OVERVIEW OF FEDERAL AND STATE LAWS REGULATING FRANCHISES, DISTRIBUTORSHIPS, DEALERSHIPS, BUSINESS OPPORTUNITIES AND SALES REPRESENTATIVES (As of March 14, 2012)

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Companies that distribute or sell goods or services at wholesale or retail may find that certain aspects of their method of distribution will be regulated by state or federal laws or regulations. There are a number of laws which control certain aspects of relationships with franchisees, distributors, dealers, sales representatives or purchasers of business opportunities. Because the consequences of not complying with these laws or regulations can be severe, companies that engage in the business of selling goods or services through distribution or sales programs or agreements should evaluate their systems and procedures to determine whether they are in compliance with these laws or regulations.

I. Introduction

There are various laws that could affect the distribution of goods or services. These include: franchise disclosure, registration or notice laws and regulations, business opportunities laws, termination/nonrenewal or relationship laws, and a large number of special industry laws. In addition, there are laws regulating the sales representative relationship.

This overview document will provide the reader with a general introduction to these laws and regulations. It has been prepared as a guide to general issues and concepts, and is not intended to provide specific legal advice nor to be a substitute for direct counsel between attorneys and clients.

II. Franchise Disclosure, Registration or Notice Laws

Since 1970, when California enacted the first law, 15 states and the Federal Trade Commission have adopted franchise disclosure, registration or notice laws or regulations. These laws and regulations are designed to supply information to the investor before he/she commits to becoming a franchisee, distributor or dealer.

The disclosure, registration or notice laws and regulations typically are intended to regulate true franchise operations. These are often called “uniform business format” franchises or “package” franchises, such as those sold by McDonald’s, Midas, Subway, Burger King, etc. They are characterized by a prescribed method of marketing products or services through readily identifiable outlets using the franchisor’s known and promoted trademark or trade name. The definitions of “franchise” used in these laws vary somewhat, however, and can apply to businesses that sell their goods or services to selected wholesalers or retailers, often called “selective distribution” or “product franchise” arrangements, if all the elements of the statutory definition are met.

The most significant revision in franchise law history occurred as of July 1, 2007, when the Federal Trade Commission’s (**“FTC”**) amended version of its FTC Franchise Rule became effective (**“Amended FTC Franchise Rule”**). The Amended FTC Franchise Rule became mandatory on July 1, 2008, by which date all franchisors had to convert to the Amended FTC Franchise Rule format.

Amended FTC Franchise Rule - Disclosure

In adopting the Amended FTC Franchise Rule, the FTC essentially adopted a modified version of the former Uniform Franchise Offering Circular (“**UFOC”**) Guidelines (discussed below) as the FTC franchise disclosure format.

Under the Amended FTC Franchise Rule, “franchise” means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that: (1) the franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark; (2) the franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and (3) as a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate of $500 or more at any time before, to within six months after, commencing operation of the franchisee's business. The Amended FTC Franchise Rule "franchise" definition is broader than the definitions used in many of the state statues discussed below. All three elements must be present to have a franchise; if any one element is missing, there will not be a franchise. The typical selective distribution system is not a franchise because the Amended FTC Franchise Rule explicitly provides that "required payment" does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

The Amended FTC Franchise Rule has a number of new exemptions and the timing requirements have been simplified. A franchisor now must disclose in detail to franchisees information in 23 categories before the sale is consummated. Franchisors have to disclose with a Franchise Disclosure Document ("**FDD**") 14 calendar-days prior to the prospect signing any agreement or paying any consideration, and a franchisor will have to give execution copies of the franchise agreement to the prospective franchisee 7 calendar-days prior to signing but only where the franchisor made changes in the document not initiated by the franchisee. Updating is required 120 days after the franchisor's fiscal year end, and quarterly updates must be made of any material changes to the information disclosed in the FDD. The FTC permits electronic disclosure. Note: some of the states discussed below have different disclosure and updating requirements.

