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchisees being offered,

(b) for a reasonable period only, and

(c) substantiated by data which clearly support such projections.

(3) If the advertisement contains any endorsement or recommendation of the earnings of any public figure whether express or implied full disclosure shall be made of any compensation or any other benefit given or promised by the registrant to such person, directly or indirectly.

Termination of Salesmen

[[7015.16]]

Sec. 16. A franchisor or subfranchisor required to be registered under the Act shall immediately notify the Director in writing of the termination of employment of each salesman.

[[7015.17]]

Sec. 17. These regulations come into force on the date that The Franchise Act is proclaimed in force.

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by applicant and the Commissioner taking the affidavit.

SCHEDULE

[[7015.28]]

Form 1

THE FRANCHISE ACT

APPLICATION FOR REGISTRATION OF A FRANCHISE

Application is made for registration under The Franchise Act of the following franchise or area franchise.

(State clearly the name of the franchise or area franchise in the form in which the offer will be made to the public.)

1. Name of franchisor ________________________________

Name under which applicant will carry on business ________________________________

Name of any parent or affiliated organization that will engage in business transactions with the franchisees ________________________________

2. Principal business address ________________________________

Principal business address in Alberta ________________________________

Telephone number of principal business address in Alberta ________________________________

3. Name and address of agent in Alberta authorized to accept service of documents ________________________________

4. Business form of franchisor ________________________________

(State whether corporation, partnership, (limited or unlimited) syndicate, sole proprietorship or other.)

(continued on next page.)

Business Franchise Guide
5. Is or has the applicant, or any partner, salesman, trading employee, officer, director, associate or affiliate of the applicant been:

(a) registered under
   (i) The Franchisees Act
   (ii) The Securities Act

(b) an applicant for registration under
   (i) The Franchisees Act
   (ii) The Securities Act

(Answer "yes" or "no". If "Yes" give particulars.)

6. Is or has the applicant or any salesman, trading employee, partner, officer, director, associate or affiliate of the applicant been:

(a) registered in any other jurisdiction which requires licensing or registration to deal in franchises or securities?

(Answer "yes" or "no". If "Yes" give particulars.)

(b) registered or licensed in Alberta or any other jurisdiction under any legislation which requires registration or licensing to deal with the public in any capacity?

(Answer "yes" or "no". If "Yes" give particulars.)

(c) refused registration or a licence mentioned in (a) or (b) above, or has any registration or licence been suspended or cancelled in any category mentioned in (a) or (b) above?

(Answer "yes" or "no". If "Yes" give particulars.)

Instructions: The answer to Item 6(3) is to include registration or licensing in any occupation such as securities salesman, insurance agent, real estate agent, used car dealer, mortgage broker, etc.

7. Has the applicant or any trading employee, salesman, partner, officer, director, associate or affiliate of the applicant ever operated under or carried on business under any name, other than the name shown in this application?

(Answer "yes" or "no". If "Yes" give particulars.)

8. Has the applicant or any salesman, trading employee, partner, officer, director, associate or affiliate of the applicant ever been:

(a) convicted, under the laws of any jurisdiction, excepting minor traffic violations?

(Answer "yes" or "no". If "Yes" give particulars.)

Instructions: This question refers to all laws, e.g. Criminal, Immigration, Customs, Liquor, etc., of any jurisdiction in any part of the world.

(b) held liable in a civil action if a civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property?

(Answer "yes" or "no". If "Yes" give particulars.)

(c) at any time declared bankrupt, or made a voluntary assignment in bankruptcy?

(Answer "yes" or "no". If "Yes" give particulars.)

(d) been refused a fidelity bond?

(Answer "yes" or "no". If "Yes" give particulars.)

9. Set out below the names and addresses of all individuals connected with the franchisee who will be trading in the franchise.

10. Set out the length of time during which the franchisee

(a) has conducted a business of the type to be operated by the franchisee?

(b) has granted franchises for such business?

(c) has granted franchises in other lines of business?

11. Attach the following audited financial statements:

(a) comparative balance sheet for the last two complete years of business,

(b) a statement of income and expenses for each of the last three financial years of business,

(c) a statement of source and application of funds for each of the last three financial years of business,

(d) if the current balance sheet is as of a date more than 180 days prior to the date of this application, an unaudited financial statement as of said date not exceeding 90 days prior to the date of this filing and a comfort letter relative thereto.

(continued on next page.)
12. Attach a copy of the typical franchise contract or agreement proposal for use or in use in this jurisdiction.

13. Set out:
(a) the total franchise fee charged including continuing royalties,

(b) the proposed application of the proceeds of such fee by the franchisor,

(c) the basis on which the fee is calculated if the fee is not the same in all cases.

14. Set out all fees, other than franchise fees, which the franchisor or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties, and the names of such third party or parties.

15. State whether the cash investment required for the franchise covers payment for fixtures and equipment.

16. Set out the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor, or disposed of by the franchisee.

17. State whether, by the terms of the franchise agreement or by other device or practice, the franchise or subfranchise is required to purchase from the franchisor or his designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description thereof.

18. State whether the services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor.

19. State whether the franchisor has, whether by contract, agreement, arrangement or otherwise, agreed with any third party or parties that the products or services of such third parties will be made available to subfranchisees or franchisees on a discount or bonus basis.

20. State whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by him to his customers.

21. State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or his agent or affiliate to subfranchisees or franchisees. Without restricting the generality of the foregoing, the statement shall include reference to the following points:
(a) whether the repayment of any financial obligations incurred under the franchise agreement or any collateral agreement or arrangement is calculated on the basis of a term of years, on a volume of business, or any other way;
(b) whether an acceleration clause or similar device is used to allow the repayment of any financial obligations upon the expiry date of the franchise agreement;
(c) whether the financing arrangements provide that upon repayment of the loan in full any restriction is continued on the franchisee's use of the equipment, goods, land or buildings which were the subject of financing arrangements; and...
(d) whether the financing arrangements restrict the use made by the franchisee of any equipment, goods, land or buildings which are not the subject of financing arrangements.

22. State whether it has been or is the practice of the franchisor to sell, assign, or discount to a third party any note, contract or other obligation of the franchisee or sub-franchisor in whole or in part.

23. Attach a copy of any statement of estimated or projected franchise earnings published in connection with the trade of the franchisee together with a statement setting forth the data upon which such estimation or projection is based.

24. State whether any compensation or the benefit has been given or is promised to a public figure arising, in whole or in part, from:
   (e) the use of the public figure in the name or symbol of the franchise, or
   (f) the endorsement or recommendation of the franchisee by the public figure in advertisements.

25. State whether the franchisee or subfranchisor receive an exclusive selling area and the way in which this area is calculated.

26. State whether the franchisee is required to participate in a franchisor sponsored promotion and publicity campaign.

27. State whether the benefit of any patent or liability insurance protection of the franchisor is extended to the franchisee.

28. State whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and franchisee.

29. State whether the franchisor provides continuing assistance to the franchisee.

30. State whether the franchisee is able to sell the franchise and, if so, according to which conditions.

31. Set out a list of other franchisees operating in Alberta where such is available and if no such franchisees exist, a list of the franchises operating in the next closest jurisdiction.

32. The principals of the franchisor shall complete the following certificate. The principals include:
   (a) a sole proprietor;
   (b) all partners, unit holders, trustees;
   (c) in the case of a company, the chief executive officer and the chief financial officer and on behalf of the board of directors any two directors of the company authorized to sign;
   (d) any other person who has a substantial interest in the franchisor.

The foregoing constitutes full, true and plain disclosure of all material facts relating to the franchise offered by this application for prospectus as required by Part I of The Franchise Act and the regulations.

33. Enclose the fee for this application.

Dated at this day of 19...

Name of Applicant

By Signature of applicant, partner or official

Official capacity
9846
Canada

[§ 7015.29]

Form 1

AFFIDAVIT

In the Matter of The Franchises Act

Province of Alberta

TO WIT:

I, ..................................................

of the ...........................................

of .............................................

in the Province of ............................

MAKE OATH AND SAY:

1. That I am the applicant (or a partner or official of the applicant) herein for registration, and I signed the application.

2. That the statements of fact made in the application are true.

SWORN before me at the .................

of .............................................

in the Province of ............................

this ............... day of .................

19......

..................................................

Signature of Deponent

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by applicant and the Commissioner taking the affidavit.

[§ 7015.30]

Form 2

THE FRANCHISES ACT

APPLICATION FOR RENEWAL OF REGISTRATION

Application is made for renewal of registration under The Franchises Act of the following franchise [ ] or area franchise [ ]

1. Name of Franchisor or subfranchisor ..............................................................

2. Business address ...........................................................................................

Telephone number ...........................................................................................

3. Address for service in Alberta ........................................................................

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Alberta Franchises Act

4. Have there been any changes in the information previously given in filings pursuant to The Franchises Act Regulations. (Answer “yes” or “no”)

5. If the answer to item 4 is “yes”, give full particulars of every change, using the same numbering for each item of change as appears in the application form in which the information was contained.

6. Enclose the fee for this application.

Dated at the .................................

By ..................................................

(name in full)

Signature of Deponent

[§ 7015.31]

Form 2

In the Matter of The Franchises Act

Province of Alberta

TO WIT:

I, ..................................................

of .............................................

in the Province of ............................

MAKE OATH AND SAY:

1. That I am the applicant (or a partner or official of the applicant) herein for renewal of registration and I signed the application for renewal of registration.

2. That the statements of fact made in the application for renewal of registration are true.

SWORN before me at the .................

of .............................................

in the Province of ............................

this ............... day of .................

19......

..................................................

(Signature of Deponent)

(A Commissioner for Oaths in and for the Province of Alberta.)

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by applicant and the Commissioner taking the affidavit.

Business Franchise Guide
THE FRANCHISES ACT
APPLICATION FOR AMENDMENT OF REGISTRATION

Name of Franchisor or subfranchisor

Application is made for amendment to our existing registration as a franchise [ ] or area franchise [ ] under The Franchises Act, and the following statements of fact are made in respect thereof.

1. Give particulars of changes in partners, officers or officials from that disclosed in filings previously made pursuant to The Franchises Act.

2. Attached hereto and marked as schedules are information statements from each new person associated with the applicant giving the information called for under the Act.

3. Set out hereunder any changes which have occurred in the financial structure of the applicant which would change the information previously given in filings pursuant to The Franchises Act.

4. Set out whether there are other material changes in relation to the information heretofore furnished by the applicant pertaining to its registration and, if so, what the changes are in reasonable detail.

5. Enclose the fee for the application.

Dated at the of this day of 19.

(name of applicant)

(name of applicant, partner or official)

(official capacity)

THE FRANCHISES ACT
APPLICATION FOR EXEMPTION AND RENEWAL
OF EXEMPTION FROM REGISTRATION

exemption

renewal of exemption

from registration under Section 3 of The Franchises Act of the following franchise [ ] or area franchise [ ]

(State clearly the name of the franchise in the form in which it will be presented to the public.)

1. Name of franchisor or subfranchisor

Name under which applicant will carry on business

Name of any parent or affiliated organization that will engage in business transactions with the franchisees

2. Principal business address

Principal business address in Alberta

Telephone number of principal business address in Alberta

3. Name and address of agent in Alberta authorized to accept service of documents

(continued on next page.)
4. Business form or franchisee
(State whether corporation, partnership, limited or unlimited syndicate, sole proprietorship or other.)

5. Has the applicant, or any partner, salesman, trading employee, officer, director, associate or affiliate of the applicant:
(a) been registered under
   (i) The Alberta Franchisees Act,
   (ii) The Alberta Securities Act,

(b) applied for registration under
   (i) The Alberta Franchisees Act,
   (ii) The Alberta Securities Act,

   (Answer "yes" or "no". If "yes", give particulars.)

6. Is or has the applicant or any salesman, trading employee, partner, officer, director, associate, or affiliate of the applicant been:
(a) registered in any other jurisdiction which requires licensing or registration to deal in franchises or securities?

   (Answer "yes" or "no". If "yes", give particulars.)

(b) registered or licensed in Alberta or any other jurisdiction under any legislation which requires registration or licensing to deal with the public in any capacity?

   (Answer "yes" or "no". If "yes", give particulars.)

(c) refused registration or a licence mentioned in (a) or (b) above, or has any registration or licence been suspended or cancelled in any category mentioned in (a) or (b) above?

   (Answer "yes" or "no". If "yes", give particulars.)

   Instructions: The answer to Item 6(b) is to include registration or licensing in an occupation such as securities salesman, insurance agent, real estate agent, used car dealer, mortgage broker, etc.

7. Has the applicant or any salesman, trading employee, partner, officer, director, associate or affiliate of the applicant ever operated under or carried on business under any name, other than the name shown in this application?

   (Answer "yes" or "no". If "yes", give particulars.)

8. Has the applicant or any salesman, trading employee, partner, officer, director, associate or affiliate of the applicant ever been:
(a) convicted, under the laws of any jurisdiction, excepting minor traffic violations?

   (Answer "yes" or "no". If "yes", give particulars.)

9. Set out below the names and addresses of all individuals connected with the franchise or with the business of the type to be operated by the franchisee.

   (Answer "yes" or "no". If "yes", give particulars.)

   (Continued on next page.)
14. Set out all fees, other than franchise fees, which the franchisee or subfranchisor is required to pay the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties, and the names of such third party or parties.

15. State whether the cash investment required for the franchise covers payment for fixtures and equipment.

16. Set out the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor, or disposed of by the franchisee.

17. State whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or his designee service, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description thereof.

18. State whether the services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor.

19. State whether the franchisor has, whether by contract, agreement, arrangement or otherwise agreed with any third party or parties that the products or services of such third parties will be made available to subfranchisors or franchisees on a discount or bonus basis.

20. State whether, by the terms of the franchise agreement or other device or practice, the franchise is limited in the goods or services offered by him to his customers.

21. State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or his agent or affiliate to subfranchisors or franchisees. Without restricting the generality of the foregoing, the statement shall include reference to the following points:
   (a) whether the repayment of any financial obligations incurred under the franchise agreement or any collateral agreement or arrangement is calculated on the basis of a standard, on a volume of business, or in any other way;
   (b) whether an acceleration clause or similar device is used to allow the repayment of any financial obligations upon the expiry date of the franchise agreement;
   (c) whether the financing arrangements provide that upon repayment of the loan in full, any restriction is continued on the franchisee's use of the equipment, goods, land or buildings which was the subject of the financing arrangements;
   (d) whether the financing arrangements restrict the use made by the franchisee of any equipment, goods, land or buildings which are not the subject of financing arrangements.

22. State whether it has been or is the practice of the franchisor to sell, assign, or discount to a third party any note, contract or other obligation of the franchisee or subfranchisor in whole or in part.

23. Attach a copy of any statement of estimated or projected franchise earnings published in connection with the trade of the franchise together with a statement setting forth the data upon which such estimation or projection is based.

(continued on next page.)
24. State whether any compensation or other benefit has been given or is promised to a public figure arising, in whole or in part, from:
   (a) the use of the public figure in the name or symbol of the franchise, or
   (b) the endorsement or recommendation of the franchise by the public figure in advertisements.

25. State whether the franchisee or subfranchisee(s) receive an exclusive selling area and the way in which this area is calculated.

26. State whether the franchisee's period of performance is extended.

27. State whether the benefit of any patent or liability insurance protection of the franchisee is extended to the franchisee.

28. State whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and the franchisee.

29. State whether the franchisor provides settlement assistance to the franchisee.

30. State whether the franchisee is able to sell the franchise and, if so, according to which conditions.

31. Set out a list of other franchises operating in Alberta where such is available and if no such franchises exist, a list of the franchises operating in the next closest jurisdiction.

32. I believe that an exemption granted under section 3 of the Act would not be prejudicial to the public interest for the following reasons:

33. The fee for this application is attached.

Dated at __________________________
this __________________________________ day of __________, 19________

(name of applicant)

By __________________________
(Signature of applicant, partner, or official)

(official capacity)

[§ 7015.35]

Form 4

In the Matter of The Franchise Act

Province of Alberta

TO WHIT:

I, __________________________
(name in full)
of the __________________________ in
the Province of __________________________

MAKE OATH AND SAY:

1. That I am the applicant (or a partner or official of the applicant) herein for exemption, and I signed the application.

2. That the statements of fact made in the application are true.

SWORN before me at the __________________________, in
the Province of __________________________
this __________________________ day of __________, 19________

(Signature of Dependent)

(A Commissioner for Oaths in and for the Province of Alberta.)

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing such attachment with the item to which it pertains, provided it is initialed by applicant and the Commissioner taking the affidavit.

Business Franchise Guide
THE FRANCHISES ACT
APPLICATION FOR REGISTRATION AS SALESMAN

Application is made for registration under The Franchises Act, as a salesman of the following franchise ( ) or area franchise ( ) and the following statements of fact are made in respect thereof:

1. (a) Name of intended employer
(b) Name of applicant in full
(c) Place of residence
   Tel. No.
(d) Business address, if registered
   Tel. No.
(e) State address for service in Alberta
   (Address where any legal documents should be sent.)

2. I have resided in Canada continuously, for a period of
   and am currently a resident of the Province of Alberta residing at the above address.

3. The following information constitutes full disclosure of the business activities and residences of the applicant for the full 15-year period immediately preceding the date of the application, including periods when unemployed. A full 15-year period of employment/unemployment activities and residences immediately preceding the full 15-year period has been spent as a student at a Canadian university or college.

4. Has the applicant or any partner or associate of the applicant ever been charged, indicted or convicted, under the laws of any province, state or country, excepting minor traffic violations?
   (Answer “yes” or “no”. If “yes”, give particulars.)

Instruction: This question refers to all laws, e.g. Criminal, Immigration, Customs, Liquor, etc., of any province, state or country, in any part of the world. This item does not include charges, indictments or convictions in Juvenile Courts, by-laws or traffic violations. All other charges, indictments, and convictions MUST BE declared.

(continued on next page.)
Alberta Franchises Act

13. The fee required by the regulations accompanies this application.

Dated at ________________________________ day of ___________ 19.

(Signature of Applicant)

AFFIDAVIT

In the Matter of The Franchisee Act,

Province of Alberta

TO WIT:

______________________________
(name in full)

of the ___________ of

in the Province of ____________________

MAKE OATH AND SAY:

1. I am ________________________________

the applicant herein for registration and I signed the application.

2. The statements of fact made in the application are true.

SWORN before me at the ________________________________

in the Province of ________________________________

this ___________ day of ___________ 19.

(Signature of deponent)

(A Commissioner, etc.)

Instructions: One original copy only is required for the purpose of the Commission. The application takes the form of an affidavit. All corrections must be initialed by both applicant and the Commissioner for Oaths. A false statement may result in prosecution. Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by applicant and the Commissioner taking the affidavit.

THE FRANCHISES ACT

CERTIFICATE OF INTENDED EMPLOYER

(To be completed by the intended employer and submitted separately in support of every new application made for registration as a salesmen.)

1. (a) Name of intended employer ________________________________

(b) Business address in Alberta ________________________________

2. (a) Name of intended employer-applicant in full ________________________________

(b) Residence Address ________________________________

(continued on next page)

9658 Canada

(d) been registered or licensed in any other capacity in Alberta or any other province, state or country under any legislation which requires registration or licensing to deal with the public in any capacity.

(Answer "yes" or "no". If "yes", give particulars.)

(e) been refused registration or a licence mentioned in clause (c) or (d) or has any such registration or licence been cancelled?

(Answer "yes" or "no". If "yes", give particulars.)

Instructions: The answer to Item 9 (d) is to include registration and licensing in an occupation such as an insurance agent, real estate agent, used car dealer, mortgage broker, etc.

10. Has the applicant or any partner or associate of the applicant ever used, operated under, or carried on business, or are you known by any name, other than the name which is subscribed hereto?

Instructions: If applicant is a married woman, please state name(s) of husband(s) and indicate name(s) used during marriage(s), maiden name and any other names as a result of more than one marriage.

11. The business reputation of the applicant is well known to each of the following named persons or companies and reference may be made to them for further information. (Give at least five names, one of which must be a bank or trust company. If bank reference is not available two (2) personal references may be substituted i.e., total 6 personal). References must have known applicant for at least 2 years. Processing may be expedited if all references accompany application. All references must be addressed by the referee to "The Alberta Securities Commission". References addressed "To whom it may concern" will not be accepted.

<table>
<thead>
<tr>
<th>Name</th>
<th>P.O. Address</th>
<th>Business or occupation</th>
</tr>
</thead>
</table>

12. Give the following detailed description of the applicant for identification purposes:

Height: ____________ Weight: ____________ Complexion: ____________

Date of Birth: ____________ Place of Birth: ____________

day month year

If born outside Canada, date of arrival in Canada ________________________________

Citizenship: ____________ Number of passport, if any: ____________

Build: ____________ Colour of eyes: ____________ Colour of Hair: ____________

Sex: ____________ Marital Status: ____________

Distinguishing marks such as scars, tattoos, etc. ________________________________

Instructions: The information disclosed by this item is for the use of the Commission only. The information need not be furnished to the intended employer.
To the Director:

On the basis of due and diligent inquiry made of the background of the applicant named above and other information available, the undersigned believes this person to be of good character and reputation.

Dated ........................................ 19 ...

(Intended employer)

By ........................................

(Title of person signing, e.g. proprietor, partner or officer)

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by the applicant and the Commissioner taking the affidavit.

[¶ 7015.38]

Form 7

THE FRANCHISES ACT

APPLICATION FOR RENEWAL OF REGISTRATION AS SALESMAN

Application is made for renewal of registration under The Franchises Act as a salesman of the following franchise □ or area franchise □

1. Name in full ........................................

2. Place of Residence ........................................
   Tel. No. ........................................

3. Have there been any changes in information previously given in filing pursuant to The Franchises Act Regulations. (answer "Yes" or "No")

4. If the answer to Item 3 is "Yes", give full particulars of every change, using the same numbering for each item of change as it appears in the application form in which the information is contained.

Dated at ........................................
   this ........................................ day of ........................................ 19 ...

(Signature of Applicant)

REQUEST OF EMPLOYER

The undersigned employer hereby requests that the registration of the above applicant be renewed.

Date at ........................................
   this ........................................ day of ........................................ 19 ...

(signature of employer)

By ........................................
   (to be used by partnerships or companies only)

(official capacity)

[¶ 7015.39]

Form 8

THE FRANCHISES ACT

AFFIDAVIT

IN THE MATTER OF THE FRANCHISES ACT

Province of Alberta

I, ........................................

(name in full)

of the ........................................

in the Province of ........................................

MAKE OATH AND SAY:

1. I am the applicant herein for renewal of registration and I signed the application.

2. The statements of fact made in the application are true.

SWORN before me at ........................................

in the Province of ........................................

this ........................................ day of ........................................ 19 ...

(signature of deponent)

(A Commissioner for Oaths in and for the Province of Alberta)

Note: Should any space prove to be insufficient, attachments may be made, cross-referencing each attachment with the item to which it pertains, provided it is initialed by the applicant and the Commissioner taking the affidavit.

[¶ 7015.40]
Canada

The condition of this obligation is such that if the person or company or any officer or partner thereof in respect of whose conduct this bond is conditioned shall at all times well and truly comply with the requirements of the Franchises Act, and regulations thereafter, and shall not have been convicted of:

(a) an offence under this Act or the regulations,
(b) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the Criminal Code,
(c) an offence in connection with a transaction relating to franchises under the Criminal Code,
(d) shall not have a judgment based on a finding of fraud given against the registered person or company, or any officer or partner thereof, in respect of whose conduct the bond is conditioned, or
(e) when no proceedings by or in respect of the registered person or company, or by any officer or partner thereof, in respect of whose conduct the bond is conditioned, have been taken under the Bankruptcy Act (Canada) or by way of winding-up and a receiving order under the Bankruptcy Act (Canada) or a winding-up order had been made,

and when such conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest Court to which appeal may be taken, the said written bond shall be void otherwise it shall be and remain in full force and effect.

Signed, Sealed and Delivered in the presence of:

Witness

[The next page is 9871.]

Alberta

Policy Statements under The Franchises Act

[§ 7020]

SECTION I—GENERAL

POLICY 1.1

Alberta Securities Commission Policy Statements—General

[§ 7020.01]

1. The following items set forth certain comments and general matters relating to Policy Statements issued or to be issued by the Board of the Alberta Securities Commission (the “Board”).

2. The A.S.C. Policy Statements are intended to set forth certain basic policies of the Board relating to franchises regulation in the Province of Alberta and the role of the Agency and Board of the Commission with respect thereto and, accordingly, the Board expects compliance with its Policy Statements. Policies are issued primarily for the purpose of:

2.1 setting forth interpretations of certain sections of the Alberta Franchise Act (the “Act”) and the Regulations thereto;

2.2 establishing guidelines in respect of certain matters arising out of the Act and the Regulations.

The Board and the Chief of Securities Administration of the Commission Agency (the “Chief”) shall always exercise their discretion in applying the policies and, in exercising their discretion, may modify or waive certain requirements of the policies while still remaining consistent with the spirit of the policies if, in their opinion and in light of the entire fact situation, special or unusual circumstances justify variations therefrom.

3. If the Board or the Chief become aware of an actual or potential abuse in relation to the trading in franchises that is prejudicial to the public interest and requires immediate remedial action, an appropriate policy or blanket order may be issued to prevent the abuse and, at the first opportunity, such policy or blanket order may be presented to the Director of the Act or Regulations, or the policy or blanket order, as the case may be, may be repealed if and when the circumstances that gave rise to the abuse are no longer present. The issuance of such a policy or blanket order also serves the purpose of providing an opportunity for public comment. Accordingly, the Board and the Chief have the right to take remedial action to ensure adherence to franchises legislation, policy and the spirit of franchises legislation.

4. A table of contents to the A.S.C. Policy Statements has been prepared and will be revised and updated on an ongoing basis as additions or changes are made to the Policy Statements. The Policy Statements have been divided, by subject matter, into separate sections as follows:

Section 1—Alberta Securities Commission Policy Statements—General

Section 2—Alberta Securities Commission Procedures and Related Matters

Section 3—Registration

Section 4—Prospectus Requirements

Section 5—Notices of Director Franchises

The Policy Statements included in Section 1 are numbered 1.1, 1.2 and so on and the other sections are numbered on a similar basis. Policy Statements issued by the Board from time to time will be inserted in the appropriate sections and assigned the next number. It is hoped that this method of indexing will facilitate reference to the Policy Statements.

5. In addition to the Policy Statements, the Commission has issued certain Notices and Blanket Orders in the course of administering the Act and the Regulations. These Notices and Blanket Orders are set forth under separate tabs in the Policies and Procedures Manual issued by the Board and are accompanied by separate tables of contents.


POLICY 1.2

Notice of Chief of Securities Administration

[§ 7020.02]

The Chief of Securities Administration of the Alberta Securities Commission Agency (the “Chief”) has appointed a Deputy Chief of Securities Administration with the working title of Director, Franchises and Registrar (“Director Franchises”). It is the Director Franchises who handles the day-to-day administration of the Act and to whom all inquiries regarding the Act and the Regulations, as well as the Director Franchises, are directed. The Director will publish notice in the Alberta Weekly Summary of the changes and reprints to the Act and the Regulations as well as other matters related to the Act and the Regulations.

[7020.02]
clarifications in Agency procedure or practice. At the applicant's request, decisions of the Director Franchises may be reviewed by the Chief on a timely basis not to exceed 20 days. Pursuant to section 30 of the Act, any person primarily affected by a decision, decision.

SECTION 2—ALBERTA SECURITIES COMMISSION FRANCHISES ACT PROCEDURE AND RELATED MATTERS

POLICY 2.1

Applications to the Chief of Securities Administration

| 17020.03 |

Purpose

This Policy summarizes the procedures, forms and content of applications for exemptions which the Chief may grant as his discretion.

1. Types of Applications

1.1 The procedures set forth in this Policy apply to all applications made to the Chief under appropriate sections of the Alberta Securities Act (the "Act"), the regulations made under the Act (the "Regulations"), and the Alberta Securities Commission Policy Statements. The Chief has published Notice No. 1.2, describing the parties responsible for the practical application of the provisions of the Act and for the rules set out in this Policy.

1.2 More specifically, this Policy applies to the following sections of the Act, which contemplate the grant of relief from various statutory requirements:

Section of the Act

3

(4)(c)

18

2. Submission of Applications

2.1 All applications should be addressed to:

Director Franchise

Alberta Securities Commission

2122-1002 Jasper Avenue

Edmonton, Alberta

T5J 5Z5

2.2 The appropriate fee set forth in Section 4 of the Regulations should be submitted with the application and should be made payable to the Provincial Treasurer of Alberta. Reference must be made to the Alberta Securities Commission's Notice No. 8 on the method of payment of the fee.

2.3 One original application is required.

§ 7020.03

Canada 130 11-90

3.3.8 Audited financial statements in accordance with Section 11 of the Regulations or an explanation as to why such financial statements are not relevant.

3.4 The Applicant

3.4.1 If the applicant is not the franchisor, include those items in 3.3 pertaining to the applicant which are relevant to the application and explain the applicant's relationship to the franchisor.

3.5 Arguments and Materials in Support of Application

3.5.1 the facts on which the application is based;

3.5.2 the reasons for making the application;

3.5.3 arguments in support of granting the order requested;

3.5.4 relevant considerations including case law, prior decisions, other applications pending, conditions and recommendations;

3.5.5 other relevant circumstances including regulatory decisions by regulatory authorities other than the Alberta Securities Commission, and applications pending before other regulatory authorities;

3.5.6 supporting documents may be included as schedules or exhibits to the application and references in the application may be made to such supporting documents.

3.6 Draft Order

3.6.1 An applicant shall submit a draft of the order sought for the consideration of the Agency. Orders previously granted are published in the Weekly Summary and may be referred to as precedent for style and content.

3.6.2 If more than one order is sought, so indicate and enclose the necessary fees.

3.7 Verification

3.7.1 Each application must be signed by the applicant and must contain a statement certifying the truth of the facts contained therein.

3.7.2 If the application is not signed by the applicant and made by an agent for the applicant, the statement may be omitted if the application is accompanied by a statement made by the applicant confirming the accuracy of the agent to prepare and file the application and certifying that the truth of the facts contained in the application.

Sample language might include:

We authorize the making and filing of the attached application and do hereby confirm the truth of the facts contained therein.

DATED at this 19 .

Business Franchise Guide

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Canada

(b) a certificate of independent advice received on this offering from a professional accountant or lawyer, and not obtained from a promoter of the franchisor whose franchises are being offered.

The format of the certificate is set out in Appendix 1.

4.2.1.2 Applications based on nonresidency

4.2.1.2.1 the franchisor is an Alberta resident whereas the proposed purchaser is not an Alberta resident. The franchise being purchased will be operated outside the province.

4.2.1.2.2 application for trades in Alberta area rights included in rights to all of Canada where both the franchisee and area franchisee are physically located outside of Alberta.

4.3 Typical Conditions Attached to Exemption Orders

Exceptions if granted may:

4.3.1 require the franchisor to provide the franchisee with a disclosure document including a prospectus, statement of material facts or Uniform Franchise Offering Circular or meet the franchise regulatory requirements in the jurisdiction where the franchise will be operated. If a disclosure document is provided then the franchisor will be required to provide the franchisee with contractual rights in the franchise agreement similar to Sections 36 and 37 of the Act.

4.3.2 exclude from the trade covered by the order subfranchising and sale of the franchised business by the proposed purchaser.

4.3.3 require that a copy of the franchise agreement be attached to and form part of the order. An Application may be made to the Chief, to waive this requirement.

4.3.4 require that Alberta law shall apply to the agreement and that the parties agree to submit to the jurisdiction of the Alberta courts.

4.4 Restorative Orders

4.4.1 Although Section 3 provides that orders may be in force prior to the date of the order, the Chief is reluctant to grant such orders unless the applicant is able to show some extraordinary circumstance which would make the granting of the order not prejudicial to the public interest. The Chief is particularly concerned that the effect of such orders would prejudice the legal rights or remedies that may be available to either to a member of the public at large or a party directly affected by the order.

4.4.2 The Chief is prepared to grant restorative orders for national franchise agreements, including Alberta and area development agreements where both the prime franchisor and Alberta franchisee are nonresident provided that each of the area franchisee is a trade requiring registration or subfranchising is a trade requiring registration.

5. Applications Under Section 4(2) and 18 of the Act

5.1 These are usually applications to extend the period of exemption or registration. Extensions when granted are restricted to advertising and negotiating a trade, but no monies may be paid or agreed upon until until a current prospectus is received and the franchise as registered or a current exemption has been granted. Extensions will generally not be granted when complaints against the franchisor, its officers, directors or employees are being investigated.

5.2 Most of the information required by clause 3.3 of this Policy can be provided by reference to the paragraph in the prospectus or statement of material facts previously filed.

5.3 Applications pursuant to these sections must be made in the period of registration and/or the period of an exemption.

6. Conclusion

6.1 Although this Policy establishes guidelines, the Chief has absolute discretion to determine if the granting of the order is not prejudicial to the public interest. Nothing in this Policy should be considered as abrogating that discretion and the Chief will continue to review each application on its individual merits.

Appendix 1

Franchises Act

Section 3

Certificate

I hereby certify that:

1. [ ] is the Province of [ ] in the Province of [ ] appeared in person before me and acknowledged that:

(a) [ ] is a prospective franchisor of a

(b) this certificate is being provided pursuant to an application by [ ] (the "Applicant") under Section 3 of the Franchises Act (the "Act") for a discretionary exemption of a trade in a franchise from the registration and prospectus requirements of the Act.

(c) he knows that he is purchasing a franchise pursuant to a discretionary exemption granted under Section 3 of the Act and, as a consequence:

1.10 Prospectus

2.1 Prospectus filings pursuant to Section 6 of the Act and amendments filed under Sections 7 and 17 will be made public after the issuance of a receipt by the Registrar.

2.1.1 Deficiency letters, forms required by the Regulations and representations or substantial earnings-capability relating thereto will not be made public because the prospect of public availability of this material could detract from freedom of communication during the filing process.

2.1.2 Supporting material such as auditors' comfort letters, legal opinions, consent letters and similar data are to be made public unless privacy is specifically requested and the Chief of Security Administration ("the Chief") grants the request to file the material on the private files.

2.1.3 Material contracts including franchise agreements and ancillary agreements with the franchisor are to be made public unless privacy is specifically requested and the Chief determines that keeping the material contracts private would not be prejudicial to the public interest.

2.1.4 Postponement and subordination agreements, escrow agreements and bonds are to be made public when a request for the postponement is issued by the Registrar.

3. Section 4 Statement of Material Facts

3.1 Statements of Material Facts filed pursuant to Section 4 will be made public after the issuance of the acknowledgment by the Chief pursuant to Section 4.

3.2 The audited financial statements referred to in Section 2 of the Act will be kept private unless they are attached to and form part of the SMF.

3.3 All other material submitted with the application for the Section 2 exemption will be kept on the files as set out in 2.1.1 to 2.1.4 of this Policy.

4. Section 3 Applications for Discretionary Exemption

4.1 Any Order granted by the Chief under Section 3 will be made public at the time of granting the Order. Generally, any material such as agreements or disclosure documents referred to in the Order as being attached will be made public.

4.2 The application, deficiency letters, forms filed pursuant to the Regulations, correspondence and agreements filed with the application are referred to in the Act and as a consequence referred to the Order as being attached will be made public.

Business Franchise Guide

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Alberta Franchises Act

1. Purpose

1.1 The Franchises Act ("the Act") does not specify whether material filed and issued pursuant to the Act or Regulations made under the Act ("the Regulations") should be held private or be made publicly available during normal business hours.

1.2 For reference purposes only, a brief summary of the position of the Alberta Securities Commission ("the Commission") on public availability of various documents filed and issued under the Act and the Regulations is contained in Schedule A to this Policy. This schedule is intended as a guideline only and does not cover all possible filings or materials submitted to the Agency of the Commission (the "Agency").

1.3 Upon court order that the contents of private files be made available to a person, the Agency private files may be subject to public review.
the freedom of communication during the application review process.

5. Section 10 Registration Renewal
5.1 The material filed in respect of an application to renew a franchisee's registration under Section 19 shall be kept in the Agency files as set out in Paragraph 2 of this Policy.

6. Sections 20 and 22 Registration as a Salesman and Renewal of Registration as a Salesman
6.1 Applications for registration and renewal of registration as a salesman and all supporting material, including bonds, will be kept on the private files of the Agency.

7. List of Registrants
7.1 Registration and exemptions acknowledged or granted are published in the Alberta Securities Commission Weekly Summary. Pursuant to Section 53 of the Act, a person or company can apply to the Registrar to obtain a statement as to the registration or non-registration of a person or company.

7.2 The Agency maintains a public list of franchisees currently registered and franchisees for which an exemption is currently acknowledged or granted.

<table>
<thead>
<tr>
<th>Nature of Document</th>
<th>Applicable Section in the Act of Regulation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Statement of Material Facts</td>
<td>Section 2</td>
<td>Statement of Material Facts public on issuance of acknowledgment letter other supporting material public acknowledgement letter private</td>
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<td>Section 7 and 17</td>
<td>Prospectus amendment public upon issue of Receipt. Form private.</td>
</tr>
</tbody>
</table>

Schedule A

7.2.1 The Agency accepts no responsibility for the accuracy or completeness of this list.

7.2.2 In accordance with Section 32 of the Act, no person shall make any representation, written or oral, that the Alberta Securities Commission, the Board, a member of the Board, the Executive Director of the Board, a person employed by the Board, the Agency, the Chief of Securities Administration, a Registrar or a person employed by the Agency has in any way passed on:

(a) the financial standing, fitness or conduct of any registrant,
(b) the quality of any franchise or (c) the results to be expected by a franchisee operating under the terms of the franchise.

Any representation to the contrary is an offense under the Act. The list maintained by the Agency shall include a reprint of this section.

8. Orders and Receipts Issued by the Agency
8.1 Orders and receipts will be public unless the Board of the Alberta Securities Commission decides it is in the public interest to keep a particular order or receipt private.

POLICY 23 - Books, Records and Accounts

1. Background:
This Policy summarizes the books, records and accounts (the "records") required by Section 33 of the Act, the location of the records and a method for making the records available to the Agency of the Alberta Securities Commission (the "Agency").

2. Books, Records and Accounts
Section 33 requires every franchisor and sub-franchisor offering franchises for sale to keep and maintain at all times a complete set of books, records and accounts of the transactions, offers and sales of franchises in Alberta.

The books, records and accounts referred to in Section 33 include all correspondence with franchisees and prospective franchisees, past and present operations manuals (for the period when franchisees are being offered in the Province), training records, teaching manuals, copies of executed agreements and any due diligence records concerning franchisees or prospective franchisees.

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The written undertaking must be filed at the time the Application is made.

Example of an Undertaking from Franchisee in Respect of Alberta Policy

Franchisee: 
Address: 
Date: 
The Director Franchisees, Alberta Securities Commission, 11th Floor, 10025 Jasper Avenue, Edmonton, Alberta T5J 3Z5

Dear Sir:

Re: Alberta Policy

We hereby irrevocably undertake that should the books, records and accounts of the trade, offers and sales of franchise in Alberta of the franchisor, be required by the Agency of the Alberta Securities Commission (the "Agency") we shall upon request and at the expense of (franchisor) immediately send the relevant books, records and accounts to the office of the Agency in Alberta.

Yours truly,

Authorized Signatories

POLICY 3.1 Administrative Policy

1.1 Administrative Clearance Process

When an application is received it is assigned by the Director Franchisees to a financial analyst. The clearance is made in accordance with the Act, Regulations and Policies. If there are any comments, the financial analyst will provide the applicant a letter documenting his comments on the application. When these comments have been received by the applicant to be the satisfaction of the financial analyst, the applicant will be invited to file final material. The comments may include requests for a surety bond, escrow agreement, or postponement and substitution agreement in accordance with Sections 11 and 16 of the Act and Sections 12 - 14 of the Regulations. See Appendices to this Policy for standard forms of these agreements. Any matters which cannot be resolved by the applicant and the financial analyst may be referred by either party to the Director Franchisees.
The guarantee shall form part of the
franchise agreement. Addenda are not accep-
table.

2. The complete and correct name and
address of the guarantor shall be set out in
the guarantee.

3. The guarantor shall absolutely and un-
conditionally guarantee the performance, com-
pletion, and satisfaction by the franchisor of all
obligations of the franchisee as set out in the
agreement, in the franchisee's books, general
prospects, and as required by virtue of the franchisor's regis-
tration in the province of Alberta.

4. The guarantee shall remain in force until
all obligations of the franchisee and the fran-
tichises are fulfilled.

5. The guarantor shall provide that the
courts of the Province of Alberta be given jurisdic-
tion.

6. The guarantee shall provide that the
terms of the Agreement shall be governed by
the laws of Alberta.

7. The form, content and execution of the
agreement shall comply with all applicable laws
to ensure enforceability in Alberta, in the jurisdic-
tion in which the guarantor has its main
subsidiary or head office, and in the jurisdiction
in which the address in item 2 appears.

In addition to the above requirements relat-
ing to the form and content of the guaranty,
the parent company guarantor is required to
sign the franchise agreement to indicate its
liability under the Franchise Agreement to complete the obligations of the franchisee.

2.7.3 Section 11(5) of the Regulations
provides that if the date of the balance sheet of the
audited financial statements is more than
120 days prior to the date of the receipt of the
application, they must be accompanied by
unaudited financial statements. The date of the
balance sheet of the audited financial
statements must not be more than 90 days
prior to the date of the receipt of the appli-
cation.

2.7.4 If the application continues to be
under review (with no receipt issued) 180 days
after the balance sheet date, the Director
Franchises may require the audited financial
statements as at a date not more than 90 days
before the date of the receipt of final material.

2.7.5 The Director may exercise discretion
pursuant to Regulations Section 6(4) and waive
the above requirement to file more recent unaudited
financial statements if (1) no material adverse
change has taken place in the financial affairs of
the franchisee since the date of the audited
financial statements; (2) there is disclosure
in the prospectus to that effect; and (3) the
franchisee agrees to a reduced registration
period to a date not more than 120 days after
the fiscal year end of the franchisor following
the year end for which audited financial state-
ments are available.

For purposes of this section, no material
adverse change shall be considered to have
occurred if there has been no change in the
financial affairs of the franchisor that would
reasonably be expected to have a significant
detrimental effect on the price that a
prospective franchisee would pay for the
franchise or a prospective franchisee's decision
to purchase the franchise.

2.7.6 The auditor's report must be pre-
pared by a firm of Chartered Accountants
and must not be qualified as to the scope of the
audit or for any other reason. The auditor's
report must be manually signed (photocopies
are not acceptable) on behalf of the firm.
The audit report of a certified public accounting
firm which is licensed, or the equivalent, by its
respective state's Board of Accountancy to pro-
vide audit reports will be accepted for
franchisors resident in the United States.

2.7.7 Pursuant to Section 152 of the
Alberta Business Corporations Act, the finan-
cial statements shall be approved by the board
of directors. To evidence this approval, the bal-
ance sheet shall be manually signed by one
director of the franchisee and attached to sign on
behalf of the board of directors (photocopies
are not acceptable).

2.8 Act Section 10(2)
Auditor's Letter of Consent
One original letter of consent from the auditors
for the inclusion of their report(s) in the
prospectus must be executed and should be
submitted to the Director at the time of filing.

2.9 Act Section 11(5)
Auditor's Certificate
One original certificate in respect to unaudited financial statements included in the prospec-
tus shall be submitted. Reference should be
made to Section 750:29 of the CICA Hand-
book.

2.10 Act Section 10
Other Expert Opinions
One original opinion from each expert
consulted in the preparation of the prospectus
shall be provided.

2.11 Act Section 8(3)
Operations Manual
The application from franchisors
shall be filed with the Director.

3.1 Final Materials
The material to be included in the prospectus
shall be provided to the Director at
the time of filing with the Director.

3.1.1 Act Section 9, Regulation 7(2)
Business Franchise Guide

Prospectus
Two copies of the prospectus, one of which is
to be signed by the franchisor, is to be
filed with the Commissioner of Corporations and
done, as well as all other agreements for the
Year of the franchisee. The registrant shall
may apply to the Director at any time to
the form set out in Appendix 3 and to the
Director at any time to remove the current
requirements.

2.1.1 Financial statements, including
the year end for which audited financial state-
ments are available.

2.1.2 franchise agreement, and
2.1.3 all other agreements to be entered
into between the franchisor and the franchisee.

The prospectus is to be filed at the Agency
no more than 15 calendar days after being
signed and dated.

2.1.3 Act Section 10(5)
Auditor's Letter of Consent
One manually signed auditor's letter of con-
sent with reference to the date of the final
prospectus. Refer to Section 750:49 of the
CICA Handbook.

2.1.4 Act Section 11
Auditor's Certificate
One manually signed auditor's letter of con-
sent in respect of unaudited financial state-
ments. Refer to Section 750:21 of the CICA
Handbook.

2.1.5 Act Section 10
Other Expert Opinions
One manually signed consent letter from any
other expert whose consent is required by Sec-
tion 10 of the Act.

2.1.6 Act Sections 11 and 14 Regulations
Sections 15, 13 and 14
Section 1 and 14 Regulations
Appendix 2 to the Broker's Agreement
in the form set out in Appendix 3 shall be
provided.

The broker shall be a trust company in a
branch physically located within the Province
of Alberta. The Agency will review the
brokers' experience, operational resources,
financial resources and assets in Alberta, as
well as the specific terms of the franchise
agreement before determining the need for any
of these agreements and the specific amount.

The registrant shall apply to the Director at
any time to remove the current requirements.
2. Application for Renewal of Franchise Registration

2.1 Administrative Clearance Process

When an application for renewal of registration is received it shall be examined by the financial analyst for review. The review is made in accordance with the Act, Regulations, and Policies that are in effect at that time. There are to be no comments provided by the analyst on the renewal application. When these comments have been resolved by the applicants to the satisfaction of the Analyst the applicants will be invited to file the final petition.

If the review results in substantial changes, a complete revised prospectus and accompanying documents will be required. In the event that there are only minor changes required to the renewal material filed and the changes do not involve signed or dated pages, the franchisee may wish to authorize the Agency staff in writing to remove pages from and insert new pages into the renewal prospectus. The written authorization for the Agency staff to do so must come directly from the person who signed the prospectus or alternatively, the person who signed the prospectus may delegate the filling of the prospectus to the agency staff to make such changes as he sees fit by way of a letter of authorization in the form set out in Appendix 4. The direction to the Agency to substitute pages from either the original prospectus or the filling of the prospectus must be made in writing, and the filling of the prospectus must be identified both in the original document and the pages to be substituted.

2.2 Act Sections 18 and 19; Regulations Section 3(4)

The application for renewal of registration is to be received no later than 30 business days prior to the date on which registration expires. The date of expiry is shown on the current registration receipt.

2.2 Act Section 19

Applications

An application for renewal of franchise registration requires the following material:

2.2.1 Regulations Section 2(2)

Form 2—Application for Renewal of Registration

One manually signed original. See Section 4 of the Regulations for the current application fee and Appendix 2 for the payment procedures. Question 5 of Form 2 may be answered by reference to the published prospectus where a letter as described in 2.2.2 is provided.

2.2.2 Regulations Section 2(5)

Form 2—Application for Renewal of Registration as Salesman

One manually signed original. See Section 4 of the Regulations for the current application fee and Appendix 1 for the payment procedures. There are to be no comments on the renewal application. All comments have been resolved by the applicant to the satisfaction of the financial analyst. When these comments have been resolved by the applicant to the satisfaction of the financial analyst the applicant will be invited to file the final petition.

If the review results in substantial changes, a complete revised prospectus and accompanying documents will be required. In the event that there are only minor changes required to the renewal material filed and the changes do not involve signed or dated pages, the franchisee may wish to authorize the Agency staff in writing to remove pages from and insert new pages into the renewal prospectus. The written authorization for the Agency staff to do so must come directly from the person who signed the prospectus or alternatively, the person who signed the prospectus may delegate the filing of the prospectus to the agency staff to make such changes as he sees fit by way of a letter of authorization in the form set out in Appendix 4. The direction to the Agency to substitute pages from either the original prospectus or the filing of the prospectus must be made in writing, and the filing of the prospectus must be identified both in the original document and the pages to be substituted.