Failure to comply with the Amended FTC Franchise Rule is a violation of Section 5 of the FTC Act, subjecting violators to civil penalties of up to $16,000 per violation. The Amended FTC Franchise Rule does not provide a private right of action to a franchisee. However, in several states, franchisees have successfully sued franchisors for rescission or damages under the state's "Little FTC Act" (deceptive trade practices act) for violation of the original FTC Franchise Rule.

State Registration and Disclosure Laws - Registration and Disclosure

The following 15 states have disclosure, registration and/or notice laws regulating franchise sales: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Oregon, Rhode Island, South Dakota, Virginia, Washington and Wisconsin. The Amended FTC Franchise Rule does not preempt the state disclosure laws, except to the extent that the state laws are inconsistent. All of these states require that a disclosure document be provided to a prospective franchisee prior to sale. That disclosure document now must be in the FTC FDD format. Except for Oregon, all of these states also require the franchisor to be registered with the state authorities before selling a franchise. However, Michigan only requires that a notice be filed with the state authorities, and Hawaii, Indiana, South Dakota and Wisconsin only require filing of an application package and the FDD with the state. Oregon only requires that a FDD that complies with the Amended FTC Franchise Rule be given to a prospective franchisee.

Although these laws vary somewhat in how they define "franchise," the California Franchise Investment Law definition is typical of the statutes in many of the other states. That definition specifies that to have a "franchise," there must be an oral or written contract agreement by which: (1) the 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 in substantial part by the franchisor; (2) 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, etc, or other commercial symbol; and (3) the franchisee is required to pay, directly or indirectly, a franchise fee. In Illinois, Rhode Island, Washington and Wisconsin, the marketing plan can be prescribed or suggested. All three elements must be present to have a franchise; if any one element is missing, there will not be a franchise.

Generally, to have a prescribed (or suggested) marketing plan or system, the franchisor must direct or suggest to the franchisee how to sell the goods or services to the public. In most cases, the franchisor provides the franchisee with an operating manual setting forth the details of the plan or system.

A prescribed (or suggested) marketing plan or system can be found in a business relationship even in the absence of a manual, based on combinations of the following types of elements: prescribing of exclusive territories, requiring mandatory training, retaining or exercising approval over sales personnel, providing product information and sales strategies, promising support in marketing, training, advertising and promotion, and prescribing sales quotas.

Two states, Hawaii and Minnesota, substitute the requirement that there be a "community of interest" in the marketing of the seller's goods or services for the marketing plan element. It is generally easier to find a community of interest and thus to have a "franchise" in those jurisdictions.

With respect to trademark association, while most of these states require that the business be associated with the alleged franchisor's mark, some states will find trademark association sufficient to meet the franchise definition threshold to exist where a manufacturer or distributor sells a trademarked product and is provided sales materials which bear the mark.

A franchise fee generally is any fee or charge, including up-front payments or subsequent royalties, required purchases, advertising fees or other fees, that the franchisee is required to pay directly or indirectly for the right to enter into the business. It includes hidden charges, such as equipment which the franchisee may be required to purchase. However, the purchase of goods (not services) at a bona fide wholesale price in a quantity which a reasonable businessman normally would purchase by way of a starting and ongoing inventory is usually exempted from the franchise fee definition. It is the absence of a fee requirement in the business relationship that exempts most companies which sell through distributorships from being covered by these laws.

The New York Franchises Law has two alternative definitions of "franchise" and does not require both a marketing plan and trademark association. If either element is present, along with a franchise fee payment, a franchise will exist for purposes of the New York law.

South Dakota adopted the Amended FTC Franchise Rule definition of "franchise" (and most of the other provisions of the Amended FTC Franchise Rule) as of July 1, 2008.

All of the state disclosure laws require the franchisor to provide each prospective franchisee with a disclosure document or offering circular setting forth detailed information about the franchisor and the proposed franchised business. All of the registration states now can only accept an FDD prepared under the Amended FTC Franchise Rule format, but under the North American Securities Administrator's ("**NASAA**") Guidelines, there must be a supplemental state cover page.

In all of these states except Hawaii, Indiana, Michigan, Oregon, South Dakota and Wisconsin, the requisite disclosure document must be filed with and approved by the state authorities before it can be used and before an offer of a franchise can be made. These laws vary in what sales they cover, but many cover not only sales to residents in the state or for a franchise to be located in the state, but to any sale made from the state.

There has been a trend in recent years for some of the states to simplify the registration process. By statutory amendment, Indiana and South Dakota now only require that the FDD and NASAA application forms be filed with the state, with registration being effective on filing. Hawaii by administrative action now makes all filings effective 7 days after receipt of the FDD and application package. However, franchisors should not be surprised to receive comments from Hawaii or South Dakota because they do make a general review of the FDD.

In 1998, the Illinois Franchise Disclosure Act of 1987 was amended to simplify the registration renewal process. Illinois is in the unique position of being a notice filing state for renewals or amendments, but not for initial filings which are still subject to a registration and review process. However, the state still reviews the annual filing, sometimes many months after it is filed. Effective as of October 1, 2009, Illinois amended its franchise laws to make them consistent with the Amended FTC Franchise Rule and to make other revisions.

Typically, the state registrations are effective until a certain time after the end of the current fiscal year or for a period of one year, and must be updated within a certain time period after the franchisor's fiscal year end or before the expiration date of the current registration. All of the states require prompt modifications of the disclosure document whenever a material change occurs in the information set forth in the document.

It is typically unlawful to make untrue statements or false representations in the disclosure documents. These statutes usually give the franchisee the right to sue for damages and/or rescission if the law is violated. The franchisee can seek damages or injunctive relief and usually can recover his/her attorneys' fees. In some states, a willful violation of the law can also subject the franchisor to criminal penalties.

State laws in New York and Washington require registration of franchise brokers, *i.e.,* third parties who participate in the franchise sale. New York is a one time filing, but Washington requires annual renewals of broker registrations. Seven of the registration states require the franchisor to file advertisements for sale of franchises with the state authorities prior to sale.

Because the FTC declined to preempt state disclosure requirements, the Amended FTC Franchise Rule does not bring uniformity to disclosure practice. Some of the states still have different timing requirements for disclosure than does the Amended FTC Franchise Rule. There are four state exceptions to the Amended FTC Franchise Rule delivery requirements. In Michigan and Washington, the Franchise Disclosure Document has to be given at least 10 BUSINESS days before the franchisee (or developer) executes any binding agreement or pays any consideration. In New York and Rhode Island, the franchisor must deliver a Franchise Disclosure Document to each prospective franchisee at the earlier of the first personal meeting or 10 BUSINESS days before signing any binding agreements or paying any money. Hopefully those states some day will conform their disclosure timing requirements to match the 14 calendar-day disclosure requirement of the Amended FTC Franchise Rule.

Franchise Law Exemptions and Exclusions

The Amended FTC Franchise Rule and the various state franchise disclosure laws exempt or exclude certain relationships from the definition of franchise. The original FTC Franchise Rule, for example, exempted fractional franchises and excluded cooperatives, general partnerships and single trademark licenses. The Amended FTC Franchise Rule adds several additional exemptions, including three sophisticated investor exemptions, although it no longer includes the former exclusions because the FTC thought they were not necessary. The state laws vary, but some exempt cooperatives and fractional franchises, and the majority exempt large franchisors with a substantial net worth. The fact that a state or federal exemption exists may not obviate the need to provide a disclosure document unless all applicable jurisdictions have similar exemptions.

State Representation Law

Florida has a law which makes it unlawful for a franchisor to make misrepresentations to prospective franchisees about the prospects or chances of success, the required total investment, or efforts to sell more franchises than the market can sustain.

III. Business Opportunity Laws

Twenty-five states and the FTC have adopted so-called business opportunity laws or sellerassisted marketing plan laws. These laws other jurisdictions cover these types of arrangements in their consumer protection laws. These laws are often misdescribed as distributorship laws. They are designed to protect innocent investors from being lured on the basis of false or misstated information into buying a business to sell goods or services at retail using racks or vending machines at locations procured by the seller, such as greeting card displays, candy machines and the like, or entering into questionable business ventures, such as worm or mink farming. However, if a seller offers a marketing plan to start a business, or makes certain enumerated representations in connection with the sale of the business opportunity, these laws are likely to apply to the relationship. Trademark association is not required.