2.3 Act Section 12

Background Check of Directors and Officers and Major Shareholders

Provide information described in 1.2.4 of this policy for any directors, officers and major shareholders added since the last filing. Provide a statement signed by all other directors, officers and major shareholders that there has been no change in the information previously filed with the Agency.

2.4 Franchise Prospectus

Two copies of the prospectus, one of which is to be manually signed, with the following forming part of and bound into each:

2.4.1 Financial statements (photocopies of auditors' and directors' signatures as set forth in the paragraph 1.3.2 of the Policy are not accepted)

2.4.2 A copy of the franchise agreement and

2.4.3 All other agreements to be entered into between the franchisor and the franchisee.

The prospectus is to be filed at the Agency no more than 15 calendar days after being signed and dated.

The certificate contained in the prospectus must cover the disclosure required by Form 1, the financial statements, the franchise agreement, other agreements attached to the prospectus and any prospective financial information. The certificate is either the last page of the document including all appendices or if each appendix is individually referred to in the prospectus as forming part of and binding into the prospectus then the certificate may appear at the end of the disclosure required by Form 1.

2.5 Regulations Section 10

Red-lined Prospectus

To facilitate the review process provide a red-lined copy of all renewal material filed and indicate the changes from previous material filed by means of underscoring or some other appropriate manner. In addition provide a letter from the filing officer or an officer of the franchisee certifying that the red-lined markings accurately indicate the changes between the content of the newly filed application and the previous documents filed by the same franchise.

The following is a sample of the required letter:

\[...\]

Where it is not possible to provide such a letter confirming that the red-lined markings accurately indicate the changes, Form 2 must be answered in detail rather than by reference to the red-lined prospectus as described in 2.2.1 of this Policy.

2.6 Regulations Section 11

Financial Statements

The financial statements requirements are the same as those set out in paragraph 1.2.7.

2.7 Act Section 10(3)

Auditor's Consent Letter

One original auditor's letter of consent with reference to the date of the prospectus.

2.8 Regulations Section 11(5)

Auditor's Consent Letter

One original auditor's consent letter in respect of the unaudited financial statements.

2.9 Act Section 10

Other Expert Consent

One original letter of any other expert consent required by Section 10 of the Franchise Act.

2.10 Board of Directors' Resolution

One certified copy of the board of directors' resolution authorizing the filing and signing of the prospectus and financial statements.

2.11 Sale of Bond

Unless the Agency waives the requirement for a bond, evidence of renewal of any bond required in previous years.

2.12 Cross Reference Sheet

One cross reference sheet (see 1.2.10).

2.13 Other Agreements

Unless the Agency waives the requirement, escrow agreements and/or Postponement and Subordination agreements as requested by the Agency. As well the applicant may request...
that the requirements for a bond be reviewed at renewal.

3. Application for Amendment of Franchise Registration

3.1 Administrative Review Process

Pursuant to Section 17 of the Act, if there is any material change in the information contained in the application or prospectus registered with the Agency, the franchisee is required to file an amendment application as soon as practicable and in any event within 30 calendar days from the date the change occurs. When the application for amendment is received it is assigned to a financial analyst for review. If there are any comments, the financial analyst will provide the applicant with a letter documenting them. The amendment is not accepted until a formal receipt is issued.

For purposes of this section, material change means a change in the financial affairs of the franchisee that would reasonably be expected to have a significant effect on the price that a prospective franchisee would pay for the franchise or a prospective franchisee’s decision to acquire the franchise.

3.2 Application

The filing requirements are as follows:

3.2.1 Regulations Section 2

Form 3 – Application for Amendment of Franchise Registration

One manually signed Form 3, see Section 4 of the Regulations for the current application fee and Schedule I for the payment procedures.

3.2.2 Two copies, one of which is to be manually signed of the amendment listing all the specific changes including filing the manually signed certificate set out in the sample below. The following is a sample format for an amendment:

Amendment

(Name of Franchise)

Amendment to the prospectus dated —__________, 19 —— in respect of the offering of ————. (Specify Name) franchise in the Province of Alberta.

1. This franchise prospectus is hereby amended as follows:

1.1 At page ———, Item ———, delete ———, and insert the following:

Certificate of Franchisor

The foregoing, together with the prospectus dated ———, 19 —— constitutes full, plain and true disclosure of all material facts relating to the franchise offered by this prospectus and is prepared in accordance with the provisions of the Franchise Act of Alberta, and the Regulations thereunder.

(Name of Franchise)

Chief Executive Officer

Director

Chief Financial Officer

Director

Dated at ———, Province of Alberta, this ——— Day of ———, 19 ——.

3.3 Pursuant to Section 152 of the Alberta Business Corporations Act, one certified copy of the board of directors’ resolution approving the amendment and authorizing the signing thereof is to be filed.

3.4 If the amendments are substantial and/or numerous in nature, an amended prospectus incorporating all the changes directly into the prospectus is to be filed, with the changes underscored in accordance with Section 10 of the Regulations. The amended prospectus is to be filed at the Agency no more than 15 calendar days after being signed and dated.

3.5 In each of these cases previously filed with the prospectus are to be filed with the amended prospectus.

4. Application for Section 2 Exemption

4.1 Administrative Review Process

4.1.1 An exemption under Section 2 of the Act is dependent upon strict compliance with the terms of the Act. The Agency reviews the application materials to ensure that the franchisee qualifies for a Section 2 exemption and for compliance with the disclosure requirements of the legislation.

4.2.1 A face page, with warnings similar to those required by Section 8 of the Regulations;
5. Application for Renewal of Section 2 Exemption

5.1 Administrative Review

Pursuant to subsection 4(3) of the Act, an application for renewal of the acknowledgment of exemption is to be submitted to the Director of Franchises no later than 30 business days prior to the expiration of the existing acknowledgment (i.e., one year less a day from the date of the existing acknowledgment).

5.2 Filing

5.2.1 Filing requirements for an application for renewal of Section 2 exemption are the same as listed in paragraphs 4.1 and 4.2 above.

5.2.2 In addition, the company is required to file a red-lined copy of the renewal SFM indicating all changes from the previous SFM and accompanied by a letter from the company’s filing solicitor or an officer of the franchisor confirming that the markings accurately show the changes between the content of the renewal SFM and the previous SFM of the franchisor.

The following is a sample of the required letter:

The undersigned, being _________________________ (Solicitor, or officer’s title) of ____________________________ (franchisor’s name) certifies that the attached copy of the statement of material facts for ____________________________ (franchisor’s name) dated ____________________________ has been marked to show all additions, deletions or changes which have been made therein from the statement of material facts dated ____________________________ (franchisor’s name) dated ____________________________.

Where it is not possible to provide such a letter confirming that the red-lined markings accurately indicate the changes, the Agency will accept the red-lined markings.

5.2.3 See Section 4 of the Regulations for the current application fee and Appendix 1 for the payment procedures.

6. Application for Amendment to SFM Filmed Pursuant To Section 2

6.1 Neither the Act nor the Regulations provide for amendment to a SFM. The Board of the Alberta Securities Commission is of the opinion that provision should be made for such an amendment. The following are the filing requirements for an amendment to a SFM:

6.1.1 Two copies, one of which is to be manually signed of an amendment.

The following is a sample format of the amendment:

7.020.06

©1990, Commerce Clearing House, Inc.
This form should be executed in triplicate with one duly executed copy to be delivered to the Alberta Securities Commission Agency.

Appendix 3

Escrow Agreement

This Agreement, made this ___ day of ___________, 19__, between ______________ (the "Franchisor") in corporation organized under the laws of the ___ and ______________, ___ (the "Escrow Agent") as Escrow Agent for the Franchisor and ___ (the "Franchisee") as Franchisor for the Franchisee.

Whereas, an application has been filed with the Alberta Securities Commission Agency, seeking registration of trades in franchises of the Franchisee pursuant to the Franchisee Act (R.S.A. 1980, c. F-17, as amended (the "Act")); and

Whereas, as a condition of registration the Chief or Securities Administration of the Alberta Securities Commission Agency (hereinafter called the Chief of Securities Administration) requires pursuant to the authority granted to him in Sections 11 and 12 of the Act, the escrow of 100% of the franchise fees and other funds paid by the Franchisees to the Franchisor or sub-franchisor until the Franchisor fulfills its obligations to the Franchisee, pursuant to his Franchise Agreement and shall then notify the Chief of Securities Administration in writing of such termination.

4. Term of Escrow

This escrow shall terminate upon written authorization of the Chief of Securities Administration. Upon termination hereof, the Escrow Agent shall distribute the funds in the escrow account in the manner and upon the terms directed in paragraph three hereof.

5. Termination by Revocation or Suspension:

If at any time prior to the termination under paragraph four, the Escrow Agent is revoked, the Escrow Agent shall distribute the escrowed funds in accordance with the written authorization of Chief of Securities Administration which may include a direction to return all funds to the respective franchisees.

6. Consent of Chief of Securities Administration or Re-Release Funds

The Escrow Agent shall distribute the funds in the escrow account in the manner and upon the terms directed in paragraph three hereof.

This Escrow Agreement shall be executed in triplicate with one copy to be delivered to the Alberta Securities Commission Agency.

130 11:90

Alberta Franchisee Act

purchase and purchase prices of the franchisee, the amount of escrowed funds paid and in addition, where the franchisee is a corporation or partnership, the general and individual address of each shareholder or partner of the franchisee. All amounts deposited shall remain the property of the franchisee and shall not be subject to any liens or charges by the Escrow Agent, or judgment or any other form of action, claim against the franchisee until released to the franchisee as hereinafter provided.

3. Disbursement of Funds:

Upon receipt by the Escrow Agent of written authorization from the Chief of Securities Administration, the Escrow Agent shall, on demand of the franchisee, pay to the franchisee all escrowed funds so authorized. If the conditions of the escrow have not been satisfied, the written authorization of the Chief of Securities Administration, the Escrow Agent shall, within reasonable time, but not more than 30 days after the last day of the term of escrow, refund to each franchisee or such other address as is furnished to the Escrow Agent by the franchisee in writing, the escrowed funds paid by such franchisee pursuant to the Franchise Agreement and shall then notify the Chief of Securities Administration in writing of such payment.
9890

Canada 130 11-90

9. Escrow Agent’s Fee

The Escrow Agent shall be entitled to reasonable compensation for its services from the Franchisor. The fee agreed upon for services rendered hereunder is intended as full compensation for the Escrow Agent’s services as contemplated by this Agreement; provided, however, in the event that the conditions of this Escrow Agreement are not satisfied, or the Escrow Agent renders any material service not contemplated in this Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification thereof, or if any material controversy arises hereunder, or if the Escrow Agent is made a party to or justifiably intervenes in any litigation pertaining to this Escrow Agreement, or the subject matter hereof, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and delays, controversy, litigation or event, and the same may be recoverable from the Franchisor only.

10. Binding Agreement and Substitution of Escrow Agent

The terms and conditions of this Agreement shall be binding on the heirs, executors and assigns, creditors or transferees, or successors in interest, whether by operation of law or otherwise, of the parties hereto. If, for any reason, the Escrow Agent named herein should be unable or unwilling to continue as such Escrow Agent, then the other parties to this Agreement may substitute, with the consent of the Chief of Securities Administration, another Escrow Agent. Any appointment of the fees provided for in paragraph nine will be subject to agreement of the parties, or will be set by the Chief of Securities Administration.

In Witness Whereof, the parties hereto have executed this Escrow Agreement in the date first above written.

Franchisor

By

Excerow Agent

By

(an authorized signature)

Date

Appendix 4

Authorization

Te Alberta Securities Commission Agency

The undersigned, being the officers and directors of—— (Name of Franchisor) named as signing authorities (for the purpose of executing and filing registration removal materials, as well as any amendments, revisions or updating that may be required, on behalf of the franchisee—— (Name of Franchisee), being the solicitor of—— (Franchisor) to make such changes as may be necessary in the renewal prospectus in the event minor changes are required. Dated—— day of—— month, 19—— in the Province of——.

Officer’s or Director’s Name and Title

(Officer’s or Director’s Name and Title)

(Officer’s or Director’s Name and Title)

(Officer’s or Director’s Name and Title)

May 21, 1960.

130 11-90

Alberta Franchises Act

2. Content of Prospectus and Franchise Agreement

2.1 The prospectus shall disclose the following matters with respect to the funds:

2.1.1 The purpose of the fund;

2.1.2 The manner in which the fund is to be administered including:

(a) where the Franchisor retains authority and responsibility for administering the fund, such factors as, but not limited to, deciding how, when and where the fund will be spent;

(b) where the fund will be administered by a party independent of the franchisee such factors as, but not limited to, how that independent party will be selected.

2.1.3 The manner in which contributions are to be made to the fund, including the contributions of units owned by the Franchisor, its officers, directors and affiliates, if any.

2.1.4 The manner in which the contributions to the fund are maintained and whether or not a separate trust account is used to prevent commingling with the Franchisor’s general operating accounts.

2.1.5 The form in which accounting for receipts and expenditures of the fund is reported to all Franchisees, frequency of reports, and whether the reports are subject to audit or review by an independent accountant.

2.1.6 The manner in which expenditures are allocated to specific regions and how the expenditures are apportioned.

2.1.7 A discussion of the direct benefits to the Franchisee’s trading area, if any, that a particular franchisee may reasonably expect as a result of its participation in the fund; direct benefits includes, but are not limited to, the amount of money spent and advertising resources provided in the Franchisee’s trading area.

2.1.8 Disclosure where the national and/or regional advertising programs and funds form part of the contractual arrangement but are not yet operational.

2.1.9 The manner in which any of the above factors may be changed, amended or varied.

2.2 Where the above factors are other than at the discretion of the Franchisor, the Franchise Agreement shall provide that the franchisee shall have the right to contractually provide for those commitments or obligations made with respect to advertising and promotional funds. Where the above factors are completely at the discretion of the franchisee, this fact shall be clearly disclosed.

3. Risk Disclosure

In circumstances where the franchisee may not receive any significant direct benefit from the fund in the Franchisee’s trading area the Agency may require appropriate risk disclosure.


Policy 4.2

Restrictive Covenants

[17020.08]

1. Purpose

Many Franchisees lack bargaining power when dealing with the Franchisor and purchase a franchise when they are unfamiliar with operating a business, with the franchised business and with franchise business methods. The purpose of this policy is to ensure the franchisees are informed of the Franchisor’s powers under the agreement to restrict the Franchisees and to establish the minimum standards for termination, transfer and nonrenewal of franchise arrangements.

For the purposes of this policy the term Franchise includes a Subfranchise in the relationship to the Parent Franchisee. This Policy applies to both prospectus and statement of material fact applications.

2. General

2.1 The most significant aspect of a franchise is the business format, trade marks and the associated goodwill which have been developed by the Franchisor (referred to as the "Franchise System") in this Policy. Franchisees protect their interest in the franchise system by a variety of methods, referred to as "restrictive covenants" in this policy; including covenants by the Franchisees of the Franchisor’s proprietary interest in the system, and goodwill associated with the system, non-competition covenants both during and after the term of the franchise agreement, rights of the Franchisor to terminate the agreement, and restrictions governing transfer, sale or assignment of the franchise by the franchisee.

2.2 While the Alberta Securities Commission (the "Commission") recognizes that the Franchisor needs to be able to protect its interest in the franchise system by way of the above methods, the Commission is concerned that Franchisors may use their superior bargaining position to impose restrictive covenants on franchisees in franchise agreements which are unreasonable or arbitrary. The franchisee may be entitled to a portion of the goodwill that it has developed in operating a specific franchise outlet.

Business Franchise Guide

[17020.07]
2.3 As a result of this concern, this policy sets out:
2.3.1 standards for disclosure of all restrictive covenants;
2.3.2 minimum standards for termination, transfer and nonrenewal of a franchise;
2.3.3 a methodology for notice of termination and notice of nonrenewal; and
2.3.4 disclosure for settlement of disputes.

3. Disclosure

3.1 Restrictive covenants must be disclosed in a separate section of the prospectus or statement of material facts ("SMP") titled "Restrictive Covenants". These restrictive covenants described in detail elsewhere in the prospectus or statement of material facts may be listed in the "Restrictive Covenants" Section and cross referenced to the detailed disclosure.

3.2 If some or all of the restrictive covenants result in risk to the franchisee in the operation of the business beyond that arising in the ordinary course of business or risk relating to the recovery of the franchisee's investment or business assets, then these factors should be identified as risks on the face page of the prospectus or SMP and a cross reference made to the place in the document where the information is contained.

3.3 All restrictive covenants shall be set out in the franchise agreement.

4. Minimum Standards

The minimum standards set forth below for termination, transfer and nonrenewal of a franchise are guidelines. The Chief of Securities Administration may exercise discretion in applying this policy and may modify, waive or increase these standards in a particular factual situation. In appropriate circumstances, "good cause" may be other than specified below. A franchisor who incorporates additional circumstances for good cause should include in the covering letter to the application the factors relevant to its business that support such circumstances.

5. Termination of a Franchise

5.1 The franchise agreement and other agreements the franchisee is required to enter into with the franchisor shall provide that a franchisee shall not unilaterally terminate a franchise prior to the expiration of its term except for "good cause" as provided in subsection 3.2 to 3.4.

5.2 The Commission Agency shall object to fillings which grant the franchisee unreasonable or arbitrary rights, with respect to the factors constituting good cause.

6. Nonrenewal of a Franchise

6.1 A franchisee shall not refuse to renew a franchise unless:
6.1.1 either the franchisee has been notified in accordance with paragraph 8 of this policy no less than six months prior to the expiration of the franchise agreement, and,
6.1.2 the franchisee has been entitled to conduct substantially the same business in the same area subsequent to the expiration or termination of the franchise agreement, or
6.1.3 the franchisee will be compensated by either repurchase or by other means for the fair market value of the going concern value of the franchise, as if the franchise had been renewed.
6.1.4 if, good cause exists as defined under paragraph 3 of this policy.

7. Transfer of a Franchise

7.1 A franchisee shall not refuse to permit a transfer of ownership of a franchise except for good cause. For purposes of this paragraph "good cause" includes:

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Alberta Franchises Act 9893
7.1.1 the failure of the proposed transferee to meet the franchisee's written reasonable standards then in effect for a franchisee;
7.1.2 the fact that the proposed transferee or its affiliate is a competitor of the franchisor;
7.1.3 the inability or unwillingness of the proposed transferee to be bound by a lawful obligation imposed by the existing franchise agreement;
7.1.4 the failure of a franchisee or proposed transferee to cure a default in an agreement with the franchisor existing at the time of the proposed transfer;
7.2 A franchisor shall be deemed to have approved the transfer of the franchise by the franchisor, unless the franchisor receives written notice of the reason for disapproval within 30 days of the franchisor's receipt of the written notice of proposed transfer.
7.3 Nothing in this paragraph prohibits the franchisor from exercising a right of first refusal on the same terms as that of an "arm's length" offer to the franchisee within 30 days of the franchisee's receipt of the written notice of the arm's length offer.

8. Notice of Termination or Nonrenewal

All notices of termination or nonrenewal:
8.1 shall be in writing;
8.2 shall be posted by registered, certified or other receipted mail, delivered by telegram or "electronic mail" or personally delivered to the franchisee;
8.3 shall contain a statement of intent to terminate or not renew the franchise;
8.3.1 together with the reasons therefore, and
8.3.2 the effective date of such termination or nonrenewal or expiration.
These notice provisions shall be disclosed in the prospectus and form part of the agreement.

9. Dispute Settlement Mechanism

Any provisions in place for a dispute settlement mechanism shall be disclosed in the prospectus. Where no such provisions exist, this fact must be disclosed in the prospectus.
UNIFORM FRANCHISES ACT
PART 1
Interpretation and Application

1. (1) In this Act,

"area franchise" means the right granted pursuant to a franchise agreement to sell or negotiate the sale of a franchise in the name of or on behalf of the franchisor;

"associate", when used to indicate a relationship with any person, includes

(a) a corporation of which that person beneficially owns, directly or indirectly, equity shares carrying more than ten per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,

(b) an associated corporation within the meaning of the Income Tax Act (Canada),

(c) an affiliated corporation,

(d) a trust or estate in which that person has a beneficial interest or as to which that person serves as trustee or in a similar capacity,

(e) a relative or the spouse of that person or a relative of that spouse who, in any such case, has the same home as that person, or

(f) a partner, fellow member of a syndicate or joint trustee;

"franchise" means either or both of the following in respect of which a franchise fee is payable:

(a) the right to

(i) engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed or controlled by a franchisor, and

(ii) engage in a business that is associated with the franchisor's trademark, service mark, trade name, logotype, advertising or any
"franchisor" means a person who grants a franchise and includes a sub-franchisor when exercising his rights under an area franchise;

"officer" means the chairman or a vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a corporation, or any other person designated an officer of a corporation by by-law or similar authority;

"sale" includes

(a) an offer for sale or disposition of, or other dealing in, or a solicitation in respect of a franchise for valuable consideration whether the terms of the payment are by instalment or otherwise, or any attempt to do any of the foregoing, or

(b) any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any of the activities referred to in clause (a);

"sub-franchisor" means a person to whom an area franchise is granted.

(2) A corporation shall be deemed to be an affiliate of another corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person.

(3) A corporation shall be deemed to be controlled by another person or persons if

(a) equity shares of the corporation carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other person or persons; and

(b) the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors of the corporation.

(4) A corporation shall be deemed to be a subsidiary of another corporation if

(a) it is controlled by

(i) that other,
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(ii) that other and one or more corporations each of which is controlled by that other, or
(iii) two or more corporations each of which is controlled by that other; or
(b) it is a subsidiary of a corporation that is that other's subsidiary.
(5) A corporation shall be deemed to be another's holding corporation or parent corporation if that other is its subsidiary.

2. The waiver of any provision of this Act is void.

PART II
DISCLOSURE

3. This part applies if
   (a) an offer to sell or a sale in a franchise is made in the Province,
   (b) an offer to purchase a franchise is accepted in the Province,
   (c) the franchisee is domiciled or ordinarily resident in the Province,
   (d) the franchise business will be operated in the Province,
   (e) an offer to sell the franchise is made from the Province, or
   (f) an offer to sell or an offer to purchase the franchise is accepted by communicating the acceptance to a person in the Province either directly or through an agent in the Province.

4. (1) A franchisor shall supply each prospective franchisee with a statement of material facts at least ten days, exclusive of Saturdays, Sundays or holidays, before
   (a) a franchise agreement is entered into by the prospective franchisee; or

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(b) any consideration is received by or on behalf of the franchisor.

(2) A franchisor shall forthwith advise a prospective franchisee of a material adverse change arising before the franchise agreement is entered into that makes contrary or misleading any statement in the statement of material facts provided to the franchisee.

(3) For the purpose of this section, when a statement of material facts is sent by prepaid mail, the statement of material facts shall be deemed to be received in the ordinary course of mail by the person to whom it was addressed.

(4) The receipt of a statement of material facts by a person who is acting as agent of, or who thereafter commences to act as agent of, the prospective franchisee with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, receipt by the prospective franchisee as of the date on which the agent received the statement of material facts.

(5) For the purpose of this section, a person shall not be considered to be acting as agent of the franchisee unless the person is acting solely as the agent of the franchisee with respect to the franchise agreement in question and has not received and has no agreement to receive compensation from or on behalf of the franchisor with respect to the franchise agreement.