State Business Opportunity Laws - Registration and Disclosure

The following states have business opportunity laws: Alaska, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia and Washington. The following jurisdictions have consumer protection laws that cover business opportunities: Alabama, District of Columbia and Tennessee. As of the date this memorandum was updated, a bill is pending in the Arizona legislature to enact a business opportunity law.

The definitions used in the state business opportunity laws vary considerably and there is no uniformity in the definitions. The Illinois Business Opportunities Sales Law of 1995, for example, defines a “business opportunity” as a written or oral contract or agreement whereby the seller provides products, equipment, supplies or services to enable the purchaser to start a business where the purchaser is required to pay more than $500 and in which the seller represents that he/she will either: (1) provide locations or assist the purchaser in finding locations to install vending machines, racks, display cases or similar devices on another person’s property; or (2) provide or assist the purchaser in finding outlets or accounts for the purchaser’s products or services; or (3) buy all the products made, produced, fabricated, grown, bred or modified by the purchaser using the supplies or services sold to the purchaser; or (4) guarantee that the purchaser will derive income which exceeds the price paid; or (5) refund all or part of the purchase price or repurchase the goods sold if the purchaser is dissatisfied with the business; or (6) provide a marketing plan, provided that the law does not apply to sale of a marketing plan made in conjunction with a federally registered trademark.

The 25 state business opportunities laws generally require the seller to file or register with the state and to disclose certain specified information to the purchaser prior to the time the purchaser pays any money. The seller usually must be able to substantiate by documentation any earnings claimed. Some states require the seller to post a bond or register with state authorities. If the seller violates these laws, the purchaser can void the contract and obtain a refund of the purchase price paid. In most states, the injured purchaser can also sue for injunctive relief and/or damages and usually can recover attorney’s fees. The states each have their own form of disclosure document, but most will allow a business opportunity seller to use the FTC disclosure document. The state disclosure documents are usually simpler, but do not provide uniformity that would result from using the FTC disclosure document format.

Most state business opportunity laws can apply to certain types of franchise programs because of the existence of the sale of a marketing program or sales program. Generally, however, franchisors with federally registered trademarks or service marks or those that comply with the FTC Franchise Rule or local franchise disclosure laws are exempt from the state business opportunities laws. However, the exemption may not apply if the franchisor makes earnings claims in connection with its offering or offers to refund the buyer’s money if the buyer is dissatisfied with the business opportunity. In several states — Florida, Kentucky, Nebraska, Texas and Utah — it is necessary for a franchisor to file a notice of exemption to avoid application of the business opportunities laws. In Connecticut, if the seller’s trademark or service mark was registered after October 1, 1996, a copy of the trademark must be filed with the state to claim the exemption.

In addition, some of the state business opportunity laws exempt franchises from coverage only if a Franchise Disclosure Document is delivered a certain time period prior to taking money or signing contracts.

Original FTC Business Opportunity Regulation - Disclosure

Until February 29, 2012, the original FTC Trade Regulation Rule on Franchising and Business Opportunity Ventures (**"Original FTC Bus Op Rule"**) also regulated such business opportunity operations and did not preempt the state business opportunity laws except to the extent that the disclosures required to be made may be inconsistent. Unlike its franchise definition, the Original FTC Bus Op Rule definition of business opportunity is more limited in scope than the state definitions. The Original FTC Bus Op Rule applied when there is a continuing commercial relationship whereby (i) a seller, defined as a "franchisor", sells goods, commodities or services which are either supplied by the franchisor or by another person with whom the franchisee is required or advised to do business; (2) secures for the franchisee retail outlets or accounts for the goods, or locations or sites for vending machines, rack displays or other product sales displays, provides the services of a person to secure those outlets or sites; and (3) requires the payment of $500 or more within six months after the business is commenced as a condition of obtaining or commencing the operation. Again, all three elements must be present. Also, voluntary purchases of reasonable amounts of inventory at a bona fide wholesale price for resale did not count toward the payment amount.