5. (1) The statement of material facts shall contain the following information:
   (a) the name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any associate that will engage in business transactions with the franchisee;
   (b) the franchisor's principal business address and the name and address of his agent for service in the Province;
   (c) the business form of the franchisor, whether corporate, partnership or otherwise;
   (d) a copy of the most recent audited financial statement of the franchisor;
(e) the business experience of the franchisor, including the length of time the franchisor

(i) has conducted a business of the type to be operated by the franchisee,
(ii) has granted franchises for that business, and
(iii) has granted franchises in other lines of business;

(f) a copy of a typical franchise agreement proposed for use or in use in the Province;

(g) a statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor and the formula by which the amount of the fee is determined if the fee is not the same in all cases, together with a notation concerning the existence of any continuing royalties;

(h) a statement describing any payments or fees other than franchise fees that the franchisee is required to pay to the franchisor, including royalties and payments or fees that the franchisor collects in whole or in part on behalf of third parties, and the names of the third parties;

(i) a statement indicating whether the cash investment required for the franchise business covers payment for fixtures and equipment;

(j) a statement of the conditions under which

(i) the franchisee may withdraw from the franchise agreement,
(ii) the franchise agreement may be rescinded,
(iii) the franchise agreement may be terminated,
(iv) the renewal of the franchise agreement may be refused, or
(v) the franchise business may be repurchased at the option of the franchisor;

(k) a statement as to whether the franchisee is able to sell the franchise business and, if so, what conditions, if any, attach to the sale;

(l) a statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee is required to purchase from the franchisor or his designate, services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business together with a description of them;

(m) a statement as to whether the services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor;

(n) a statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services that may be offered by him to his customers;

(o) a statement as to whether the franchisor has, by contract, agreement, arrangement or otherwise, agreed with a third party that the products or services of the third party will be made available to the franchisee on a discount or bonus basis;

(p) a statement of the terms and conditions of any financing arrangements that are offered directly or indirectly by the franchisor or his associate;

(q) a statement of any past or present practice of or any intent of the franchisor to sell, assign or discount to a third party any note, contract or other obligation of the franchisee in whole or in part;

(r) if any statement of estimated or projected franchisee earnings is made or is to be made to the franchisee, the data on which it is based;

(s) a statement as to whether franchisees receive any exclusive rights or territory and if so, the extent thereof;

(t) a statement indicating whether the franchisee is required to participate in a promotion or publicity campaign sponsored by the franchisor;
(u) a statement as to whether the benefit of any patent or liability insurance protection of the franchisor is extended to the franchisee;

(v) a statement as to whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and franchisee;

(w) a statement as to whether the franchisor provides continuing assistance in any form to the franchisee and, if so, the nature, extent and cost of the assistance;

(x) a list of other franchisees operating in the Province and if no such franchisees exist, a list of the franchisees operating in the next closest jurisdiction; and

(y) a copy of this Act.

(2) If a solicitor, auditor, accountant, engineer, appraiser or any other person is named as having prepared or certified any part of a statement of material facts, the written consent of that person to the inclusion of any report or valuation shall be included in the statement of material facts.

(3) The consent of an auditor or accountant referred to in subsection (2)

(a) shall refer to the report required to be made by him under the regulations, stating the date of it and the dates of the financial statements on which the reports are made; and

(b) shall contain a statement that he has read the statement of material facts and that the information contained in the statement, which is derived from the financial statements contained in the statement of material facts or that is within his knowledge, is, in his opinion, presented fairly and is not misleading.

(4) If a person referred to in subsection (2)

(a) has, directly or indirectly, received or expects to receive any interest, direct or indirect, in the property of the franchisor or an affiliate, or
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PART III
TERMINATION AND RENEWAL

10. This Part applies

(a) if the franchisee is domiciled in this Province or
the franchise business is or has been operated in
this Province; and

(b) if the franchise agreement was entered into or
renewed on or after . . . . . . . .

11. (1) In this section, “good cause” includes a failure of
the franchisee to comply with any requirement of a franchise
agreement after being given notice of the failure and a
reasonable opportunity to comply.

(2) Subject to this Act, no franchisor may terminate a
franchise agreement prior to the expiration of its term,
except for good cause.

12. A franchise agreement may be terminated on immedi-
ate notice and without an opportunity to correct if, during
the period in which the franchise agreement is in effect, there
occurs any of the following events that is relevant to the
franchise agreement:

(a) the business to which the franchise relates is de-
clared bankrupt or judicially determined to be
insolvent, all or a substantial part of the assets of
the business are assigned to or for the benefit of
any creditor or the franchisee admits his inability
to pay his debts as they come due;

(b) the franchisee abandons the franchise business by
failing to operate the business for five consecutive
days during which the franchisee is required to
operate the business under the franchise agree-
ment, or for any shorter period after which it is
not unreasonable under the facts and circum-
cstances for the franchisor to conclude that the
franchisee does not intend to continue to operate
the franchise business, unless the failure to oper-
ate is due to fire, flood, earthquake or other
similar causes beyond the franchisee’s control;
(c) the franchisor and franchisee agree in writing to terminate the franchise agreement;

(d) the franchisee makes any material misrepresentations relating to the acquisition of the franchise business;

(e) the franchisee fails, for a period of ten days after notification of non-compliance, to comply with any enactment or municipal by-law applicable to the operation of the franchise;

(f) the franchisee, after correcting any failure referred to in clause (e), engages in the same non-compliance whether or not the non-compliance is corrected after notice;

(g) the franchisee repeatedly fails to comply with one or more requirements of the franchise agreement, whether or not corrected after notice;

(h) the franchise business or business premises of the franchisee are seized, taken over or foreclosed by a creditor, lienholder or lessor, if

(i) a final judgment against the franchisee remains unsatisfied for thirty days, or

(ii) execution has been made on the licence granted by the franchise agreement or on any property used in the franchise business, and it is not discharged within five days of the execution;

(i) the franchisee engages in conduct that reflects materially and unfavourably on the operation and reputation of the franchise business or system;

(j) the franchisee fails to pay any franchise fees or other amounts due to the franchisor or its affiliate within fifteen days after receiving written notice that the fees are overdue; or

(k) the franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in an imminent danger to public health or safety.

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13. (1) In addition to providing a franchisee with at least one hundred and eighty days prior written notice, a franchisor may refuse to renew a franchise agreement under any of the following conditions:

(a) during the one hundred and eighty days immediately prior to the expiration of the franchise agreement the franchisor permits the franchisee to sell his business to a purchaser meeting the franchisee’s current requirements for granting new franchises or, if the franchisor is not granting a significant number of new franchises, the current requirements for granting renewal franchises;

(b) the refusal to renew is not for the purpose of converting the franchisee’s business premises to operation by employees or agents of the franchisor for the franchisor’s own account and, on the expiration of the franchise agreement, the franchisor agrees not to seek to enforce any covenant of the franchisee not to compete with the franchisor or franchisees of the franchisor;

(c) termination is permitted pursuant to section 12 or 13;

(d) the franchisor and the franchisee agree not to renew the franchise agreement;

(e) the franchisor withdraws from distributing its products or services through franchises in the geographic market served by the franchisee, and

(i) on the expiration of the franchise agreement, the franchisor agrees not to enforce any covenant of the franchisee not to compete with the franchisor or franchisees of the franchisor;

(ii) the refusal to renew is not for the purpose of converting the business conducted by the franchisee pursuant to the franchise agreement to operation by employees or agents of the franchisor for the franchisor’s own account, and
(iii) where the franchisor determines to sell, transfer or assign its interest in a marketing premises occupied by a franchisee whose franchise agreement is not renewed pursuant to this clause.

(A) the franchisor, during the one hundred and eighty day period after giving notice, offers the franchisee a right of first refusal of at least thirty days duration of an offer made in good faith by another to purchase such franchisor's interest in such premises, or

(B) in the case of the sale, transfer or assignment to another person of the franchisor's interest in one or more other controlled marketing premises, the other person in good faith offers the franchisee a franchise on substantially the same terms and conditions currently being offered by the other person to other franchisees; or

(f) the franchisor and the franchisee fail to agree to changes or additions to the terms and conditions of the franchise agreement, if the changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions on which the franchisor is then customarily granting renewal franchises or, if the franchisor is not then granting a significant number of renewal franchises, the terms and conditions on which the franchisor is then customarily granting new franchises.

(2) The franchisor may give the franchisee written notice of a date that is at least thirty days after the date of the notice, on or before which a proposed written agreement of the terms and conditions of the renewal franchise shall be accepted in writing by the franchisee.

(3) Notice under subsection (2), when given not less than one hundred and eighty days before the end of the franchise term, may state that in the event of failure of such accept-

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ance by the franchisee, the notice shall be deemed a notice of intention not to renew at the end of the franchise term.

14. (1) Nothing in section 13 prohibits a franchisor from offering or agreeing before expiration of the current franchise term to extend the term of the franchise for a limited period in order to satisfy the time of notice of non-renewal requirement of that section.

(2) Nothing in clause 13(1)(b) prohibits a franchisor from exercising a right of first refusal to purchase the franchisee's business.

15. All notices of termination or non-renewal required by this Part

(a) shall be in writing;

(b) shall be sent by registered or certified mail, delivered by telegram or personally delivered to the franchisee; and

(c) shall contain a statement of the intent to terminate or not to renew the franchise, as the case may be, and

(i) the reasons for the termination or non-renewal, and

(ii) the effective date of the termination or non-renewal.

16. (1) Where a franchisor terminates or refuses to renew a franchise agreement otherwise than in accordance with this Part, the franchisor shall offer to repurchase from the franchisee the franchisee's resalable current inventory that meets the franchisor's present standards, that is required by the franchise agreement or commercial practice and that is held for use or sale in the franchised business at the lesser of

(a) the fair wholesale market value, and

(b) the price paid by the franchisee.

(2) The franchisor shall not be liable for offering to purchase personalized items that have no value to the franchisor in the business in which it grants franchises.
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17. The franchisor may offset against any repurchase offer made pursuant to section 16 any sums owed the franchisor or its affiliates by the franchisee pursuant to the franchise agreement or any ancillary agreement.

18. Except as expressly provided, nothing in sections 16 and 17 abrogates the right of a franchisee to bring an action under any other law.

PART IV
REGULATIONS

19. The Lieutenant Governor in Council may make regulations

(a) regulating the purchase and sale of franchises and the keeping of records relating to purchases and sales;

(b) governing the keeping of accounts and records, the preparation and filing of financial statements of franchisors and the audit requirements with respect thereto;

(c) prescribing the documents, reports, statements, agreements and other information that are required to be furnished or delivered under this Act and the regulations and the form, content and other particulars relating to them;

(d) prohibiting or otherwise regulating the distribution of written or printed material by a person in respect of a franchise whether in the course of selling or otherwise; and

(e) exempting, or providing for the exemption of, any person, goods, services or business or any class thereof from the operation of this Act.

PART V
ENFORCEMENT

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(i) that, at the time and in the circumstances under which it is made, is false or misleading with respect to a material fact, or

(ii) that omits to state a material fact, the omission of which makes the statement false or misleading, or

(b) contravenes this Act or the regulations,

is guilty of an offence and liable

(c) to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both, or

(d) in the case of a corporation, to a fine of not more than $25,000.

(2) No person is guilty of an offence under subsection (1)(a) if he establishes that he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

(3) If a corporation is found guilty of an offence under subsection (1) every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

21. A prosecution under this Act may be commenced within one year after the commission of the alleged offence, but not afterward.
CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

LOI UNIFORME SUR LES FRANCHISES

PARTIE I
Définition et Application

I. Les définitions qui suivent s'appliquent à la présente loi.

1. (1) "Asocié" est assimilé, lorsque employé pour indiquer un rapport avec une personne, à :

a) une personne morale dont cette personne a, directement ou indirectement, la propriété à titre bénéficiaire d'actions ordinaires comportant plus de dix pour cent des droits de vote attachés à l'ensemble des actions ordinaires de cette personne morale qui sont alors en circulation;

b) une corporation associée au sens de la Loi de l'impôt sur le revenu (Canada);

c) une personne morale affiliée;

d) une fiducie ou une succession dans laquelle cette personne détient des droits ou à l'égard de laquelle elle agit en qualité de fiduciaire ou en qualité semblable;

e) un parent ou un conjoint de cette personne ou un parent de ce conjoint qui, en pareil cas, vit sous le même toit que cette personne;

f) un membre d'une société de personnes, d'un même syndicat ou une même fiducie.

Contrat de franchise - Un contrat, une convention ou un arrangement exprès ou implicite, oral ou écrit, conclu par au moins deux personnes et en vertu duquel une personne reçoit une franchise. La présente définition exclut les contrats, les conventions ou les arrangements conclus entre fabricants.

Dirigeant - Le président ou un vice-président du conseil d'administration, le président, le vice-président, le secrétaire, le secrétaire adjoint, le trésorier, le trésorier adjoint ou le directeur général d'une personne morale, ou toute autre personne considérée comme dirigeant d'une personne morale en application de son règlement intérieur ou d'une décision administrative.

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«droit de franchise» Le prix qui est payé ou qu'il est convenu de payer en échange de l'octroi d'une franchise et, notamment :

a) tout droit ou frais qu'un franchisé doit payer ou convient de payer;

b) toute somme versée en paiement de biens ou des services;

c) tout service que le franchisé doit rendre ou convient de rendre;

d) tout prêt, toute garantie ou autre contrepartie commerciale que le franchiseur peut, à sa discrétion, exiger du franchisé en échange du droit de se lancer en affaires en application d'un contrat de franchise.

La présente définition exclut :

e) l'achat d'une quantité raisonnable de biens ou l'engagement d'acheter une quantité raisonnable de biens au cours actuel du marché ou de gros;

f) l'achat d'une quantité raisonnable de services ou l'engagement d'acheter une quantité raisonnable de services au cours actuel du marché;

g) le paiement de frais raisonnables de gestion de compte à quiconque a délivré une carte de crédit, par un établissement qui accepte cette carte de crédit;

h) le paiement, directement ou indirectement, d'un droit de franchise qui, sur une base annuelle, ne dépasse pas mille dollars.

Franchise - Contrer versement d'un droit de franchise, les deux droits suivants ou l'un d'entre eux :

a) celui d'exploiter

(i) l'entreprise d'offrir, de vendre ou de distribuer des biens et des services en application d'un plan ou d'un système de commercialisation prescrit ou contrôlé par le franchiseur,

(ii) une entreprise qui est associée à la marque de commerce, à la marque de services, à la
CONFÉRENCE SUR L’UNIFORMISATION DES LOIS AU CANADA

raison commerciale, au logotype, à publicité
ou à tout symbole commercial représentent
le franchiseur ou son associé;

b) celui de vendre une franchise visée à l’alinéa a)
pour une région désignée ou d’en négocier la
vente.

«franchise régionale» Le droit accordé conformément à un
contract de franchise de vendre une franchise, out d’en négocier
la vente, au nom du franchiseur ou pour son compte.

«franchisé» La personne à qui une franchise est octroyée, y
compris le sous-franchisé.

«franchisseur» La personne qui accorde une franchise. Lui
est assimilé le sous-franchisseur lorsque celui-ci exerce les
droits qui sont les siens en vertu d’une franchise régionale.

«sous-franchisseur» La personne à qui une franchise régi-
onnaire est octroyée.

«vente» Selon le cas :

a) la vente, l’offre de vente ou la disposition à titre
onéreux d’une franchise ou de toute autre opéra-
tion, d’une sollicitation à titre onéreux dont une
franchise fait l’objet, peu importe que le marché
soit à température ou non, ou toute tentative de
vendre ou de solliciter une franchise à titre oné-
reux, ou de réaliser une opération intéressant une
franchise ou de disposer d’une franchise à titre
onéreux;

b) l’acte, la publicité, la conduite ou la négociation
donc l’objet, direct ou indirect, consiste à mener
da bonne fin des opérations visées à l’alinéa a).

(2) Une personne morale est réputée être affiliée à une
autre personne morale si l’une d’elles est la filiale de l’autre
ou si les deux sont les filiales de la même personne morale ou
si chacune d’elles est contrôlée par la même personne.

(3) Une personne morale est réputée être contrôlée par
une autre personne ou par d’autres personnes dans les cas
suitants :

a) cette autre personne ou ces autres personnes dé-
tiennent, ou sont bénéficiaires, autrement qu’à
titre de garantie seulement, des actions ordinaires

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de la personne morale conférant plus de cin-
quante pour cent des droits de vote pour l’élec-
tion des administrateurs;

b) les droits de vote que confèrent ces actions suffi-
sent, s’ils sont exercés, à faire élire une majorité
du conseil d’administration de la personne mo-
rale.

(4) Une personne morale est réputée être la filiale d’une
autre personne morale dans l’un ou l’autre des cas suivants :

a) elle est contrôlée, selon le cas :

(i) par cette autre personne morale,

(ii) par cette autre personne morale et par une
ou plusieurs personnes morales dont chacune est contrôlée par cette autre personne
morale,

(iii) par deux ou plusieurs personnes morales
dont chacune est contrôlée par cette autre
personne morale;

b) elle est la filiale d’une personne morale qui est la
filiale de cette autre personne morale.

(5) Une personne morale est réputée être la société de
portefeuille ou la société mère d’une autre personne morale
si cette autre personne morale est sa filiale.

2. Est nulle toute convention dérogeant aux dispositions de
la présente loi.

PARTIE II
DIVULGATION

3. La présente partie est applicable dans l’un ou l’autre de

applicabilité

a) l’offre de vente ou la vente d’un franchise se fait
dans la province;

b) l’offre d’achat de la franchise est acceptée dans la
province;

c) le franchisé a son domicile dans la province ou y
est habituellement résident;
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d) l'entreprise de franchise sera exploitée dans la province;

c) l'offre de vendre la franchise se fait à partir de la province;

f) l'offre de vendre ou l'offre d'acheter la franchise est acceptée par communication de l'acceptation à une personne dans la province soit directement, soit par l'entremise d'un représentant dans la province.

4. (1) Le franchisseur doit fournir à chaque éventuel franchisé un exposé des faits importants au moins dix jours, à l'exclusion des samedis, des dimanches et des jours fériés, avant :

a) soit la conclusion par l'éventuel franchisé du contrat de franchise;

b) soit la réception d'une rémunération par le franchisseur ou pour son compte.

(2) Le franchisseur doit prévenir sur-le-champ le franchisé éventuel de tout changement important défavorable survenu avant la conclusion du contrat de franchise qui rend fausse ou trompeuse toute déclaration contenue dans l'exposé des faits importants fourni au franchisé.

(3) Pour l'application du présent article, l'exposé des faits importants transmis par courrier affranchi est réputé avoir été reçu par son destinataire dans le cours ordinaire de livraison du courrier.

(4) La réception de l'exposé des faits importants par quiconque agit comme représentant ou qui commence aussitôt après à agir comme représentant du franchisé éventuel relativement à l'achat d'une franchise visée au paragraphe (1) équivaut, pour l'application du présent article, à la réception de l'exposé par le franchisé éventuel à la date où son représentant a reçu cet exposé.

(5) Pour l'application du présent article, nul n'est réputé agir en qualité de représentant du franchisé, à moins qu'il n'agisse à ce titre qu'uniquement en ce qui a trait au contrat de franchise en question et qu'aucune rémunération directe ou indirecte ne lui soit versée par le franchisseur.

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5. (1) L'exposé des faits importants doit comprendre les renseignements suivants :

a) le nom du franchisseur, la dénomination qu'il utilise ou qu'il compte utiliser pour exercer son commerce et le nom de tout associé qui conclura des opérations commerciales avec le franchisé;

b) la principale adresse commerciale du franchisseur, de même que le nom et l'adresse de son représentant à des fins de signification dans la province;

c) la forme juridique de l'entreprise du franchisseur, qu'il s'agisse d'une personne morale, d'une société ou d'une autre entité;

d) un exemplaire du plus récent état financier vérifié du franchisseur;

e) l'expérience que le franchisseur a acquise en affaires y compris celle qu'il a obtenue depuis qu'il :

(i) exploite une entreprise du genre de celle que le franchisé doit diriger,

(ii) octroie des franchises pour cette entreprise,

(iii) octroie des franchises pour d'autres genres d'entreprises;

f) un exemplaire du contrat de franchise type proposé ou employé dans la province;

g) une déclaration des droits de franchise exigés, de la façon dont le franchisseur compte en utiliser le produit et de la formule employée pour fixer le montant des droits si celui-ci varie, de même qu'une déclaration portant sur l'existence de redevances à payer;

h) une déclaration des sommes ou des droits, outre les droits de franchise, que le franchisé est tenu de remettre au franchisseur, y compris les redevances, les sommes ou les droits que le franchisseur recouvre pour le compte d'un ou de plusieurs tiers, de même que le nom de ces tiers;

i) une déclaration précisant si la mise de fonds pour l'octroi d'une franchise couvre les installations et le matériel;
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j) les conditions selon lesquelles :
   (i) le franchisé peut dénoncer le contrat de franchise,
   (ii) le contrat de franchise peut être annulé,
   (iii) le contrat de franchise peut être résilié,
   (iv) le renouvellement du contrat de franchise peut être refusé,
   (v) l'entreprise de franchise peut être rachetée au gré du franchiseur;

k) une déclaration précisant si le franchisé peut vendre l'entreprise de franchise et, le cas échéant, les conditions auxquelles cette vente est assujettie;

l) une déclaration précisant si les conditions du contrat ou l'usage exigent que le franchisé achète du franchiseur ou de son représentant des services, des approvisionnements, des produits, des installations ou d'autres biens nécessaires à la mise sur pied ou à l'exploitation de l'entreprise de franchise et, le cas échéant, leur description;

m) une déclaration précisant si les services, les approvisionnements, les produits, les installations ou les autres biens nécessaires à la mise sur pied ou à l'exploitation de l'entreprise de franchise peuvent être obtenus d'autres sources;

n) une déclaration précisant si les conditions du contrat ou l'usage imposent des limites en ce qui a trait aux biens et aux services que le franchisé peut offrir à ses clients;

o) une déclaration précisant si le franchiseur est convenu par contrat ou par convention avec un ou plusieurs tiers d'offrir les produits ou les services de ces tiers au franchisé suivant un système d'escompte ou de prime;

p) les conditions auxquelles est assujetti tout projet de financement offert directement ou indirectement par le franchiseur ou son associé;

q) une déclaration précisant si le franchiseur a l'habitude ou l'intention de vendre, de céder ou d'es-

APPENDICE E

ment à un tiers la totalité ou une partie d'une obligation du franchisé;

r) s'il doit y avoir une déclaration des revenus de franchise estimatifs ou projetés à faire au franchisé, les données sur lesquelles cette déclaration est fondée;

s) une déclaration précisant si les franchisés ont des droits ou des territoires exclusifs et, le cas échéant, l'étendue de ceux-ci;

t) une déclaration précisant si le franchisé doit participer à une campagne de publicité parrainée par le franchiseur;

u) une déclaration précisant si le franchisé a droit aux avantages et à la protection découlant des brevets et des contrats d'assurance-responsabilité du franchiseur;

v) une déclaration précisant si le franchiseur a adopté une procédure pour régler ses différends avec le franchisé;

w) une déclaration précisant si le franchiseur apporte au franchisé une assistance sur une base régulière et, le cas échéant, la nature, l'étendue et le coût de cette assistance;

x) la liste des franchisés de la province et, s'il n'y en a aucun, la liste des franchisés de la province la plus proche;

y) un exemplaire de la présente loi.

(2) Si un avocat, un vérificateur, un comptable, un ingénieur ou un évaluateur, ou toute autre personne, est désigné comme ayant rédigé ou certifié une partie d'un exposé de faits importants, cet exposé doit contenir le consentement écrit de la personne en question à l'inclusion de la partie qui lui est attribuée.

(3) Le consentement d'un vérificateur ou d'un comptable mentionné au paragraphe (2):

a) vise le rapport qu'il doit faire en vertu des règles menis et précise la date où il a été rédigé et la date des états financiers qui font l'objet du rapport;
b) contient une déclaration portant qu’il a lu l’exposé des faits importants et que les renseignements qu’il contient, connus de lui ou tirés des états financiers inclus dans l’exposé, sont, à son avis, présentés impartialement et ne sont pas trompeurs.

(4) Si la personne visée au paragraphe (2), selon le cas :

a) détient ou espère détenir un intérêt, direct ou indirect, dans les biens du franchisseur ou de l’une de ses filiales;

b) détient des intérêts, directs ou indirects, dans des valeurs mobilières appartenant au franchisseur ou à l’une de ses filiales.

Ces intérêts doivent être divulgués dans l’exposé des faits importants.

(5) Si une personne visée au paragraphe (2) est ou sera vraisemblablement élue, nommée ou engagée à titre de dirigeant, administrateur ou employé du franchisseur ou de l’une de ses filiales, l’exposé des faits importants doit le mentionner.

6. (1) Le sous-franchisseur doit fournir au franchisé éventuel un exemplaire de l’exposé des faits importants du franchisseur, le sous-franchisseur étant lié par cet exposé, sauf dans la mesure où il peut le modifier par écrit.