The Original FTC Bus Op Rule, which applied in all states and U.S. territories and possessions, requires the seller to provide a disclosure document to the purchaser prior to the time the sale is consummated. The disclosure document is the same one originally required of franchise sellers. It was not filed with the FTC. It was an unfair or deceptive act or practice under Section 5 of the FTC Act to fail to furnish the information.

As of March 1, 2012, the FTC promulgated a revised business opportunity trade regulation rule (**"Revised FTC Bus. Op Rule"**). The Revised FTC Bus Op expanded the definition of "business opportunity" but streamlined the pre-sale disclosures, prohibited many misrepresentatives and other misleading practices, and required disclosures be provided in the same language as the offer being made (*e.g.*, Spanish).

A "business opportunity" is a commercial arrangement where (1) a seller solicits a prospective purchaser to enter into a new business, and (2) the prospective purchase makes a payment, and (3) the seller represents that seller or a designated person will either (i) provide locations for use or operation of equipment, displays, vending machines or similar devices, owned, leased or controlled, or paid for by the purchaser; or (ii) will provide outlets, accounts, or customers, including but not limited to Internet outlets, accounts or customers, for the purchaser's goods or services; or (iii) buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies or provides, including but not limited to providing payment for such services, such as stuffing envelopes from the purchaser's home. The FTC says this definition extends coverage to some types of business opportunities not previously covered, continues to cover those previously covered, and avoids broadly sweeping multi-level marketers and certain other arrangements into coverage.

Under the FTC's streamlined disclosure requirements, the seller has to disclose 7 calendar days before the purchaser signs any contract or makes a payment or provides other consideration to the seller using a prescribed one page disclosure document in English, Spanish or other language in which the offer was made. The one page form calls for certain seller identifying information, and a "yes" or "no" answer regarding legal actions, cancellation or refund policies, and earnings claims, plus a reference to 10 people who have previously purchased a business opportunity from the seller. If a "yes" answer is given to any of the three questions, a supplemental list or statement must be attached to the form describing those matters.

Franchise sellers are not covered by the Revised FTC Bus Op Rule unless they were exempted from the Amended FTC Franchise Rule because the initial payment in the first 6 months was less than $500.

More importantly, state bus op laws are not preempted except to the extent of any conflict with the Revised FTC Bus Op Rule. As a consequence, a bus op seller will have to give a prospective purchaser both the FTC Bus Op disclosure form and any required state bus op disclosure form.

The state and FTC business opportunity laws are intended to protect individuals from being fraudulently induced to invest their money in get-rich-quick schemes. The definitions used in these laws are such that they probably would not apply to the kind of selective distribution agreements which a manufacturer of goods would use to distribute its goods through selected wholesalers or retailers. However, if a marketing plan is involved or certain representations are made in connection with the sale, the seller should review the applicability of the state bus op laws in particular.

IV. Termination/Nonrenewal or Relationship Laws

There are 24 states, plus two U.S. territories, that have passed laws which in one way or another regulate some aspect of the relationship between franchisors and their franchisees, particularly with respect to the termination or nonrenewal of the relationship, and 2 other states that regulate the distributorship relationship.

The jurisdictions with relationship laws include: Alaska, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin, Puerto Rico and the Virgin Islands.

The scope of coverage of these laws varies considerably. Some of the earliest state laws passed, and the laws of Puerto Rico and the Virgin Islands, apply generally to just about every selective distribution relationship, including franchises. However, many of the more recently adopted laws often use a definition of “franchise” similar to that used in the franchise disclosure laws and thus would not apply to the typical distribution arrangement. Each state’s definition must be examined to determine its scope of coverage.

For example, the California Franchise Relations Act uses the same definition of “franchise” used in its franchise registration and disclosure law. In Illinois, the relationship law is physically incorporated into the Illinois Franchise Disclosure Act of 1987, so the same definition applies. As a result, these laws would apply to the typical uniform business format or package franchise, but would not apply to the typical distribution agreement if the seller does not require a fee to be paid by the distributor. The Arkansas Franchise Practices Act requires the agreement to have an “exclusive territory” in order for there to be coverage.

On the other hand, Connecticut, Missouri, Mississippi, New Jersey, Rhode Island and Wisconsin have laws of broad applicability, as do Puerto Rico and the Virgin Islands. For example, the Connecticut Franchises law covers “franchises”, which are defined as a franchisee being granted the right to offer, sell or distribute goods or services under a marketing plan or system prescribed in substantial part by a franchisor, and the operation of the business pursuant to the plan is substantially associated with the franchisor’s mark or trade name. No fee is required.

The New Jersey Franchise Practices Act covers “franchises,” which are defined as written arrangements in which one person grants to another person a license to use a trade name, trademark, etc., and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease agreement or otherwise. However, the Act applies only to a franchise which contemplates or requires a place of business in New Jersey, where gross sales of the products or services covered by the franchise exceed $35,000 for the prior 12 months, and where more than 20% of the franchisee’s gross sales are derived from the franchise.

The Wisconsin Fair Dealership Law and the Rhode Island Fair Dealership Act apply to “dealerships,” which are defined as expressed or implied agreements, oral or written, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, etc., in which there is a community of interest in the business of selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise. These laws have been held to apply to many typical authorized dealer or selected wholesaler or distributor relationships as well as franchises.

The Alaska law regulates the relationship between a distributor (defined as a wholesaler, manufacturer and related entities who provide merchandise or services to a dealer) and a dealer, and the Maryland law covers grantors and their distributors (persons whose primary business is the wholesale distribution of commercial goods for resale who maintain an inventory).

The termination/nonrenewal and relationship laws vary considerably in the subject areas regulated. Many of the laws deal with the relationship between the franchisor and franchisee during the term of the agreement, and cover matters such as the right of the franchisee to associate with other franchisees of the franchisor, competition by the franchisor, and a ban on discriminatory treatment.

Some of the laws, such as the Missouri and Mississippi statutes, which have very inclusive definitions of what constitutes a "franchise," only require 90 days notice to cancel, terminate or fail to renew a franchise. Most of these laws, however, including those in Connecticut, New Jersey, Rhode Island and Wisconsin, deal with the ability of the seller/manufacturer/franchisor to end the relationship with the distributor/dealer/franchisee. Typically, the agreement can only be terminated or not renewed for "good cause," as that term is defined in the statute. There usually must be notice given within a specified time before the termination, cancellation or nonrenewal takes place; for example, 90 days in Wisconsin, and 60 days in Connecticut and New Jersey. In California, the notice period is 30 days for termination and 180 days for nonrenewal. In Wisconsin and Rhode Island, the notice requirements also apply to a substantial change in the competitive circumstances of the agreement. Often, the distributor/dealer/franchisee must be given the right to cure the alleged deficiency. The Rhode Island law adopted in 2007 is largely a copy of the Wisconsin law, but confusingly contains a definition of "good cause" that is not otherwise used in the statute.

There is also often a provision requiring the franchisor to repurchase the franchisee's inventory, if the termination actually takes place, at a price specified in the statute, such as "fair wholesale market value." Some laws also permit the heirs of the franchisee to inherit the agreement and continue the relationship indefinitely. Under the California law, a franchisee who has received a notice of nonrenewal has the right to sell his business to a person meeting the franchisor's current requirements.

If the agreement is terminated by the franchisor without complying with these laws, the franchisee is usually given the right to sue for damages and/or injunctive relief and generally can recover his/her attorneys' fees in addition. The net effect of some of these laws often means that the relationship will exist for as long as the franchisee (and his/her heirs) may want, as long as they continue to comply with the terms of the franchise or distribution agreement until the agreement expires of its own force without renewal rights.

Some of more recent laws have quite narrow focuses. For example, the Idaho law simply provides that any condition, stipulation or provision in a franchise agreement that purports to waive venue or jurisdiction in that state's court system is void, but the law allows the franchise agreement to make a choice of law.

Efforts have been made several times over the years to adopt a federal relationship law. In fact, bills have been introduced and hearings held in Congress frequently. The definition used in most of those proposed federal bills has been broad enough to regulate most franchising and many selective distribution arrangements. No bill has passed Congress so far because of substantial opposition from the industry and many franchisees.