(2) Le franchisseur fournit au sous-franchisseur un nombre suffisant d’exemplaires de l’exposé des faits importants pour lui permettre de se conformer aux dispositions du présent article.

7. Le franchisseur tient et garde à jour, à son établissement principal dans la province mentionné dans son exposé des faits importants, un jeu complet de livres, de dossiers et de comptes relatifs à ses ventes dans la province.

8. (1) Le contrat de franchise ne lie pas le franchisé s’il fait parvenir au franchisseur un avis écrit ou télégraphique attestant son intention de ne pas être lié par le contrat de franchise, au plus tard à minuit le dixième jour, à l’exclusion des samedis, des dimanches et des jours fériés, suivant la conclusion du contrat de franchise.

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(2) Le paragraphe (1) ne s’applique pas lorsque, avant l’expiration du délai mentionné, le franchisé vend, cède ou transporte ses droits dans la franchise, autrement que pour garantir une dette.

(3) La réception de l’avis visé au paragraphe (1) par quiconque a agi en qualité de représentant du franchisseur relativement à la vente de la franchise équivaut, pour l’application du présent article, à la réception de l’avis par le franchisseur à la date où son représentant a reçu cet avis.

(4) Il incombe à la personne de qui le franchisé est convenu d’acheter la franchise de prouver l’expiration du délai fixé au paragraphe (1).

9. (1) Le franchisé, lorsqu’il est encore propriétaire de la franchise, peut résilier le contrat de franchise :

a) si l’exposé des faits importants ne lui a pas été donné en conformité avec l’article 4;

b) si l’exposé des faits importants qu’il a reçu contient, à la date où il a conclu le contrat de franchise, un faux exposé d’un fait important ou omis de mentionner un fait important dont la mention est nécessaire pour empêcher qu’un des faits exposés soit trompeur, à la lumière des circonstances dans lesquelles il en est fait mention.

(2) Les actions intentées en vertu du présent article se prescrivent par deux ans à compter de la plus récente des deux dates suivantes :

a) celle de la réception par l’acheteur de l’exposé des faits importants;

b) celle de la conclusion du contrat de franchise.

(3) L’alinéa (1)b) ne s’applique pas à un faux exposé d’un fait important ou à l’omission de mentionner un fait important, selon le cas :

a) la fausseté de l’exposé ou l’omission n’étaient pas connues de la personne dont les franchises sont offertes par le biais de l’exposé des faits importants et si, dans l’exercice d’une diligence raisonnable, elles n’auraient pu être connues d’elle;
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b) ce faux exposé ou cette omission sont rapportés dans un exposé modifié des faits importants et ce exposé modifié a été reçu par le franchisé;

c) le franchisé connaissait le faussaire de l'exposé ou était au courant de l'omission lorsqu'il a acheté la franchise.

(4) La cause d'action conférée par le présent article s'ajoute aux autres droits que la loi peut accorder au franchisé, sans y déroger.

PARTIE III
RÉSILIATION ET RENOUVELLEMENT

10. La présente partie est applicable dans les cas suivants :
   a) le franchisé est domicilié dans la province ou l'entreprise de franchise est exploitée ou a été exploitée dans la province;
   b) le contrat de franchise a été conclu ou renouvelé le ou après cette date.

11. (1) Pour l'application du présent article, est assimilé à «motif valable» le défaut pour le franchisé de se conformer aux exigences du contrat de franchise après avoir reçu avis du défaut et après avoir eu une occasion convenable de s'y conformer.

(2) À moins de disposition contraire de la présente loi, aucun franchiseur ne peut résilier un contrat de franchise avant que celui-ci ne soit expiré à moins qu'il n'ait un motif valable de le faire.

12. L'une ou l'autre des situations suivantes, survenant pendant la période de validité du contrat de franchise et reliées à celui-ci, ouvre droit à sa résiliation sur avis immédiat et sans possibilité de remédier à la situation, à savoir :
   a) l'entreprise à l'égard de laquelle la franchise est accordée est en faillite, est déclarée insolvable par un tribunal, cède son actif ou une partie importante de celui-ci à un créancier, ou le franchisé reconnaît son incapacité de payer ses dettes à l'échéance;

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b) le franchisé abandonne l'entreprise de franchise en ne l'exploitant pas pendant cinq jours consécutifs au cours desquels il est tenu de l'exploiter en vertu du contrat de franchise, ou pendant une période plus courte si les circonstances permettent au franchiseur de conclure que le franchisé n'a pas l'intention de continuer à exploiter l'entreprise de franchise, à moins que le défaut d'exploitation ne soit dû à un incendie, à une inondation, à un tremblement de terre ou à une autre cause semblable indépendante de sa volonté;

c) le franchiseur et le franchisé conviennent par écrit de résilier le contrat de franchise;

d) le franchisé fait de fausses déclarations importantes relatives à l'acquisition de l'entreprise de franchise;

e) le franchisé omit, pour une période de dix jours suivant la date de réception de l'avis d'inobservation, de se conformer à toute loi, ou à tout règlement municipal, applicable à l'exploitation de la franchise;

f) le franchiseur recommence, après avoir remédié au défaut visé à l'alinéa e), à se rendre coupable de la même inobservation, peu importe qu'il ait remédié au défaut après en avoir reçu avis;

g) le franchisé omit, à maintes reprises, de se conformer à une ou à plusieurs exigences du contrat de franchise, peu importe qu'il ait remédié à cette situation après en avoir reçu avis;

h) l'entreprise de franchise ou les locaux où elle est exploitée sont saisis ou repris par un créancier, un créancier privilégié ou un bailleur dans l'un ou l'autre des cas suivants :
   (i) le franchisé ne respecte pas les exigences d'un jugement définitif dans les trente jours,
   (ii) une saisie a été pratiquée sur le permis accordé en vertu du contrat de franchise ou sur
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tout bien utilisé en rapport avec l'entreprise de franchise et elle n'est pas annulée dans les cinq jours suivant la date à laquelle elle a été pratiquée;

i) le franchisé se comporte de façon à nuire considérablement à l'exploitation ou à la réputation de l'entreprise ou du système de franchise;

j) le franchisé omet de payer tout droit de franchise ou toute autre somme due au franchisseur ou à sa filiale dans les quinze jours de la date de réception d'un avis écrit l'informant que les droits sont exigibles;

k) le franchisseur conclut valablement qu'il y a danger imminent pour la santé ou la sécurité du public si le franchisé continue d'exploiter l'entreprise de franchise.

13. (1) Outre le préavis écrit d'au moins cent quatre-vingts jours qu'il doit donner au franchisé, le franchisseur peut refuser de renouveler un contrat de franchise si l'une des situations suivantes se présente :

a) au cours des cent quatre-vingts jours précédant l'expiration du contrat de franchise, le franchisseur permet au franchisé de vendre son entreprise à un acheteur qui répond aux exigences du franchisseur à ce moment-là pour l'octroi de nouvelles franchises, ou si le franchisseur n'octroie pas un nombre important de nouvelles franchises, à un acheteur qui répond aux exigences du franchisseur à ce moment-là pour le renouvellement de franchises;

b) le refus de renouveler n'est pas fait dans le but de transformer les locaux commerciaux du franchisé de manière à permettre l'exploitation de son entreprise par des employés ou des mandataires du franchisseur pour le compte de ce dernier et, à l'expiration du contrat de franchise, le franchisseur convient de n'exécuter aucune convention du franchisé dont le contrat de franchise n'a pas été renouvelé suivant laquelle le franchisé s'engage à ne pas faire concurrence au franchisseur ou à ses franchisés;

c) la résiliation est permise conformément aux articles 12 ou 13;

d) le franchisseur et le franchisé conviennent de ne pas renouveler le contrat de franchise;

e) le franchisseur cesse de distribuer ses produits ou ses services au moyen de franchises dans la région géographique où le franchisé exploite son entreprise et,

(i) à l'expiration du contrat de franchise, le franchisseur convient de n'exécuter aucune convention du franchisé dont le contrat de franchise n'a pas été renouvelé suivant laquelle le franchisé s'engage à ne pas faire concurrence au franchisseur ou aux franchisés du franchisseur,

(ii) le refus de renouveler n'est pas fait dans le but de transformer l'entreprise exploitée par le franchisé en vertu du contrat de franchise de manière qu'elle soit exploitée par des employés ou des mandataires du franchisseur pour le compte de celui-ci,

(iii) dans le cas où le franchisseur décide de vendre, de transférer ou de céder son droit sur des locaux commerciaux occupés par un franchisé dont le contrat de franchise n'est pas renouvelé conformément avec la présente disposition,

(A) le franchisseur offre au franchisé, au cours des cent quatre-vingts jours suivant la date de l'avis, le droit, pour une période d'au moins trente jours, de refuser le premier une offre faite de bonne foi par une autre personne d'acheter le droit du franchisseur dans ces locaux,

(B) dans le cas de la vente, du transfert ou de la cession à une autre personne du droit du franchisseur sur un ou plusieurs autres locaux commerciaux contrôlés, cette autre personne offre de bonne foi au franchisé une franchise dont les mo-
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dalités sont à peu près les mêmes que celles qu'elle offre ordinairement à d'autres franchisés;

f) le franchisseur et le franchisé n'arrivent pas à s'entendre sur les modalités à modifier ou à ajouter au contrat de franchise à savoir, si ces modifications ou adjonctions entraîneront le renouvellement du contrat de franchise suivant des modalités qui sont à peu près les mêmes que celles suivant lesquelles le franchisseur renouvelle habituellement des franchises à ce moment-là, ou si le franchisseur ne renouvelle pas un nombre important de franchises à ce moment-là, suivant les modalités habituellement prévues pour l'octroi de nouvelles franchises.

(2) Le franchisseur peut informer le franchisé par écrit de la date à laquelle celui-ci doit faire connaître au franchisseur par écrit s'il accepte ou non l'entente écrite proposée sur les modalités de renouvellement de la franchise, pourvu qu'il accorde au franchisé un délai d'au moins trente jours à compter de la date de cet avis.

(3) Dans les cas où il est donné au plus tard cent quatre-vingts jours avant l'expiration du contrat de franchise, l'avis visé au paragraphe (2) peut préciser qu'il sera réputé constituer un avis de l'intention de ne pas renouveler le contrat de franchise à la date de son expiration si le franchisé n'en fait pas connaître son acceptation dans le délai prévu.

14. (1) L'article 13 n'a pas pour effet d'empêcher un franchisseur d'offrir ou de convenir, avant l'expiration du contrat de franchise, de prolonger la durée de celui-ci pour une période de temps limitée dans le but de satisfaire aux exigences que prévoit cet article en ce qui a trait au délai fixé pour le non-renouvellement.

(2) L'alinéa 13(1)b) n'a pas pour effet d'empêcher un franchisseur d'exercer le droit de première offre d'achat de l'entreprise du franchisé.

15. Les avis de résiliation ou de non-renouvellement visés à la présente partie

a) sont faits par écrit;

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b) sont expédiés par courrier recommandé ou certifié, télégraphiés ou remis personnellement au franchisé;

c) exposent, selon le cas, l'intention de résilier ou de ne pas renouveler la franchise

(i) ainsi les motifs de la résiliation ou du non-renouvellement,

(ii) la date à compter de laquelle la résiliation ou le non-renouvellement s'applique.

16. (1) Si un franchisseur résilie ou refuse de renouveler un contrat de franchise sans se conformer aux dispositions de la présente partie, le franchisseur doit offrir de racheter du franchisé la partie du stock courant de ce dernier qui peut être revendue, qui respecte les normes actuelles du franchisseur et qui est détenue conformément au contrat de franchise ou aux usages commerciaux dans le but d'être utilisée et vendue par l'entreprise franchisée; le prix d'achat que le franchisseur doit payer est égal au moins élevé des deux montants suivants :

a) la juste valeur marchande dans le cas d'une vente en gros;

b) le prix payé par le franchisé.

(2) Le franchisseur n'est pas tenu d'offrir d'acheter les articles personnels qui n'ont aucune valeur pour lui dans le cadre de l'entreprise pour laquelle il octroie des franchises.

17. Le franchisseur peut déduire de toute offre d'achat, faite en conformité avec l'article 16, toutes les sommes que le franchisé doit au franchisseur ou à ses filiales conformément au contrat de franchise ou à tout contrat qui en découle.

18. Sauf disposition expresse, les dispositions des articles 16 et 17 n'ont pas pour effet de porter atteinte au droit du franchisé d'intenter une action en justice en vertu d'une autre loi.

PARTIE IV
RÈGLEMENTS

19. Le lieutenant-gouverneur en conseil peut, par règlement :

Exception

Compensation

Application des autres lois
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a) réglementer l'achat et la vente des franchises et la tenue des dossiers se rapportant à ces opérations;
b) régir la tenue des comptes et des dossiers, la préparation et le dépôt des états financiers des franchiseurs et les exigences qui s'y rapportent en matière de vérification;
c) prescrire les documents, rapports, déclarations, accords et autres renseignements qui doivent être fournis ou remis en vertu de la présente loi et de ses règlements d'application, ainsi que leur forme, leur contenu et les autres particularités qui s'y rapportent;
d) prohiber ou, par ailleurs, réglementer la diffusion de toute documentation écrite ou imprimée relative à une franchise, que ce soit au cours de la vente ou autrement;
e) exempter ou prévoir l'exemption de toute personne, de toute marchandise ou entreprise et de tout service, et de toute catégorie de personnes, marchandises, entreprises et services de l'application de la présente loi.

PARTIE V
APPLICATION
Infractions et peines

20. (1) Est coupable d'une infraction et passible :
a) soit d'une amende d'au plus 2 000 $ et d'une peine d'emprisonnement maximale de un an ou de l'une de ces peines,
b) soit, lorsqu'il s'agit d'une personne morale, d'une amende maximale de 25 000 $,
c) dans un exposé des faits importants fait une déclaration qui,
(i) au moment et dans les circonstances où elle est faite, est fausse ou trompeuse relativement à un fait important,

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(ii) omiet de mentionner un fait important, dont l'omission rend la déclaration fausse ou trompeuse;
d) enfreint la présente loi ou ses règlements d'application.

(2) N'est pas coupable d'une infraction en vertu de l'alinéa (1)a) qui conçoit établi qu'il ignorait que la déclaration était fausse ou trompeuse et qu'il n'aurait pas pu le savoir dans l'exercice d'une diligence raisonnable.

(3) Dans les cas où une personne morale est reconnue coupable d'une infraction visée au paragraphe (1), ses dirigeants et administrateurs qui ont autorisé ou permis l'infraction ou qui y ont acquiescé sont également coupables d'une infraction et passibles d'une amende maximale de 2 000 $ et d'une peine d'emprisonnement maximale de un an, ou de l'une de ces peines.

21. Les poursuites intentées en vertu de la présente loi se prescrivent par un an à partir de la perpétration de l'infraction reprochée.
Model Franchise Investment Act

(¶ 3700)

(Final version, adopted by the North American Securities Administrators Association, August 30, 1990.)

Section 1. Short Title.

This Act shall be known and may be cited as the "[name of jurisdiction] Franchise Investment Act."

Section 2. Findings and Purpose.

The Legislature finds that franchisees may suffer substantial losses when the franchisor does not provide complete information regarding the franchisor and the franchise relationship. The legislature also finds that many franchisees lack bargaining power and purchase a franchise when they are unfamiliar with operating a business, with the franchised business and with industry practices in franchising. This Act seeks to assure that each offeree receives the information necessary to make an informed decision about the offered franchise and to prohibit the sale of franchises when there is a likelihood that the franchisor's promises will not be fulfilled.

Section 3. Definitions.

When used in this Act, unless the context otherwise requires:

(a) "Act" means the [name of jurisdiction] Franchise Investment Law.

(b) "[Administrator]" [substitute any other appropriate terms such as "Commission,"] "Commissioner," "Secretary"] means the [official administering the Act].

(c) "Advertisement" means a communication published in connection with an offer or sale of a franchise.

(d) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(e) "Business Day" means a day other than a Saturday, Sunday, or federal holiday.

(f) "Disclosure Document" means the Uniform Franchise Offering Circular as adopted and amended by the North American Securities Administrators Association, Inc.

(g) "Franchisee" means

(i) an oral or written agreement, either express or implied, which:

(A) grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor;

(B) requires payment of a franchise fee to a franchisor or its affiliate; and

(C) allows the franchise business to be substantially associated with a trademark, service mark, trade name, logo, advertising, or other commercial symbol of or designating the franchisor or its affiliate; or

(ii) a master franchise.

Disclosure Laws

(b) [Reserved]

(i) "Franchise Fee" means a direct or indirect payment to purchase or operate a franchise. Franchise fee does not include:

(i) payment of a reasonable service charge to the issuer of a credit card by an establishment accepting the credit card;

(ii) payment to a trading stamp company by a person issuing trading stamps in connection with a retail sale; or

(iii) agreement to purchase at a bona fide wholesale price a reasonable quantity of tangible goods for resale.

(j) "Franchisee" means a person to whom a franchise is granted. Franchisee includes:

(i) a subfranchisor with regard to its relationship with a franchisor; and

(ii) a subfranchisee with regard to its relationship with a subfranchisor.

(k) "Franchisor" means a person who grants a franchise. Franchisor includes a subfranchisor with regard to its relationship with a franchisor, unless stated otherwise in this Act.

(l) "Fraud" or "Deceit" are not limited to common law fraud or deceit.

(m) "Marketing Plan" means a plan or system concerning a material aspect of conducting business. Indicia of a marketing plan include:

(i) price specification, special pricing systems or discount plans;

(ii) sales or display equipment or merchandising devices;

(iii) sales techniques;

(iv) promotional or advertising materials or cooperative advertising;

(v) training regarding the promotion, operation or management of the business; or

(vi) operational, managerial, technical or financial guidelines or assistance.

(n) "Master Franchise" means an agreement express or implied, oral or written, by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

(o) "Offer" or "Offer To Sell" means every attempt to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

(p) "Order" means a consent, authorization, approval, or prohibition, issued by the administrator in a specific matter.

(q) "Person" means an individual or any other legal or commercial entity.

(r) "Publish" means to circulate generally by mail, or print media or electronic media, or otherwise to disseminate generally to the public.

(s) "Registration Application" means an initial franchise application on the Uniform Franchise Registration Application as adopted and amended by the North American Securities Administrators Association, Inc. and the amendment or renewal of the application.

(t) "Sale" or "Sell" means every contract or agreement of sale of, contract to sell or a disposition of, a franchise or interest in a franchise for value.

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(a) "Salesperson" means a person employed by or representing a franchisor in effecting or attempting to effect the offer or sale of a franchise.

(b) "Subfranchisor" means a person who is granted a master franchise.

(c) "Subfranchisee" means a person who is granted a franchise or a subfranchise from the subfranchisor.

(y) "This state" means [name of jurisdiction].

Section 4. Scope and Applicability.

(a) This Act applies to a franchise that is offered or sold in this state.

(b) A franchise is offered or sold in this state if an offer to sell is made or accepted in this state or an offer to buy is accepted in this state.

(c) An offer to sell is made in this state if the offer is directed by the offeror into this state from within or from outside this state and is received where it is directed.

(d) This Act applies to a franchise offered or sold outside this state if it is offered or sold to a resident of this state and is to be operated in this state.

(e) An offer to sell is not made in this state solely because the offer appears in a newspaper or other publication of general and regular circulation which had more than two thirds of its circulation outside this state during the past 12 months or solely because the offer appears in a broadcast or transmission originating outside this state.

Section 5. Registration of Franchises.

It is unlawful for any person to offer or sell a franchise unless the offer is registered under this Act or is exempt from registration under Section 6 of this Act.

Section 6. Exemptions from Registration.

The following transactions are exempt from Section 5:

(a) The offer or sale of a franchise if all of the following conditions are satisfied:

(i) the franchisor's most recent audited financial statements show a net worth of at least $10 million or the franchisor is at least 80% owned by a person that unconditionally guarantees the franchisor's performance, that consents to service of process in this state and whose most recent audited financial statements show a net worth of at least $10 million;

(ii) the franchisor or person owning at least 80% of the franchisor, had and currently has at least 25 franchised business to be offered or sold at no fewer than 25 locations for the entire five years immediately preceding the offer or sale of the franchise;

(iii) the offeror receives the disclosure document at least 10 business days prior to the execution by the offeror of any binding agreement or at least 10 business days prior to the direct or indirect receipt of a franchise fee by the franchisor from the offeror, whichever first occurs; and

(iv) the franchisor annually files a notice of exemption with the administrator. The notice of exemption shall include the disclosure document and the fee prescribed by Section 29 and shall be filed prior to an offer or sale of a franchise in this state. The exemption expires 15 months from the date of the most recent audited financial statement filed unless the administrator prescribes a different period by rule or order.
The offer or sale of a franchise by a franchisor is not an affiliate of the franchisor for the franchisee's own account if the franchisor's entire franchise is sold and the sale is not effected by or through the franchisor. A sale is not effected by or through the franchisor merely because a franchisee signs a franchise agreement with terms which do not materially differ from the agreements with the existing franchisee or because a franchisor has a right to approve or disapprove the sale or requires payment of a reasonable transfer fee. This exemption applies to the offer or sale of a master franchise if the entire master franchise is sold.

The offer or sale of a franchise to a person who has been for at least 2 years, an officer, director, partner or affiliate of the franchisor for that person's own account:

(i) has a net worth of at least one million dollars (in the case of a natural person, including the property of the purchaser's spouse but excluding primary residence, personal vehicles and personal effects) or had an individual income or joint income including that person's spouse in excess of $200,000 in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year; and

(ii) has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the franchise.

The offer or sale to an existing franchisee of an additional franchise that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale:

(i) The offer or sale of a franchise involving a renewal, extension, modification or amendment of an existing franchise agreement if there is no interruption in the operation of the franchised business and there is no material change in the franchise relationship. For purposes of this subsection, an interruption in the operation of the franchised business solely for the purpose of relocating or restarting business that is not a material change in the franchise relationship or an interruption in the operation of the franchised business.

(ii) The offer or sale of a franchise if the franchisee agrees to pay, directly or indirectly, a franchise fee computed on an annual basis of $250 or less.

The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator or custodian in behalf of a person other than the franchisor or the estate of the franchisor.

The offer of a franchise by the franchisor during the period a registration has expired and is pending renewal under Section 9, or an application to amend a registration under Section 11, if the offeree receives the newly registered disclosure document at least ten business days before the offeree's execution of any binding agreement or at least 10 business days prior to the receipt of a franchise fee by the franchisor from the offeree, whichever first occurs. Changes from the document's last registered must be marked to show changes.

The offer or sale of rights to a person to sell goods or services within or adjacent to a retail establishment as a department or division; provided that the person is not required to purchase goods or services from the operator of the retail establishment.

(k) The offer or sale of a franchise that the administrator by rule or order exempts when registration is not necessary or appropriate in the public interest or for the protection of prospective franchisees.

Section 7. Out-of-State Sales Exemption.

An offer or sale of a franchise is exempted from Sections 5, 8, 9, 13 through 16, inclusive if:

(a) it is offered or sold to a non-resident of this state;

(b) the franchise business will not be operated wholly or partly in this state;

(c) the offer or sale does not violate federal law or the law of the foreign jurisdiction; and

(d) the offeree is not actually present in this state during any offer or sale.

Section 8. Delivery Requirements.

(a) It is unlawful to sell any franchise in this state without first providing a copy of a disclosure document reflecting all material changes together with a copy of all proposed agreements relating to the sale of the franchise, unless otherwise provided in subsection (b), to the prospective franchisee, at the earlier of:

(i) the prospective franchisee's first personal business meeting with the franchisor which is held for the purpose of discussing the sale or possible sale of a franchise, or

(ii) ten business days prior to the execution of an agreement or payment of any consideration relating to the franchisor relationship.

(b) The delivery requirements in subsection (a) of this section do not apply to the offer or sale of a franchise which is exempt under Section 6(b), 6(c), 6(f), of this Act.


(a) A registration application must include the disclosure document, the filing fee, and the consent to service of process. The administrator may require the filing of audited financial statements examined and reported upon by an independent certified public accountant and prepared in accordance with generally accepted accounting principles and of additional documents or disclosures.

(b) If the franchisor fails to demonstrate to the administrator the franchisor's financial ability to fulfill its initial obligations to franchisees, the administrator may require an escrow of funds paid by the franchisee or subfranchisee to the franchisor or its affiliate until the franchisor performs its initial obligations and the franchisee has commenced operations. The administrator may allow alternatives to escrow.