Greensfelder has prepared a summary of these state relationship laws entitled "State Relationship Laws Definitional Elements and Coverage", which is available upon request.

V. Special Industry laws

There are also laws that relate to specific industries, such as wholesalers or dealers selling motor vehicles, petroleum products, farm and industrial equipment lawn and garden equipment, outdoor power equipment, hotels, campgrounds, marine products, or liquor, wine or beer.

A number of states have adopted disclosure laws or regulations regulating only certain specified industries. Some of those industries and the number of states with such laws are as follows: gasoline station operations (10), automobile dealerships (2), hardware distributors (1) and real estate (1). There are also 4 states which do not have franchise disclosure laws, but have general statutes prohibiting misrepresentations when selling a franchise.

There are also a number of specific termination/nonrenewal or relationship laws relating to particular industries. For example, Missouri has a law relating only to campground franchises. Automobile dealership relationships are regulated by the Federal Automobile Dealer Franchise Act (often called the "automobile dealer day-in-court" law) and 50 separate state laws. Gasoline station operations are covered by the Federal Petroleum Marketing Practices Act and 42 separate state laws.

Farm machinery dealerships are covered by 45 state laws; recreational vehicle dealerships are subject to 5 state laws; and liquor, beer and/or wine distributorship are regulated by 45 state laws.

Some states also have special disclosure or filing requirements that apply to multi-level marketing sellers.

These special industry laws are not discussed in detail in this overview document; however, on request, Greensfelder would be pleased to provide detailed information on them.

VI. Sales Representative Laws

Starting in the mid-1980's, 35 states and Puerto Rico have adopted laws that provide some level of protection to sales representatives who solicit wholesale orders for products. Several states also cover solicitation of services. The states with sales representative laws are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Puerto Rico.

Typically these laws apply (1) to principals who do or do not have a place of business in the state, (2) sell products at wholesale for resale, (3) use sales representatives (typically persons who are independent contractors and not employees) to solicit wholesale orders for these products within that state, and (4) compensate the sales representatives, in whole or in part, by commission. Some recently amended laws cover all orders for products, not just wholesale orders. While most laws apply only to those who solicit orders for products, there is a trend to expand many of these laws to cover solicitation of orders for services. Also, while these laws apply generally to independent contractors, some also apply to employees who solicit orders (e.g., Michigan). Some other states have laws protecting commissioned employees only (e.g., Iowa, Nebraska). Each state's definition must be reviewed.

Some statutes require the contracts to be in writing. Some require the principal to give the sales representative a copy of the contract, and some even require the sales representative to sign a receipt. Some deal with how payments during the term of the contract are to be calculated and/or paid, although generally the terms of a written contract will control. All deal with payment of commissions on termination and generally impose substantial liability (up to two or three times unpaid commissions and attorney's fees and costs) for failure to pay or to pay in a timely manner. Most of the statutes do not directly address the issue of whether they apply to preexisting contracts or only to contracts entered into or renewed after the effective date of the law, but generally they are not applied retroactively.

While the various state sales representative laws follow a general pattern, they differ in scope considerably, and the actual statutory provision must be examined to determine the particular state's requirements. Some jurisdictions, like Minnesota and Puerto Rico, have expansive statutes that require good cause or just cause to terminate a sales representative. Wisconsin requires giving 90 days notice prior to termination, cancellation, non-renewal or substantial change in competitive circumstances.

These sales representative laws are not discussed in detail in this overview document; however, on request, Greensfelder would be pleased to provide detailed information on them.

VII. Observations

A company that sells products or services that are to be resold by others cannot ignore the laws and regulations discussed in this article. A company that fails to comply with these laws or regulations exposes itself, and its officers, directors and other persons engaged in the sales process, to damages, injunctions, rescission orders and civil or criminal penalties.

If your company has not examined its distribution system in light of those laws, we strongly urge you to do so at any early date. A determination can be made rather quickly as to whether or not the franchise disclosure laws or business opportunities laws may cover your agreements. With respect to the termination/nonrenewal or relationship laws, your agreements may have to be revised to take maximum advantage of the laws and a program established as to the appropriate manner by which an agreement can be terminated effectively with minimum risk to the company.

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