(c) (i) Except as provided in paragraph (ii), if no order under Sections 18 or 19 is in effect, a franchise registration application is effective on the thirtieth business day after filing of the application or the last amendment to the application or at an earlier time ordered by the administrator unless the applicant requests postponement of effectiveness of the application or the administrator has made a good faith effort to communicate why the application does not meet the requirements of this law.

(ii) If the administrator requires the submission of additional information under Section 11, 12, 13, or 26 before the franchise registration application becomes effective under paragraph (i), and no order under Section 18 or 19 is in effect, the application becomes effective on the fifteenth business day after the additional information is filed with the administrator, or at such earlier time as the administrator

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discloses, unless the applicant requests postponement of effectiveness of the application.

(d) Registration of a franchise under this Act expires 120 calendar days after the end of the franchisor's fiscal year following the application date, unless the administrator prescribes a different period by rule or order. A franchise registration may be renewed for one year or a shorter period if designated by the administrator by filing an application to renew 30 days prior to the expiration of the registration.

(e) An applicant or registrant may withdraw a franchise registration application, or franchise registration if it files a written request for withdrawal with the administrator. Withdrawal is effective 15 business days from the day on which the withdrawal request is filed with the administrator.

(i) The administrator may accept the examination of a registration application by another state administrator as complying with this Act.

Section 10. Negotiated Changes Permitted.

This Act does not preclude negotiation of the terms and conditions of a franchise before it is sold. After the initial offer, a franchisor need not amend its disclosure document to negotiate with an offeree, or make supplementary disclosure to that offeree, by reason of a change negotiated in the terms and conditions of a franchise.

Section 11. Change in Information.

The franchisor must promptly amend its franchise registration application to reflect every material change in the information filed with the administrator.

Section 12. Advertising.

No person may publish in this state any advertisement offering to sell a franchise required to be registered under this Act unless the advertisement and required filing fee have been filed with the administrator at least five business days prior to its first publication.


Every franchisor offering or selling a franchise in this state must maintain a complete and accurate set of books and records of the offers and sales of franchises. The books and records must include disclosure documents, advertising correspondence with franchisees and prospective franchisees, past and present operations manuals, training records, training manuals, copies of executed agreements, and any due diligence records concerning franchisees. These books and records must be maintained at an office readily accessible to the franchisor for 5 years. The books and records may be kept on photographic or electronic media but must be printed if the administrator requests. Nothing in this section limits the investigative authority of the administrator.

Section 14. Jurisdiction and Venue.

A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.

Section 15. Waivers Void.

A condition, stipulation or provision requiring a franchisee to waive compliance with or relieving a person of a duty or liability imposed by or a right provided by this Act or a rule or order under this Act is void. An acknowledgement provision, disclaimer or integration clause or a provision having a similar effect in a franchise agreement

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does not negate or act to remove from judicial review any statement, misrepresentation or action that would violate this Act or a rule or order under this Act. This section shall not affect the settlement of disputes, claims or civil lawsuits arising or brought under this Act.

Section 16. Franchisee’s Right To Associate.

A franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, or retaliate against a franchisee for engaging in those activities.

Section 17. Fraudulent Deceptive and Prohibited Practices.

In connection with the offer or sale of franchise it is unlawful for a person, directly or indirectly, to:

(a) employ a device, scheme, or artifice to defraud;

(b) make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(c) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit on a person;

(d) represent to an offeree of a franchise that the filing of a franchise registration application or the registration of a franchise constitutes a finding by the administrator that a document filed under the Act is true, complete, and not misleading or that the administrator has passed upon the merits of the franchise;

(e) misrepresent that a franchise is registered or exempted from registration under this Act;

(f) violate an order of the administrator after the person receives notice that the order was issued; or

(g) fail to notify the administrator of a material change in the information required in a document required to be filed by this Act or a rule or order under this Act; or

(h) omit to state a material fact or make or cause to be made an untrue statement of a material fact in any application, notice, or report filed with the administrator under this Act.

Section 18. Enforcement.

(a) The administrator may, by order deny a franchise registration application or suspend or revoke the effectiveness of registration of a franchise if:

(i) the franchisor failed to comply with a provision of this Act or a rule, order or condition of the administrator under this Act;

(ii) the registration application is incomplete or inaccurate in any material respect;

(iii) the registration application includes a false or misleading statement of a material fact or omits to state a material fact required to be stated or necessary to make a required statement not misleading;

(iv) the sale of the franchise would constitute a misrepresentation, deceit or fraud upon an offeree;
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(v) a person is engaging in, has engaged in or is about to engage in a false, fraudulent or deceptive practice or use of a device, scheme, or device to defraud in connection with the offer or sale of the franchise;

(vi) a partner, officer or director of the franchisor or a person who occupies a similar status or performs similar functions, or a person who directly or indirectly controls or is controlled by the franchisor is or has been found guilty or liable in a proceeding required to be described in the registration application and the involvement of such person creates an unreasonable risk to franchisees or offerors;

(vii) an advertisement prohibited by this Act has been used in connection with the offer or sale of a franchise;

(viii) the franchisor's enterprise or method of business includes activities that are illegal where performed, or

(a) the financial condition of the franchisor impairs or would impair the ability of the franchisor to fulfill obligations under the franchise agreement;

(b) The administrator may by order deny, suspend or revoke an exemption under Section 6 of this Act on any of the grounds described in paragraph (a) of this Section.

(c) When it appears to the administrator that any person has violated or is about to violate a provision of this Act or a rule or order under this Act, the administrator may do any or all of the following:

(i) issue an order directing the person to cease and desist from continuing the act or practice;

(ii) bring an action in a court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this Act or a rule or order under this Act. Upon a proper showing, the court may grant a permanent or preliminary injunction, restraining order or writ of mandate. The court may grant appropriate ancillary relief, including appointment of a receiver or conservator for the defendant or the defendant's assets. The court may exercise all powers necessary or appropriate for these purposes. The court may not require the administrator to post a bond, or

(iii) bring an action on behalf of the state in any court of competent jurisdiction against any officer, director, trustee, manager or agent of the franchisor or any person in violation of this Act. The action must be brought within 4 years after the commission of the act or practice on which it is based.

(d) The administrator may impose an administrative assessment against a person named in an order issued under Section 6(a), 6(b) or 19. The amount of the administrative assessment may not exceed $5,000 for each act or omission that constitutes the basis for issuing the order. The administrative assessment may only be imposed:

(i) following an opportunity for a hearing under Section 25 if the notice delivered to all named persons includes notice of the administrator's authority to impose an administrative assessment under this section, or

(ii) as part of an order issued under Sections 6(a), 6(b) or 19, if the order is stipulated to by each person subject to the administrative assessment.

(e) When an administrator prevails in an action under this Act, the administrator is entitled to recover the costs, expenses and attorneys' fees incurred in connection with the action.

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(1) In connection with an action or proceeding under this section, the adminis-
tor may exercise any of the powers specified in Section 20 of this Act.

Section 19. Summary Action.

The administrator, upon a finding that it is in the public interest, may issue an order summarily under Section 18.

Section 20. Criminal Prosecution.

(a) A person who willfully violates any provision of this Act, or any rule under it, or any order of which the person has notice, commits a [Class. ] felony and up

(b) A prosecution for a violation under this Act must be commenced within 4 year after the commission of the violation. Nothing in this Act limits the power of the state to punish a person for conduct which constitutes a crime under another statute.

Section 21. Private Civil Actions.

(a) A person who violates any provision of this Act is liable to the franchisee for damages, costs, and attorneys and experts fees. In the case of a violation of Sections 3 or 17 (a) through (e) inclusive, of this Act, the franchisee may also sue for rescission. No person will be liable under this section if the defendant proves that the plaintiff knew the facts concerning the violation.

(b) Every person who directly or indirectly controls a person liable under this section, every principal executive officer or director of a person so liable, every person occupying a similar status or performing similar functions, and every agent, employee of a person so liable, who materially aids in the act or transaction constituting violation, is also liable jointly and severally with any other persons unless the person liable proves he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the violation is alleged to exist.

Section 22. Period of Limitation.

An action under Section 21 of this Act must be commenced not later than 120 days after the act or transaction constituting the violation or

Section 23. No Other Civil Liability.

Except as expressly provided in this Act, no civil liability arises from a violation of any provision of this Act. Nothing in the Act limits liability that may exist under another statute or at common law. Prior law governs all actions based on a violation occurring before the effective date of this Act.

Section 24. Burden of Proof.

In an administrative, civil, or criminal proceeding arising under this Act, burden of proving an exemption, or an exclusion from a definition, is on the party claiming it.

Section 25. Hearings and Judicial Review.

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(a) Except as provided by subparagraph (c), the administrator may not enter an order under Section 18 or 19 without appropriate prior notice to all named persons, opportunity for hearing and written findings of fact and conclusions of law.

(b) Notice required by this Act is sufficient if delivered personally, or if sent by registered or certified mail and addressed to the person, or the person's attorney of record at the person's or attorney's last known address appearing in the records of the administrator. Notice served in accordance with Section 28 is also sufficient.

(c) A person named in an order may apply to the administrator for a hearing in respect to any matter determined by the order within 30 days after the administrator has summarily issued an order. A hearing shall be held within 30 days after the administrator receives a written request for hearing unless extended by mutual consent of the parties. During the pendency of any hearing requested under this subsection, the order issued in summary shall remain in effect unless vacated or modified by the administrator.

(d) After a hearing, the administrator may issue a final order. The final order may affirm, vacate or modify an order issued summarily in effect during the pendency of the hearing, or may include such other sanctions as are provided for under Section 18. An order issued summarily against a person becomes a final order if the person fails to request a hearing under subparagraph (c) or if the person defaults after requesting a hearing.

(e) Hearings and rehearings shall be public.

(f) Orders and other official acts of the administrator are subject to judicial review [insert judicial review statute section of jurisdiction].

(g) Orders originally entered without a hearing under Sections 18 or 19 may be reviewed only if the person seeking review has requested a hearing within the time provided by subparagraph (b). Petition for review under this subparagraph may be filed only after service of the order finally disposing of the person's request for hearing under subparagraph (b).


(a) The administrator may make public or private investigations inside or outside this state to determine whether a person has violated, is violating, or is about to violate a provision of this Act or a rule or order under this Act. The administrator may investigate to aid in the enforcement of this Act or in prescribing rules under this Act. The administrator may publish information concerning the violation of this Act or a rule or order under this Act.

(b) The administrator may keep confidential any information obtained in the course of an investigation.

(c) The administrator may investigate suspected criminal violations of this Act and may refer evidence to the Attorney General or a prosecuting attorney. Upon request of the Attorney General or prosecuting attorney, the administrator and the administrator's attorneys, deputies or assistants may assist in presenting the law or facts at trial.

(d) For the purpose of an investigation or proceeding under this Act, the administrator may subpoena witnesses, compel their attendance, examine them under oath, or require the production of any documents, or tangible things, which the administrator deems relevant or material to this investigation or proceeding. The subpoena must state the date, place and time at which the person is required to appear or produce documentary material.

(e) An administrator's subpoena shall be served in accordance with the service of process requirements of civil litigation in this state.

(f) Upon application of the administrator, a court may compel compliance with a subpoena through a contempt proceeding.

Section 27. Rules, Orders, Forms and Interpretive Opinions.

(a) The administrator may promulgate rules, forms, and orders necessary or appropriate to administer this Act and may define terms, whether or not used in this Act. The administrator may classify franchises, persons and matters within the administrator's jurisdiction and prescribes different rules for different classes. The Act imposes no liability for an act or omission done in good faith in conformity with an order or rule of the administrator.

(b) No rule, order or form may be made unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of franchisees and consistent with the purposes fairly intended by the policy and provisions of the Act.

(c) The administrator may honor requests from interested persons for interpretive opinions or may issue determinations that the administrator will not institute enforcement proceedings against a person for engaging in certain specified activities where the determination is consistent with purposes fairly intended by the policy and provisions of the Act.


(a) A person who offers or sells a franchise subject to the registration requirement of this Act in this state shall file with the administrator an irrevocable consent to service of process by appointing the administrator as the person's agent to receive service of process in a civil action or proceeding arising under this Act.

(b) A person who offers or sells a franchise in this state without filing a consent to service of process is deemed to appoint the administrator as the person's agent to receive service of process in a civil action or proceeding arising under this Act.

(c) A person may effect service of process under this section by service on the administrator. The time to respond begins to run when the person sends notice of the service and a copy of the process by certified mail to the defendant or respondent or attorney of record at its last known address on file with the administrator. If no address is on file with the administrator, the time to respond begins to run when the process is served on the administrator. The plaintiff shall file an affidavit of compliance with the court of tribunal hearing the matter.

Section 29. Fees

(a) The administrator shall charge and collect the fees fixed by this section. The administrator shall not refund fees.

(b) The fee for filing an application for initial registration of a franchise under Section 9 is $300.

(c) The fee for filing a notice of exemption under Section 6(a) is $300.

(d) The fee for filing an application for renewal of a registration under Section 9 is $250.
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(e) The fee for filing a request for an amendment to an application under Section 11 is $100.

(f) The fee for filing a request for an interpretive opinion under Section 27(c) is $300.

(g) The fee for filing advertising is $10 per item.

Section 30. Cooperation with Other Agencies or Organizations.

To encourage uniform application and interpretation of this Act and effective franchise regulation and enforcement, the administrator may cooperate with federal, state or foreign agencies or administrators and law enforcement agencies, including:

(a) Conducting joint examinations and investigations;

(b) Holding joint administrative hearings;

(c) Filing and prosecuting joint civil or administrative proceedings;

(d) Sharing and exchanging information and documents subject to the restrictions of this state;

(e) Sharing and exchanging personnel;

(f) Formulating rules, regulations, statements of policy, guidelines, proposed statutory changes and interpretive opinions and releases; and

(g) Issuing and enforcing subpoenas at the request of the Federal Trade Commission or an agency administering franchise statutes in another jurisdiction if the information sought would also be subject to lawful subpoenas for conduct occurring in this state.

Section 31. Filing of Documents.

A document is filed when it is received by the administrator.

Section 32. Construction.

This Act shall be applied and construed with a view to uniformity among states enacting it. This Act shall be liberally construed to effectuate its purposes.

Section 33. Severability of Provisions.

If a provision of this Act or its application to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application. To this end the provisions of this Act are severable.
Law on Industrial Property: Franchise provisions

Franchise Provisions, Law on Industrial Property


TITLE FOUR

TRADEMARKS AND TRANSFER OF RIGHTS

Chapter VI

Licenses and Transfer of Rights

* * *

Art. 142. A franchise shall exist whenever, in conjunction with the license to use a trademark, technical knowledge is transmitted or technical assistance is furnished in order to enable the licensee to produce or sell goods or render services in a uniform manner and with the operating, commercial and administrative methods established by the holder of the trademark, aimed to maintain the quality, prestige and image of the products or services distinguished by the trademark.

The franchisee of a franchise should provide to the party to whom he intends to grant information regarding the situation of the grantor's business enterprise, prior to the entering into, the corresponding agreement and according to the terms established in the regulations of this law.

In order to register the franchise, the provisions of this chapter shall apply.

Art. 143. The rights of a trademark registration application or of a registered trademark can be transmitted to one or several persons under the terms and with the formalities established by ordinary law. Such transmission of rights shall be registered at the ministry [Ministry of Commerce and Industrial Development] in accordance with the regulations of this law in order to be enforceable against third parties.

Art. 144. Unless otherwise stipulated, it will be understood that a transmission of rights on registered trademarks exists if a merger of corporate entities takes place.

Art. 145. The trademark registrations belonging to one holder shall be considered as linked for purposes of their transmission, whenever such trademarks are identical and cover similar products or services, or when such trademarks are confusingly similar and are applied to the same or similar products or services.

Art. 146. Whenever the holder of trademark registrations of two or more linked trademarks considers that likelihood of confusion shall not exist in the event that any of such trademarks is used by a third party on the goods or services to which such trademarks apply, such holder may request the dissolution of the link. The ministry shall finally resolve such request.

Art. 147. The transmission of any of the linked trademarks shall only be registered whenever all linked trademarks are transmitted to the same person.

Art. 148. Whenever the registration of any transmission of a registered trademark is requested, and prior non-registered transmissions exist, these should be disclosed; and the ministry shall register all such transmissions.

Art. 149. The registration of a transmission of a trademark registration shall be denied whenever such trademark registration can be considered as null and void. For purposes of the foregoing, the corresponding file shall be examined before registering such transmission, and if the subject trademark registration is found in the above situation, the ministry shall self-initiate the procedure to declare such trademark registration as null and void.

Art. 150. The ministry may deny the registration of a license, franchise or transmission of rights for reasons of public interest. The ministry must duly establish and give reason for the resolution by which the requested registration is denied. The registration of license shall not be registered when the respective agreement expressly excludes the applicability of this law, with no prejudice to the ability of the parties to submit to international arbitration in the case of conflict.

Art. 203. In order to prove the fulfillment of the provisions of this law and other provisions derived therefrom, the ministry shall perform inspection and examination, in accordance with the following procedures:

I. Reporting and information requirements.

II. Inspection visits.

Art. 204. All persons shall be required to provide the ministry, within fifteen days, the reporting and information required in writing, with regard to the fulfillment of the provisions of this law and other provisions derived therefrom.

Art. 205. The inspection visits shall be made on working days and hours and only by personnel authorized by the ministry, following identification and presentation of the respective inspection warrant.

The ministry may also authorize that visits be made on non-working days and hours, in order to avoid the commission of infractions, for which the case inspection warrant shall express such authorization.

Art. 206. The owners or persons in charge of establishments in which products are manufactured, stored, distributed or sold, or in which services are rendered, shall be required to allow access to the commissioned personnel for the practice of the inspection visits, provided that the requirements set forth in the preceding article are met.

Art. 207. Inspection visits are understood to be those made in places where products are manufactured, stored, transported, expended or commercialized, or where services are rendered, for the purpose of examining the products, the rendering conditions of the services, and the documents related to the activity in question.

Art. 208. A record of all inspections shall be drawn in the presence of two witnesses provided by the person with whom the inspection was carried out, or by the inspector, if said person refuses to provide witnesses.

Art. 209. The records shall express:

I. Time, day, month and year in which the inspection is conducted.

II. Street, number, town, and federated entity in which the place where the visit is made is located.

I. Number and date of the warrant that caused the inspection.

IV. Name and character of the person with whom the inspection was carried out.

V. Name and domicile of the persons who acted as witnesses, where they were designated by the inspector, or in the absence thereof, by the inspector.

VII. Identification of the opportunity given to the visitor to exercise his right to make observations to the inspector during the practice of the inspection.

VI. Information regarding the execution.

VIII. Statement of the visitor, if he wishes to make such.

IX. Name and signature of all involved in the inspection, including the inspector.

Art. 210. Upon making observations during the inspection or in writing, the visitors may offer proof regarding the information contained in the record.

Art. 211. If during the inspection the commission of any of the acts or deeds set forth in Articles 213 and 222 are authentically proven, the inspector shall secure, with all necessary precautions, the products with which said infractions or crimes are presumably committed, taking an inventory of the secured goods, which shall be expressed in the inspection record and the owner or person in charge at the place in which such goods are located shall be designated as the depositary, if it is fixed if not, the products shall be concentrated at the ministry.

In the case of crimes, the ministry shall inform the Federal Public Ministry of the deeds and shall place the secured goods in its disposition.

Art. 212. A copy of the inspection record shall be left with the person with whom the inspection was carried out, even when said person refuses to sign it, which shall not affect its validity.

Chapter II

Administrative Infractions and Penalties

Art. 213. The following are administrative infractions:

I. To perform acts contrary to good usage and customs in industry, commerce, and services that imply disloyal competences and that are related to matters regulated by this law.

II. To make products that are not patented according to the law, if the first author has expired or was declared void, such act shall incur an infraction to one year from the date of registration, or if such is the case, from the date on which the patent is declared void.

III. To put products in sale or to circulate on sale to offer services, indicating that they are protected by a trademark when they are not. If the trademark registration has expired or has been declared void or canceled, such act shall incur an infraction after one year from the date of expiration, or if such is the case, from the date on which the corresponding declaration is made.

IV. To use a trademark confusingly similar to another registered trademark, to cover the same or similar products or services as those protected by the registered trademark.

V. To use, without the consent of the holder, a registered trademark as an element of a trade name or corporate name or denomina
tion, or vice versa, provided that said names are related to establishments that operate with the products or services protected by the trademark.

VI. To use, within the geographic zone of the Republic, in the case set forth in Article 105 of this law, a trade name identical or confusingly similar to an already or already used by a third party, to cover an industrial, commercial, or service establishment of the same or similar line.

VII. To use as trademarks the denominations, signs or abbreviations of which Articles 4 and 5 of Sections VI, VII, VIII, IX, XII, XIII, XIV, and XV of Article 90 of this law refer.

VIII. To use a trademark previously registered as a corporate denomination or name or as parts thereof, of an entity the activity of which is the production, importation, or commercialization of goods or services similar to those to which the registered trademark applies, without the written consent of the holder of the trademark registration or of the person to whom the license has been con-

Business Franchise Guide
Art. 218. In cases of recurrence the previously imposed fines shall be doubled, without exceeding three times the maximum set in Article 214 of this law, as the case may be.

Recurrent violation shall be understood to be, for the purposes of this law, and other provisions derived therefrom, each subsequent infraction of the same nature, committed within two years following the date on which the resolution regarding the infraction was issued.

Art. 219. The condemnations may be imposed in addition to a fine or without a fine. Permanent condemnation shall occur when the establishment, has been temporarily condemned twice within a period of two years, if therein the infraction recurs.

Art. 220. The following must be taken into account in the determination of the penalties:

Chapter III

Crimes

Art. 223. The following are crimes:

I. To manufacture or produce products covered by an inventor’s patent or utility model registration, without the consent of the holder or without the respective license.

II. To offer for sale or to put into circulation products covered by an inventor’s patent or utility model registration, knowing that such were manufactured or produced without the consent of the patent or utility model holder or without the respective license.

III. To use patented processes, without the consent of the patent holder or without the respective license.

IV. To offer for sale or to put into circulation products that have resulted from the use of patented processes, knowing that such were used without the consent of the patent holder or at whose disposal for its use.

V. To reproduce industrial designs protected by registration, without the consent of the holder or without the respective license.

VI. To use a registered trademark, without the consent of the holder or without the respective license, on products or services similar to those to which the trademark applies.

VII. To offer for sale or to put into circulation products similar to those to which a registered trademark applies, knowing that such was used without the consent of the holder.

order to use it or to reveal it to a third party, for the purpose of obtaining an economic benefit for oneself or for the third party or for the purpose of causing damage to the person who keeps the secret or to its authorized user.

XV. To use the information contained within an industrial secret known by virtue of work, change, position, exercise of profession or business relationship, without the consent of the person who keeps the secret or of its authorized user, or that has been revealed by a third party, knowing that such person does not have the consent of the person who keeps the industrial secret or of its authorized user, for the purpose of obtaining an economic benefit or for the purpose of causing damage to the person who keeps the secret or to its authorized user.

Art. 224. Two to six years of imprisonment and fines in an amount from one hundred to ten thousand days of the current general minimum wage of the Federal District, shall be imposed upon anyone who commits the crimes indicated in the preceding article, except for those set forth in Sections X and XI, in which case the penalty shall be from six months to four years of imprisonment and fines in an amount from fifty to five thousand days of the current general minimum wage of the Federal District.

Art. 225. The previous investigation regarding the crimes to which Article 223 refers shall be initiated by the Federal Public Ministry as soon as knowledge of the facts that exemplify such is had, and within the investigation, the precautionary measures established in the Federal Penal Procedures Code may be dictated. However, for the exercise of penal action the technical examination issued to such effect by the ministry shall be required, which shall not prejudice the civil or penal actions that may proceed.

Art. 226. Independently of the exercise of penal action, the damaged party may, for any of the crimes to which this law refers, sue the responsible party or parties for compensation and for the payment of damages suffered due to said crimes.

Art. 227. The federal courts have competent jurisdiction over the crimes to which this chapter refers, as well as the commercial and civil disputes and the precautionary measures subscribed to for the purposes of application of this law. When said disputes affect only particular interests, the common order courts may have jurisdiction at the plaintiff’s request.
LOI n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l’amélioration de leur environnement économique, juridique et social (1)

NOM : CONSOMMATEURS

L’Assemblée nationale et le Sénat ont adopté, le Président de la République promulgue la loi dont la teneur suit :

CHAPITRE Ier
Dispositions en faveur de l'entreprise

Art. 1er. — Toute personne qui met à la disposition d’autre personne un nom commercial, une marque ou une enseigne, en exigeant d’elle un engagement d’exclusivité ou de quasi-exclusivité pour l’exercice de son activité, est tenue préalablement à la signature de tout contrat conclu dans l’indéterminé commun des deux parties à fournir à l’autre partie un document donnant des informations sincères qui lui permette de s’engager en connaissance de cause.

Ce document, dont le contenu est fixé par décret, précise notamment l’identité et l’expérience de l’entreprise, l’état et les perspectives de développement du marché concerné, l’importance du réseau d’exploitants, la durée, les conditions de remboursement, de réduction et de cession du contrat ainsi que le champ des exclusivités.

Lorsque le versement d’une somme est exigé préalablement à la signature du contrat mentionné ci-dessus, notamment pour obtenir la réservation d’une zone, les prestations assurées en contrepartie de cette somme sont précisées par écrit, ainsi que les obligations réciproques des parties en cas de délit.

Le document prévu au premier alinéa ainsi que le projet de contrat sont communiqués vingt jours au minimum avant la signature du contrat ou, le cas échéant, avant le versement de la somme mentionnée à l’alinéa précédent.

Décret n° 91-337 du 4 avril 1989 portant application de l’article 1er de la loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l’amélioration de leur environnement économique, juridique et social

Le Premier ministre,

Sur le rapport du garde des sceaux, ministre de la justice, du ministre de l’industrie et de l’aménagement du territoire et du ministre délégué au commerce et à l’artisanat,

Vu le code pénal, notamment son article R. 25 ;

Vu l’article 1er de la loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l’amélioration de leur environnement économique, juridique et social ;

Le Conseil d’État (section des finances) entendu,

Décide :

Art. 1er. — Le document prévu au premier alinéa de l’article 1er de la loi du 31 décembre 1989 susvisée doit contenir les informations suivantes :

1° L’adresse du siège de l’entreprise et la nature de ses activités avec l’indication de sa forme juridique et de l’identité du chef d’entreprise s’il s’agit d’une personne physique ou des dirigeants s’il s’agit d’une personne morale ; le cas échéant, le montant du capital ;

2° Le nombre d’immatriculés au registre du commerce et des sociétés ou le numéro d’inscription au répertoire des métiers et, dans ce cas, la marque qui doit être l’objet du contrat a été acquise à la suite d’une cession ou d’une licence, la date et le numéro de l’inscription correspondante au registre national des métiers ou, pour les contrats de licence, l’identification de la durée pour laquelle la licence a été consentie ;

3° La ou les dématérialisations bancaires de l’entreprise. Cette information peut être limitée aux cinq principales dématérialisations bancaires ;

4° La date de la création de l’entreprise avec un rappel des principales étapes de sa évolution, y compris celle du réseau d’exploitants ; s’il y a lieu, ainsi que toutes indications permettant d’apprécier l’expérience professionnelle acquise par l’exploitant ;

Les informations mentionnées à l’alinéa précédent peuvent ne porter que sur les cinq dernières années qui précèdent celle de la remise du document. Elles doivent être complétées par une présentation de l’état général et local du marché des produits ou services devant faire l’objet du contrat et des perspectives de développement de ce marché.

Doivent être annexés à cette partie du document les comptes annuels des deux dernières exercices ou, pour les sociétés faisant publiquement appel à l’épargne, les rapports établis au titre des deux derniers exercices ou application du troisième alinéa de l’article 341-1 de la loi n° 66-537 du 24 juillet 1956 sur les sociétés commerciales ;

DOCUMENTS ET DE L’AMÉNAGEMENT DU TERRITOIRE

COMMERCE ET ARTISANAT

5° Une présentation du réseau d’exploitants qui doit comporter :

a) La liste des entreprises qui en font partie avec l’indication pour chacune d’elles du mode d’exploitation concerné ;

b) L’adresse des entreprises établies en France avec lesquelles la personne qui propose le contrat est liée par des contrats de même nature que celui dont la conclusion est envisagée ; la date de conclusion ou de renouvellement de ces contrats est précisée ;

Lorsque le réseau compte plus de cinq exploitants, les informations mentionnées à l’alinéa précédent ne sont exigées que pour les cinq entreprises les plus proches du lieu de l’exploitation envisagée ;

La liste des entreprises qui, étant liées au réseau par des contrats de même nature que celui dont la conclusion est envisagée, sont issues de faire partie du réseau au cours de l’année précédant celle de la délivrance du document. Le document doit préciser si le contrat est venus à expiration ou s’il a été résilié ou annulé ;

6° L’indication de la durée du contrat proposé, des conditions de renouvellement, de résiliation et de cession, ainsi que le champ des exclusivités.

Le document doit, en outre, préciser la nature et le montant des dépenses et investissements spécifiques à l’entreprise ou à la marque, le cas échéant, que le personne destinataire du projet de contrat devra engager avant de commencer l’exploitation.

Art. 2. — Son prix doit être payé par le titulaire du contrat à l’être désigné par la loi, l’article 83 de la loi du 17 août 1982 ayant été dérogé.

Art. 3. — Le garde des sceaux, ministre de la justice, le ministre de l’industrie et de l’aménagement du territoire et le ministre délégué au commerce et à l’artisanat sont chargés, chacun en ce qui le concerne, de l’exécution du présent décret, qui sera publié au Journal officiel de la République française.


MICHEL ROCARD
Par le Premier ministre.

Le ministre délégué au commerce et à l’artisanat,

FRANÇOIS DOURIN
Le garde des sceaux, ministre de la justice,

HENRI NALLEY
Le ministre de l’industrie et de l’aménagement du territoire,

ROGER FAUREX

Par le garde des sceaux, ministre de la justice.

COMMISSION REGULATION (EEC) No 4087/88
of 30 November 1988
on the application of Article 85 (3) of the Treaty to categories of franchise agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices (1), as last amended by the Act of Accession of Spain and Portugal, and in particular Article 1 thereof,

Having published a draft of this Regulation (2),

Having consulted the Advisory Committee on RestRICTive Practices and Dominant Positions,

Whereas:

(1) Regulation No 19/65/EEC empowers the Commission to apply Article 85 (3) of the Treaty by Regulation to certain categories of bilateral exclusive agreements falling within the scope of Article 85 (1) which either have as their object the exclusive distribution or exclusive purchase of goods, or include restrictions imposed in relation to the assignment or use of industrial property rights.

(2) Franchise agreements consist essentially of licences of industrial or intellectual property rights relating to trade marks or signs and know-how, which can be combined with restrictions relating to supply or purchase of goods.

(3) Several types of franchise can be distinguished according to their object: industrial franchise concerns the manufacturing of goods, distribution franchise concerns the sale of goods, and service franchise concerns the supply of services.

(4) It is possible on the basis of the experience of the Commission to define categories of franchise agreements which fall under Article 85 (1) but can normally by regarded as satisfying the conditions laid down in Article 85 (3). This is the case for franchise agreements whereby one of the parties supplies goods or provides services to end users. On the other hand, industrial franchise agreements should not be covered by this Regulation. Such agreements, which usually govern relationships between producers, present different characteristics than the other types of franchise. They consist of manufacturing licences based on patents and/or technical know-how, combined with trade-mark licences. Some of them may benefit from other block exemptions if they fulfill the necessary conditions.

(5) This Regulation covers franchise agreements between two undertakings, the franchisor and the franchisee, for the retailing of goods or the provision of services to end users, or a combination of these activities, such as the processing or adaptation of goods to fit specific needs of their customers. It also covers cases where the relationship between franchisor and franchisees is made through a third undertaking, the master franchisee. It does not cover wholesale franchise agreements because of the lack of experience of the Commission in that field.

(6) Franchise agreements as defined in this Regulation can fall under Article 85 (1). They may in particular affect intra-Community trade where they are concluded between undertakings from different Member States or where they form the basis of a network which extends beyond the boundaries of a single Member State.

(7) Franchise agreements as defined in this Regulation normally improve the distribution of goods and/or the provision of services as they give franchisors the possibility of establishing a uniform network with limited investments, which may assist the entry of new competitors on the market, particularly in the case of small and medium-sized undertakings, thus increasing interbrand competition. They also allow independent traders to set up outlets more rapidly and with higher chance of success than if they had to do so without the franchisor’s experience and assistance. They have therefore the possibility of competing more efficiently with large distribution undertakings.

(1) OJ No 36, 6. 3. 1965, p. 331/65.
(2) OJ No C 229, 27. 8. 1987, p. 3.
As a rule, franchise agreements also allow consumers and other end users a fair share of the resulting benefit, as they combine the advantage of a uniform network with the existence of traders personally interested in the efficient operation of their business. The homogeneity of the network and the constant cooperation between the franchisor and the franchisee ensures a constant quality of the products and services. The favourable effect of franchising on interbrand competition and the fact that consumers are free to deal with any franchisee in the network guarantees that a reasonable part of the resulting benefits will be passed on to the consumers.

This Regulation must define the obligations restrictive of competition which may be included in franchise agreements. This is the case in particular for the granting of an exclusive territory to the franchisees combined with the prohibition on actively seeking customers outside that territory, which allows them to concentrate their efforts on their allotted territory. The same applies to the granting of an exclusive territory to a master franchisee combined with the obligation not to conclude franchise agreements with third parties outside that territory. Where the franchisees sell or use in the process of providing services, goods manufactured by the franchisor or according to its instructions and or bearing its trade mark, an obligation on the franchisees not to sell, or use in the process of the provision of services, competing goods, makes it possible to establish a coherent network which is identified with the franchised goods. However, this obligation should only be accepted with respect to the goods which form the essential subject-matter of the franchise. It should notably not relate to accessories or spare parts for these goods.

The obligations referred to above thus do not impose restrictions which are not necessary for the attainment of the abovementioned objectives. In particular, the limited territorial protection granted to the franchisees is indispensable to protect their investment.

It is desirable to list in the Regulation a number of obligations that are commonly found in franchise agreements and are normally not restrictive of competition and to provide that if, because of the particular economic or legal circumstances, they fail under Article 85 (1), they are also covered by the exemption. This list, which is not exhaustive, includes in particular clauses which are essential either to preserve the common identity and reputation of the network or to prevent the know-how made available and the assistance given by the franchisor from benefiting competitors.

The Regulation must specify the conditions which must be satisfied for the exemption to apply. To guarantee that competition is not eliminated for a substantial part of the goods which are the subject of the franchise, it is necessary that parallel imports remain possible. Therefore, cross deliveries between franchisees should always be possible. Furthermore, where a franchise network is combined with another distribution system, franchisees should be free to obtain supplies from authorized distributors. To better inform consumers, thereby helping to ensure that they receive a fair share of the resulting benefits, it must be provided that the franchisee shall be obliged to indicate its status as an independent undertaking, by any appropriate means which does not jeopardise the common identity of the franchised network. Furthermore, where the franchisees have to honour guarantees for the franchisor's goods, this obligation should also apply to goods supplied by the franchisor, other franchisees or other agreed dealers.

The Regulation must also specify restrictions which may not be included in franchise agreements if these are to benefit from the exemption granted by the Regulation, by virtue of the fact that such provisions are restrictions falling under Article 85 (1) for which there is no general presumption that they will lead to the positive effects required by Article 85 (3). This applies in particular to market sharing between competing manufacturers, to clauses unduly limiting the franchisee's choice of suppliers or customers, and to cases where the franchisee is restricted in determining its prices. However, the franchisor should be free to recommend prices to the franchisees, where it is not prohibited by national laws and to the extent that it does not lead to concerted practices for the effective application of these prices.

Agreements which are not automatically covered by the exemption because they contain provisions that are not expressly exempted by the Regulation and not expressly excluded from exemption may nonetheless generally be presumed to be eligible for application of Article 85 (3). It will be possible for the Commission rapidly to establish whether
this is the case for a particular agreement. Such agreements should therefore be deemed to be covered by the exemption provided for in this Regulation, where they are notified to the Commission and the Commission does not oppose the application of the exemption within a specified period of time.

(13) If individual agreements exempted by this Regulation nevertheless have effects which are incompatible with Article 85 (3), in particular as interpreted by the administrative practice of the Commission and the case law of the Court of Justice, the Commission may withdraw the benefit of the block exemption. This applies in particular where competition is significantly restricted because of the structure of the relevant market.

(16) Agreements which are automatically exempted pursuant to this Regulation need not be notified. Undertakings may nevertheless in a particular case request a decision pursuant to Council Regulation No 17 (1) as last amended by the Act of Accession of Spain and Portugal.

(17) Agreements may benefit from the provisions either of this Regulation or of another Regulation, according to their particular nature and provided that they fulfill the necessary conditions of application. They may not benefit from a combination of the provisions of this Regulation with those of another block exemption Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

1. Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to franchise agreements to which two undertakings are party, which include one or more of the restrictions listed in Article 2.

2. The exemption provided for in paragraph 1 shall also apply to master franchise agreements to which two undertakings are party. Where applicable, the provisions of this Regulation concerning the relationship between franchisor and franchisee shall apply mutatis mutandis.

3. For the purposes of this Regulation:

(a) ‘franchise’ means a package of industrial or intellectual property rights relating to trade marks, trade names, shop signs, utility models, designs, copyrights, know-how or patents, to be exploited for the resale of goods or the provision of services to end users;

(b) ‘franchise agreement’ means an agreement whereby one undertaking, the franchisor, grants the other, the franchisee, in exchange for direct or indirect financial consideration, the right to exploit a franchise for the purposes of marketing specified types of goods and/or services; it includes at least obligations relating to:

— the use of a common name or shop sign and a uniform presentation of contract premises and/or means of transport;

— the communication by the franchisor to the franchisee of know-how;

— the continuing provision by the franchisor to the franchisee of commercial or technical assistance during the life of the agreement;

(c) ‘master franchise agreement’ means an agreement whereby one undertaking, the franchisor, grants the other, the master franchisee, in exchange for direct or indirect financial consideration, the right to exploit a franchise for the purposes of concluding franchise agreements with third parties, the franchisees;

(d) ‘franchisor’s goods’ means goods produced by the franchisor or according to its instructions, and/or bearing the franchisor’s name or trade mark;

(e) ‘contract premises’ means the premises used for the exploitation of the franchise or, when the franchise is exploited outside those premises, the base from which the franchisee operates the means of transport used for the exploitation of the franchise (contract means of transport);

(f) ‘know-how’ means a package of non-patented practical information, resulting from experience and testing by the franchisor, which is secret, substantial and identified;

(g) ‘secret’ means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; it is not limited in the narrow sense that each individual component of the know-how should be totally unknown or unobtainable outside the franchisor’s business;

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(h) 'substantial' means that the know-how includes information which is of importance for the sale of goods or the provision of services to end users, and in particular for the presentation of goods for sale, the processing of goods in connection which the provision of services, methods of dealing with customers, and administration and financial management; the know-how must be useful for the franchisee by being capable, at the date of conclusion of the agreement, of improving the competitive position of the franchisee, in particular by improving the franchisee's performance or helping it to enter a new market;

(i) 'identified' means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality; the description of the know-how can either be set out in the franchise agreement or in a separate document or recorded in any other appropriate form.

Article 2

The exemption provided for in Article 1 shall apply to the following restrictions of competition:

(a) an obligation on the franchisor, in a defined area of the common market, the contract territory, not to:
   — grant the right to exploit all or part of the franchise to third parties,
   — itself exploit the franchise, or itself market the goods or services which are the subject-matter of the franchise under a similar formula,
   — itself supply the franchisee's goods to third parties;

(b) an obligation on the master franchisee not to conclude franchise agreement with third parties outside its contract territory;

(c) an obligation on the franchisee to exploit the franchise only from the contract premises;

(d) an obligation on the franchisee to refrain, outside the contract territory, from seeking customers for the goods or the services which are the subject-matter of the franchise;

(e) an obligation on the franchisee not to manufacture, sell or use in the course of the provision of services, goods competing with the franchisor's goods which are the subject-matter of the franchise; where the subject-matter of the franchise is the sale or use in the course of the provision of services both certain types of goods and spare parts or accessories therefor, that obligation may not be imposed in respect of these spare parts or accessories.

Article 3

1. Article 1 shall apply notwithstanding the presence of any of the following obligations on the franchisee, in so far as they are necessary to protect the franchisor's industrial or intellectual property rights or to maintain the common identity and reputation of the franchised network:

(a) to sell, or use in the course of the provision of services, exclusively goods matching minimum objective quality specifications laid down by the franchisor;

(b) to sell, or use in the course of the provision of services, goods which are manufactured only by the franchisor or by third parties designed by it, where it is impracticable, owing to the nature of the goods which are the subject-matter of the franchise, to apply objective quality specifications;

(c) not to engage, directly or indirectly, in any similar business in a territory where it would compete with a member of the franchised network, including the franchisor; the franchisee may be held to this obligation after termination of the agreement, for a reasonable period which may not exceed one year, in the territory where it has exploited the franchise;

(d) not to acquire financial interests in the capital of a competing undertaking, which would give the franchisee the power to influence the economic conduct of such undertaking;

(e) to sell the goods which are the subject-matter of the franchise only to end users, to other franchisees and to resellers within other channels of distribution supplied by the manufacturer of these goods or with its consent;

(f) to use its best endeavours to sell the goods or provide the services that are the subject-matter of the franchise; to offer for sale a minimum range of goods, achieve a minimum turnover, plan its orders in advance, keep minimum stocks and provide customer and warranty services;

(g) to pay to the franchisor a specified proportion of its revenue for advertising and itself carry out advertising for the nature of which it shall obtain the franchisor's approval.

2. Article 1 shall apply notwithstanding the presence of any of the following obligations on the franchisee:

(a) not to disclose to third parties the know-how provided by the franchisor; the franchisee may be held to this obligation after termination of the agreement;

(b) to communicate to the franchisor any experience gained in exploiting the franchise and to grant it, and other franchisees, a non-exclusive licence for the know-how resulting from that experience;
(c) to inform the franchisor of infringements of licensed industrial or intellectual property rights, to take legal action against infringers or to assist the franchisor in any legal actions against infringers;

(d) not to use know-how licensed by the franchisor for purposes other than the exploitation of the franchise; the franchisee may be held to this obligation after termination of the agreement;

(e) to attend or have its staff attend training courses arranged by the franchisor;

(f) to apply the commercial methods devised by the franchisor, including any subsequent modification thereof, and use the licensed industrial or intellectual property rights;

(g) to comply with the franchisor’s standards for the equipment and presentation of the contract premises and/or means of transport;

(h) to allow the franchisor to carry out checks of the contract premises and/or means of transport, including the goods sold and the services provided, and the inventory and accounts of the franchisee;

(i) not without the franchisor’s consent to change the location of the contract premises;

(j) not without the franchisor’s consent to assign the rights and obligations under the franchise agreement.

3. In the event that, because of particular circumstances, obligations referred to in paragraph 2 fall within the scope of Article 85 (1), they shall also be exempted even if they are not accompanied by any of the obligations exempted by Article 1.

**Article 4**

The exemption provided for in Article 1 shall apply on condition that:

(a) the franchisee is free to obtain the goods that are the subject-matter of the franchise from other franchisees; where such goods are also distributed through another network of authorized distributors, the franchisee must be free to obtain the goods from the latter;

(b) where the franchisor obliges the franchisee to honour guarantees for the franchisor’s goods, that obligation shall apply in respect of such goods supplied by any member of the franchised network or other distributors which give a similar guarantee, in the common market;

(c) the franchisee is obliged to indicate its status as an independent undertaking; this indication shall however not interfere with the common identity of the franchised network resulting in particular from the common name or shop sign and uniform appearance of the contract premises and/or means of transport.

**Article 5**

The exemption granted by Article 1 shall not apply where:

(a) undertakings producing goods or providing services which are identical or are considered by users as equivalent in view of their characteristics, price and intended use, enter into franchise agreements in respect of such goods or services;

(b) without prejudice to Article 2 (e) and Article 3 (1) (b), the franchisee is prevented from obtaining supplies of goods of a quality equivalent to those offered by the franchisor;

(c) without prejudice to Article 2 (e), the franchisee is obliged to sell, or use in the process of providing services, goods manufactured by the franchisor or third parties designated by the franchisor and the franchisee refuses, for reasons other than protecting the franchisor’s industrial or intellectual property rights, or maintaining the common identity and reputation of the franchised network, to designate as authorized manufacturers third parties proposed by the franchisee;

(d) the franchisee is prevented from continuing to use the licensed know-how after termination of the agreement where the know-how has become generally known or easily accessible, other than by breach of an obligation by the franchisee;

(e) the franchisee is restricted by the franchisor, directly or indirectly, in the determination of sale prices for the goods or services which are the subject-matter of the franchise, without prejudice to the possibility for the franchisor of recommending sale prices;

(f) the franchisor prohibits the franchisee from challenging the validity of the industrial or intellectual property rights which form part of the franchise, without prejudice to the possibility for the franchisor of terminating the agreement in such a case;

(g) franchisees are obliged not to supply within the common market the goods or services which are the subject-matter of the franchise to end users because of their place of residence.

**Article 6**

1. The exemption provided for in Article 1 shall also apply to franchise agreements which fulfil the conditions laid down in Article 4 and include obligations restrictive of competition which are not covered by Articles 2 and 3 (3) and do not not fall within the scope of Article 5, on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27 (1) and that the Commission does not oppose such exemption within a period of six months:

(1) OJ No 35, 10. 5. 1962, p. 1119/62.
2. The period of six months shall run from the date on which the notification is received by the Commission. Where, however, the notification is made by registered post, the period shall run from the date shown on the postmark of the place of posting.

3. Paragraph 1 shall apply only if:

(a) express reference is made to this Article in the notification or in a communication accompanying it; and

(b) the information furnished with the notification is complete and in accordance with the facts.

4. The benefit of paragraph 1 can be claimed for agreements notified before the entry into force of this Regulation by submitting a communication to the Commission referring expressly to this Article and to the notification. Paragraphs 2 and 3 (b) shall apply mutatis mutandis.

5. The Commission may oppose exemption. It shall oppose exemption if it receives a request to do so from a Member State within three months of the forwarding to the Member State of the notification referred to in paragraph 1 or the communication referred to in paragraph 4. This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

6. The Commission may withdraw its opposition to the exemption at any time. However, where that opposition was raised at the request of a Member State, it may be withdrawn only after consultation of the advisory Committee on Restrictive Practices and Dominant Positions.

7. If the opposition is withdrawn because the undertakings concerned have shown that the conditions of Article 85 (3) are fulfilled, the exemption shall apply from the date of the notification.

8. If the opposition is withdrawn because the undertakings concerned have amended the agreement so that the conditions of Article 85 (3) are fulfilled, the exemption shall apply from the date on which the amendments take effect.

9. If the Commission opposes exemption and its opposition is not withdrawn, the effects of the notification shall be governed by the provisions of Regulation No 17.

Article 7

1. Information acquired pursuant to Article 6 shall be used only for the purposes of this Regulation.

2. The Commission and the authorities of the Member States, their officials and other servants shall not disclose information acquired by them pursuant to this Regulation of a kind that is covered by the obligation of professional secrecy.

3. Paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 8

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds in a particular case that an agreement exempted by this Regulation nevertheless has certain effects which are incompatible with the conditions laid down in Article 85 (3) of the EEC Treaty, and in particular where territorial protection is awarded to the franchisee as:

(a) access to the relevant market or competition therein is significantly restricted by the cumulative effect of parallel networks of similar agreements established by competing manufacturers or distributors;

(b) the goods or services which are the subject-matter of the franchise do not face, in a substantial part of the common market, effective competition from goods or services which are identical or considered by users as equivalent in view of their characteristics, price and intended use;

(c) the parties, or one of them, prevent end users, because of their place of residence, from obtaining, directly or through intermediaries, the goods or services which are the subject-matter of the franchise within the common market, or use differences in specifications concerning those goods or services in different Member States, to isolate markets;

(d) franchisees engage in concerted practices relating to the sale prices of the goods or services which are the subject-matter of the franchise;

(e) the franchisor uses its right to check the contract premises and means of transport, or refuses its agreement to requests by the franchisee to move the contract premises or assigns its rights and obligations under the franchise agreement, for reasons other than protecting the franchisor's industrial or intellectual property rights, maintaining the common identity and reputation of the franchised network or verifying that the franchisee abides by its obligations under the agreement.

Article 9

This Regulation shall enter into force on 1 February 1989.

It shall remain in force until 31 December 1999.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 November 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission
RÈGLEMENT (CEE) N° 4087/88 DE LA COMMISSION
du 30 novembre 1988
concernant l’application de l’article 85 paragraphe 3 du traité à des catégories
d’accords de franchise

LA COMMISSION DES COMMUNAUTÉS EUROPÉENNES,

vu le traité instituant la Communauté économique européenne,

vu le règlement n° 19/65/CEE du Conseil, du 2 mars 1965, concernant l’application de l’article 85 paragraphe 3 du traité à des catégories d’accords et de pratiques concertées (1), modifié en dernier lieu par l’acte d’adhésion de l’Espagne et du Portugal, et notamment son article 1er,

après publication du projet de règlement (2),

après consultation du comité consultatif en matière d’ententes et de positions dominantes,

considérant ce qui suit:

(1) Conformément au règlement n° 19/65/CEE, la Commission est compétente pour appliquer par voie de règlement l’article 85 paragraphe 3 du traité à des catégories d’accords exclusifs bilatéraux tombant sous le coup de l’article 85 paragraphe 1 qui, soit ont pour objet la distribution ou l’achat exclusif de biens, soit comportent des restrictions imposées en rapport avec l’acquisition ou l’utilisation de droits de propriété industrielle.

(2) Les accords de franchise consistent essentiellement en des licences de droits de propriété industrielle ou intellectuelle concernant des marques, des signes distinctifs ou du savoir-faire, qui peuvent être combinées avec des restrictions portant sur la livraison ou l’achat de produits.

(3) Plusieurs types de franchise peuvent être distingués en fonction de leur objet : la franchise industrielle concerne la fabrication de produits, la franchise de distribution concerne la vente de produits et la franchise de services concerne la prestation de services.

(4) Il est possible, sur la base de l’expérience de la Commission, de définir des catégories d’accords de franchise qui tombent sous le coup de l’article 85 paragraphe 1, mais peuvent normalement être considérés comme remplissant les conditions de l’article 85 paragraphe 3 ; c’est le cas pour les accords de franchise aux termes desquels une des parties fournissent des produits ou des services à des utilisateurs finals ; en revanche, les accords de franchise industrielle ne sont pas couverts par le présent règlement ; de tels accords, qui régissent habituellement des relations entre producteurs, présentent des caractéristiques différentes des autres types de franchise ; ils consistent en des licences de production fondées sur des brevets et/ou du savoir-faire technique, combinées avec des licences de marques ; certains de ces accords peuvent bénéficier d’autres exemptions par catégorie s'ils remplissent les conditions nécessaires.

(5) Le présent règlement couvre des accords de franchise entre deux entreprises, le franchiseur et le franchisé, relatifs à la vente au détail de produits ou à la prestation de services aux utilisateurs finals, ou à une combinaison de ces deux activités telle que le traitement ou l’adaptation de produits pour répondre aux besoins spécifiques de leurs clients ; il couvre aussi les cas où la relation entre franchiseur et franchisé est réalisée par l’intermédiaire d’un tiers, le franchisé principal ; il ne couvre pas les accords de franchise de gros en raison du manque d’expérience de la Commission dans ce domaine.

(6) Les accords de franchise, tels que définis dans le présent règlement, peuvent tomber sous le coup de l’article 85 paragraphe 1 ; ils peuvent en particulier affecter le commerce entre États membres lorsqu’ils sont conclus entre des entreprises de différents États membres ou lorsqu’ils forment la base d’un réseau qui s’étend au-delà des limites d’un seul État membre.

(7) Les accords de franchise, tels que définis dans le présent règlement, amèneront normalement la distribution de produits et/ou la prestation de services, puisqu’ils donnent aux franchiseurs la possibilité d’établir un réseau uniforme avec des investissements limités, ce qui peut favoriser l’arrivée de nouveaux concurrents sur le marché, particulièrement dans le cas de petites et moyennes entreprises, accroissant ainsi la concurrence entre marques ; ils permettent aussi à des commerçants indépendants d’installer des établissements plus rapidement et avec de meilleures chances de succès que s’ils avaient dû le faire sans l’expérience ni l’assistance du franchiseur ; ils ont ainsi la possibilité de concurrencer plus efficacement de grandes entreprises de distribution.

(1) JO n° 36 du 6. 3. 1965, p. 533/65.
(2) JO n° C 229 du 27. 8. 1987, p. 3.
(8) En règle générale, les accords de franchise réservent également aux consommateurs et aux autres utilisateurs finaux une part équitable du bénéfice qui en résulte, du fait qu'ils combinent les avantages d'un réseau uniforme avec l'existence de commerçants personnellement intéressés au fonctionnement efficace de leur entreprise ; le caractère homogène du réseau et la coopération constante entre le franchisseur et les franchisés assurent une qualité constante des produits et des services ; l'effet favorable de la franchise sur la concurrence entre marques et le fait que les consommateurs soient libres de traiter avec tout franchisé dans le réseau garantissent qu'une part raisonnable des bénéfices résultant de l'accord rentrent aux consommateurs.

(9) Le présent règlement doit définir les obligations restrictives de concurrence qui peuvent être comprises dans les accords de franchise ; c'est le cas en particulier pour l'octroi d'un territoire exclusif aux franchisés combiné avec l'interdiction de chercher activement des clients hors de ce territoire, ce qui leur permet de concentrer leurs efforts sur le territoire qui leur a été attribué ; c'est également le cas pour l'octroi d'un territoire exclusif à un franchisé principal, combiné avec l'obligation de ne pas conclure d'accords de franchise avec des tiers hors de ce territoire ; lorsque les franchisés vendent, ou utilisent dans le cadre de la prestation de services, des produits fabriqués par le franchisseur, ou selon ses instructions, et/ou des produits portant sa marque, l'obligation pour les franchisés de ne pas vendre, ou utiliser dans le cadre de la prestation de services, de produits concurrents, permet d'établir un réseau cohérent qui s'identifie avec les produits franchisés ; cependant cette obligation ne peut être acceptée que pour les produits qui forment l'objet essentiel de la franchise ; elle ne peut pas s'appliquer en particulier aux accessoires ou aux pièces de rechange de ces produits.

(10) Les obligations susvisées n'imposent donc pas de restrictions qui ne sont pas nécessaires pour atteindre les objectifs mentionnés ci-dessus. En particulier la protection territoriale limitée accordée aux franchisés est indispensable pour protéger leur investissement.

(11) Il convient d'énumérer dans le présent règlement un certain nombre d'obligations normalement non restrictives de concurrence qui sont communément incluses dans des accords de franchise et de prévoir que si, du fait de circonstances économiques ou juridiques particulières, elles tombent sous le coup de l'article 85 paragraphe 1, elles sont aussi couvertes par l'exemption. Cette liste, qui n'est pas exhaustive, comprend en particulier des clauses qui sont essentielles soit pour préserver l'identité commune et la réputation du réseau, soit pour empêcher que le savoir-faire et l'assistance fournis par le franchisseur ne profitent à des concurrents.

(12) Le règlement doit préciser les conditions qui doivent être satisfaites pour que l'exemption s'applique ; pour garantir que la concurrence ne soit pas éliminée pour une partie substantielle des produits qui font l'objet de la franchise, il est nécessaire que les importations parallèles restent possibles ; par conséquent, les livraisons croisées entre franchisés doivent toujours être permises ; en outre, lorsqu'un réseau de franchise est combiné avec un autre système de distribution, les franchisés doivent être libres de s'approvisionner auprès des distributeurs agréés. Pour mieux informer les consommateurs, ce qui contribue à garantir qu'ils reçoivent une part équitable du bénéfice résultant de l'accord, il doit être prévu que les franchisés soient tenus d'indiquer leur qualité d'entreprise indépendante par tout moyen approprié qui ne mette pas en danger l'identité commune du réseau franchisé ; de plus, si les franchisés doivent accorder une garantie pour les produits du franchisseur, cette obligation doit également s'appliquer aux produits fournis par le franchisseur, d'autres franchisés ou d'autres distributeurs agréés.

(13) Le règlement doit aussi préciser les restrictions qui ne peuvent figurer dans les accords de franchise pour que ceux-ci bénéficient de l'exemption par catégorie, du fait qu'elles constituent des restrictions tombant sous le coup de l'article 85 paragraphe 1, par lesquelles il n'existe pas de présomption générale qu'elles produisent les effets positifs exigés par l'article 85 paragraphe 3. Cela s'applique notamment au partage de marché entre producteurs, aux clauses limitant indûment le choix du franchisé pour ses fournisseurs ou ses clients et aux cas où le franchisé est soumis à des restrictions quant à la détermination de ses prix. Le franchisseur doit toutefois être libre de recommander des prix aux franchisés lorsque cela n'est pas interdit par les législations nationales et dans la mesure où cela ne donne pas lieu à des pratiques concertées pour l'application effective de ces prix.

(14) Les accords, qui ne sont pas automatiquement exemptés parce qu'ils comprennent des clauses non expressément admises par le règlement sans comporter de restrictions expressément exclues, sont néanmoins susceptibles de bénéficier de la présomption générale de compatibilité avec l'article 85 paragraphe 3, sur laquelle est fondée l'exemp-
tion par catégorie et la Commission est à même d'établir rapidement si tel est le cas pour un accord déterminé. Il y a donc lieu de considérer de tels accords comme couverts par l'exemption prévue au présent règlement lorsqu'ils sont notifiés à la Commission et que celle-ci ne s'oppose pas à l'application de l'exemption dans un délai déterminé.

(15) Si, dans des cas particuliers, des accords exemptés par le présent règlement ont cependant des effets incompatibles avec l'article 85 paragraphe 3, en particulier tel que ça prenne est interprété par la pratique administrative de la Commission et la jurisprudence de la Cour de Justice, la Commission peut retirer le bénéfice de l'exemption par catégorie. Cela s'applique en particulier lorsque la concurrence est restreinte de façon significative du fait de la structure du marché en cause.

(16) Les accords qui sont exemptés automatiquement au titre du présent règlement n'ont pas à être notifiés : il est cependant loisible aux entreprises de demander une décision en vertu du règlement n° 17 du Conseil (1), modifié en dernier lieu par l'acte d'adhésion de l'Espagne et du Portugal.

(17) Les accords peuvent bénéficier des dispositions du présent règlement ou d'un autre règlement, en fonction de leur nature particulière et à condition qu'ils remplissent les conditions d'application nécessaires ; ils ne peuvent pas bénéficier d'une combinaison des dispositions du présent règlement avec celles d'un autre règlement d'exemption par catégorie.

A ARRÊTÉ LE PRÉSENT RÈGLEMENT:

Article premier

1. Conformément à l'article 85 paragraphe 3 du traité et aux conditions prévues au présent règlement, l'article 85 paragraphe 1 dudit traité est déclaré inapplicable aux accords de franchise auxquels ne participent que deux entreprises et qui comportent une ou plusieurs des restrictions prévues à l'article 2.

2. L'exemption prévue au paragraphe 1 s'applique également aux accords de franchise principale auxquels ne participent que deux entreprises. Le cas échéant, les dispositions du présent règlement concernant les relations entre franchiseur et franchisé s'appliquent mutatis mutandis aux relations entre franchiseur et franchisé principal ou entre franchisé principal et franchisé.

3. Pour l'application du présent règlement on entend par:

a) « franchise », un ensemble de droits de propriété industrielle ou intellectuelle concernant des marques, noms commerciaux, enseignes, dessins et modèles, droits d'auteur, savoir-faire ou brevets, destinés à être exploités pour la revende de produits ou la prestation de services à des utilisateurs finals ;

b) « accord de franchise », un accord par lequel une entreprise, le franchiseur, accorde à une autre, le franchisé, en échange d'une compensation financière directe ou indirecte, le droit d'exploiter une franchise dans le but de commercialiser des types de produits et/ou de services déterminés ; il doit comprendre au moins les obligations suivantes :

— l'utilisation d'un nom ou d'une enseigne communs et une présentation uniforme des locaux et/ou moyens de transport visés au contrat,

— la communication par le franchiseur au franchisé de savoir-faire

et

— la fourniture continue par le franchiseur au franchisé d'une assurance commerciale ou technique pendant la durée de l'accord ;

c) « accords de franchise principale » , un accord par lequel une entreprise, le franchiseur, accorde à une autre, le franchisé principal, en échange d'une compensation financière directe ou indirecte, le droit d'exploiter une franchise en vue de conclure des accords de franchise avec des tiers, les franchisés ;

d) « produits du franchiseur » , des produits fabriqués par le franchiseur ou selon ses instructions et/ou portant le nom ou la marque du franchiseur ;

e) « locaux visés au contrat », les locaux utilisés pour l'exploitation de la franchise ou, lorsque la franchise est exploitée hors de ces locaux, la base à partir de laquelle le franchisé met en œuvre les moyens de transport utilisés pour l'exploitation de la franchise ( moyens de transport visés au contrat ) ;

f) « savoir-faire », un ensemble d'informations pratiques non brevetées, résultant de l'expérience du franchiseur et testées par celui-ci, ensemble qui est secret, substantiel et identifié ;

g) « secret », le fait que le savoir-faire, dans son ensemble ou dans la configuration et l'assemblage précis de ses composants, ne soit pas généralement connu ou facilement accessible ; cette notion ne doit pas être comprise au sens étroit, à savoir que chaque composant individuel du savoir-faire doive être totalement inconnu ou impossible à obtenir hors des relations avec le franchiseur ;

(1) JO n° 13 du 21. 2. 1962, p. 204/62.
h) « substantiel », le fait que le savoir-faire doive inclure une information importante pour la vente de produits ou la prestation de services aux utilisateurs finaux, et notamment pour la présentation des produits pour la vente, la transformation des produits en liaison avec la prestation de services, les relations avec la clientèle et la gestion administrative et financière ; le savoir-faire doit être utile pour le franchisé en étant susceptible, à la date de conclusion de l’accord, d’améliorer sa position concurrentielle, en particulier en améliorant ses résultats ou en l’aidant à pénétrer sur un nouveau marché.

i) « identifié », le fait que le savoir-faire doive être décrit d’une façon suffisamment complète pour permettre de vérifier qu’il remplit les conditions de secret et de substantielité ; la description du savoir-faire peut être faite dans l’accord de franchise, dans un document séparé ou sous toute autre forme appropriée.

Article 2

L’exemption prévue à l’article 1er s’applique aux restrictions de concurrence suivantes :

a) l’obligation pour le franchisseur de ne pas, dans une partie définie du marché commun, le territoire visé au contrat, — donner le droit d’exploiter tout ou partie de la franchise à des tiers.

b) l’obligation pour le franchisé principal de ne pas conclure de contrats de franchise avec des tiers hors du territoire visé au contrat.

c) l’obligation pour le franchisé de n’exploiter la franchise qu’à partir des locaux visés au contrat.

d) l’obligation pour le franchisé de s’abstenir de rechercher des clients hors du territoire visé au contrat pour les produits ou services qui font l’objet de la franchise.

e) l’obligation pour le franchisé de ne pas fabriquer, vendre ou utiliser dans le cadre de la prestation de services des produits concurrents des produits du franchisé qui font l’objet de la franchise ; lorsque l’objet de la franchise est de vendre ou d’utiliser dans le cadre de la prestation de services à la fois certains produits et des pièces de rechange ou accessoires de ceux-ci, cette obligation ne peut pas être imposée en ce qui concerne ces pièces de rechange ou accessoires.

Article 3

1. Les obligations suivantes imposées au franchisé ne font pas obstacle à l’application de l’article 1er, dans la mesure où elles sont nécessaires pour protéger les droits de propriété industrielle ou intellectuelle du franchisseur ou pour maintenir l’identité commune et la réputation du réseau franchisé :

a) vendre, ou utiliser dans le cadre de la prestation de services, exclusivement des produits répondant aux spécifications objectives minimales de qualité fixées par le franchisseur ;

b) vendre ou utiliser dans le cadre de la prestation de services, des produits fabriqués seulement par le franchisseur ou par des tiers désignés par lui, lorsqu’il n’est pas possible en pratique, en raison de la nature des produits qui font l’objet de la franchise, d’appliquer des spécifications objectives de qualité ;

c) ne pas exercer, directement ou indirectement, une activité commerciale similaire dans un territoire où il concurrencerait un membre du réseau franchisé, y compris le franchisseur ; cette obligation peut être imposée au franchisé après la fin de l’accord pour une période raisonnable n’excédant pas un an, dans le territoire où il a exploité la franchise ;

d) ne pas acquérir de participations financières dans le capital d’une entreprise concurrente qui donneraient au franchisé le pouvoir d’influencer le comportement économique d’une telle entreprise ;

e) ne vendre les produits qui font l’objet de la franchise qu’aux utilisateurs finaux, aux autres franchisés, et aux revendeurs appartenant à d’autres canaux de distribution qui sont approvisionnés par le fabricant de ces produits ou avec son consentement ;

f) commercialiser les produits ou prestes les services faisant l’objet de la franchise au mieux de ses possibilités ; offrir à la vente un assortiment minimal de produits, réaliser un chiffre d’affaires minimal, planifier ses commandes à l’avance, détenir un stock minimal et assurer le service à la clientèle et la garantie ;

2. Les obligations suivantes imposées au franchisé ne font pas obstacle à l’application de l’article 1er :

a) ne pas divulguer le savoir-faire fourni par le franchisseur ; cette obligation peut être imposée au franchisé après l’expiration de l’accord ;

b) communiquer au franchisseur toute expérience acquise dans le cadre de l’exploitation de la franchise et lui accorder, ainsi qu’aux autres franchisés, une licence non exclusive pour le savoir-faire résultant de cette expérience ;
Article 5

L'exemption prévue à l'article 1er ne s'applique pas lorsque :

a) des entreprises fabriquant des produits ou prenant des services, qui sont identiques ou considérés comme similaires par les utilisateurs en raison de leurs propriétés, de leur prix et de leur usage, concluent entre elles des accords de franchise concernant ces produits ou services ;

b) sans préjudice de l'article 2 point e) et de l'article 3 paragraphe 1 point b), le franchisseur est empêché de s'approprier en produits de qualité équivalente à ceux qui lui sont proposés par le franchisseur ;

c) sans préjudice de l'article 2 point e), le franchisseur est tenu de vendre ou d'utiliser dans le cadre de la prestatio

Article 4

L'exemption prévue à l'article 1er s'applique à condition que :

a) le franchisé soit libre d'acheter les produits faisant l'objet de la franchise aux autres franchisés ; en cas de distribution parallèle par un autre réseau de distributeurs agréés, le franchisé doit être libre de s'approvisionner auprès de ceux-ci ;

b) si le franchisseur impose au franchisé d'assurer une garantie pour les produits du franchisseur, cette obligation s'applique en ce qui concerne les produits vendus dans le marché commun par d'autres membres du réseau franchisé ou par d'autres distributeurs qui donnent une garantie similaire ;

c) le franchisé est tenu d'indiquer sa qualité de commerçant indépendant ; cette indication doit cependant ne pas interférer en l'identité commune du réseau franchisé qui résulte en particulier de l'utilisation d'un nom ou d'une enseigne identiques et de l'apparence uniforme des locaux et moyens de transport visés au contrat.
2. Le délai de six mois court à partir du jour où la notification est reçue par la Commission. Toutefois, lorsque la notification est envoyée par lettre recommandée, ce délai court à partir de la date indiquée par le cachet de la poste du lieu d'expédition.

3. Le paragraphe 1 ne s'applique que si :
   a) la notification ou une communication l'accompagnant se réfèrent expressément au présent article et que
   b) les renseignements à fournir lors de la notification sont complets et conformes aux faits.

4. En ce qui concerne les accords déjà notifiés lors de l'entrée en vigueur du présent règlement, les dispositions du paragraphe 1 peuvent être invoquées dans une communication à la Commission se référant expressément au présent article et à la notification. Les dispositions du paragraphe 2 et du paragraphe 3 point b) sont applicables mutatis mutandis.

5. La Commission peut faire opposition à l'exemption. Elle fait opposition lorsqu'un État membre en fait la demande dans un délai de trois mois à compter de la date de la transmission à l'État membre de la notification visée au paragraphe 1 ou de la communication visée au paragraphe 4. Cette demande doit être fondée sur des considérations relatives aux règles de concurrence du marché.

6. La Commission peut lever l'opposition à l'exemption à tout moment. Toutefois, lorsque l'opposition résulte de la demande d'un État membre et que celui-ci la maintient, elle ne peut être levée qu'après consultation du comité consultatif en matière d'ententes et de positions dominantes.

7. Si l'opposition est levée parce que les entreprises ont démontré que les conditions prévues à l'article 85 paragraphe 3 sont remplies, l'exemption prend effet à la date de la notification.

8. Si l'opposition est levée parce que les entreprises intéressées ont modifié l'accord de manière à remplir les conditions de l'article 85 paragraphe 3, l'exemption prend effet à compter de la date à laquelle les modifications entrent en vigueur.

9. Si la Commission fait opposition et que celle-ci n'est pas levée, les effets de la notification sont régis par les dispositions du règlement n° 17.

Article 7

1. Les informations recueillies en application de l'article 6 ne peuvent être utilisées qu'aux fins visées par le présent règlement.

2. La Commission et les autorités des États membres ainsi que leurs fonctionnaires et autres agents sont tenus de ne pas divulguer les informations qu'ils ont recueillies en application du présent règlement et qui, de par leur nature, sont couvertes par le secret professionnel.

3. Les dispositions des paragraphes 1 et 2 ne s'opposent pas à la publication de renseignements généraux ou d'études ne comportant pas d'indications individuelles sur les entreprises ou associations d'entreprises.

Article 8

Conformément à l'article 7 du règlement n° 19/65/CEE, la Commission peut retirer le bénéfice de l'application du présent règlement si elle constate que, dans un cas déterminé, un accord exempté en application du présent règlement a cependant certains effets qui sont incompatibles avec les conditions prévues à l'article 85 paragraphe 3 du traité notamment lorsqu'une exclusivité territoriale est concédée au franchisé et que :
   a) l'accès au marché est en cause, ou la concurrence sur celui-ci est restreinte de façon significative par l'effet cumulatif de réseaux parallèles d'accords similaires établis par des producteurs ou distributeurs concurrents;
   b) les produits ou services faisant l'objet de la franchise ne sont pas soumis, dans une partie substantielle du marché commun, à la concurrence effective de produits ou de services identiques ou considérés par l'utilisateur comme similaires en raison de leurs propriétés, de leurs prix et de leur usage;
   c) les parties, ou l'une d'entre elles, empêchent les utilisateurs finaux, en raison de leur lieu de résidence, d'obtenir dans le marché commun, directement ou par des intermédiaires, les produits ou services faisant l'objet de la franchise, ou utilisent les différences de spécifications concernant ces produits ou services dans les différents États membres pour cloisonner les marchés;
   d) les franchisés réalisent des pratiques concertées en ce qui concerne les prix de vente des produits ou services qui font l'objet de la franchise;
   e) le franchisseur utilise son droit d'examiner les locaux et moyens de transport visés au contrat, ou refuse son accord à une demande du franchisé de déplacer les locaux visés au contrat ou de céder ses droits et obligations au titre de l'accord de franchise, pour d'autres motifs que de protéger ses droits de propriété industrielle ou intellectuelle, de maintenir l'identité commune et la réputation du réseau franchisé ou de vérifier si le franchisé respecte ses obligations au titre dudit accord.

Article 9

Le présent règlement entre en vigueur le 1er février 1989.

Il est applicable jusqu'au 31 décembre 1999.
Le présent règlement est obligatoire dans tous ses éléments et directement applicable dans tout État membre.

Fait à Bruxelles, le 30 novembre 1988.

*Par la Commission*

Peter SUTHERLAND

*Membre de la Commission*