
SENATE BILL 5256

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, A. Smith and Newhouse.

Read first time January 25, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to franchise investment protection; amending RCW
2 19.100.010, 19.100.020, 19.100.030, 19.100.040, 19.100.070, 19.100.080,
3 19.100.100, 19.100.140, 19.100.160, 19.100.170, 19.100.180, 19.100.220,
4 and 19.100.240; and adding new sections to chapter 19.100 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 19.100.010 and 1979 c 158 s 83 are each amended to
7 read as follows:

8 When used in this chapter, unless the context otherwise requires:

9 (1) "Advertisement" means any written or printed communication or
10 any communication by means of recorded telephone messages or spoken on
11 radio, television, or similar communication media published in
12 connection with an offer or sale of a franchise.

13 (2) (~~"Community interest" means a continuing financial interest~~
14 ~~between the franchisor and franchisee in the operation of the franchise~~
15 ~~business.~~) "Affiliate" means a person controlling, controlled by, or

1 under common control with another person, every officer or director of
2 such person, and every person occupying a similar status or performing
3 similar functions.

4 (3) "Director" means the director of licensing.

5 (4) "Franchise" means:

6 (a) An ~~((oral or written contract or))~~ agreement, ~~((either~~

7 ~~expressed))~~ express or implied, ~~((in))~~ oral or written, by which:

8 (i) A person ~~((grants to another person, a license to use a trade~~
9 name,)) is granted the right to engage in the business of offering,
10 selling, or distributing goods or services under a marketing plan
11 prescribed or suggested in substantial part by the grantor or its
12 affiliate;

13 (ii) The operation of the business is substantially associated with
14 a trademark, service mark, trade ~~((mark, logotype or related~~
15 characteristic in which there is a community interest in the business
16 of offering, selling, distributing goods or services at wholesale or
17 retail, leasing, or otherwise and in which the franchisee)) name,
18 advertising, or other commercial symbol designating, owned by, or
19 licensed by the grantor or its affiliate; and

20 (iii) The person pays, agrees to pay, or is required to pay,
21 directly or indirectly, a franchise fee(~~(: PROVIDED, That none of~~
22 the)).

23 (b) The following shall not be construed as a franchise within the
24 meaning of this chapter:

25 ~~((a))~~ (i) The payment of a reasonable service charge to the
26 issuer of a credit card by an establishment accepting or honoring such
27 credit card or any transaction relating to a bank credit card plan;

28 ~~((b))~~ (ii) Actions or transactions otherwise permitted,
29 prohibited or regulated under laws administered by the insurance
30 commissioner of this state;

1 (~~(e)~~) (iii) Any motor vehicle dealer franchise subject to the
2 provisions of chapter 46.70 RCW.

3 (5) "Bank credit card plan" means a credit card plan in which the
4 issuer of credit cards (~~(as defined by RCW 9.26A.010(1))~~) is a national
5 bank, state bank, trust company or any other banking institution
6 subject to the supervision of the supervisor of banking of this state
7 or any parent or subsidiary of such bank.

8 (6) "Franchisee" means a person to whom a franchise is offered or
9 granted.

10 (7) "Franchisor" means a person who grants a franchise to another
11 person.

12 (8) (~~("Area franchise" means any contract or agreement between a~~
13 ~~franchisor or subfranchisor whereby the subfranchisor is granted the~~
14 ~~right to)~~) "Subfranchise" means an agreement, express or implied, oral
15 or written, by which a person pays or agrees to pay, directly or
16 indirectly, a franchisor or affiliate for the right to grant, sell or
17 negotiate the sale of (~~(franchises in the name or on behalf of the~~
18 ~~franchisor)~~) a franchise.

19 (9) "Subfranchisor" means a person to whom (~~(an area franchise)~~) a
20 subfranchise is granted.

21 (10) "Franchise broker (~~(or selling agent)~~)" means a person who
22 directly or indirectly engages in the business of the offer or sale of
23 franchises. The term does not include a franchisor, subfranchisor, or
24 their officers, directors, or employees.

25 (11) "Franchise fee" means any fee or charge that a franchisee or
26 subfranchisor is required to pay or agrees to pay for the right to
27 enter into a business or to continue a business under a franchise
28 agreement, including, but not limited to, the payment either in lump
29 sum or by installments of an initial capital investment fee, any fee or
30 charges based upon a percentage of gross or net sales whether or not

1 referred to as royalty fees, any payment for the mandatory purchase of
2 goods or services or any payment for goods or services available only
3 from the franchisor, or any training fees or training school fees or
4 charges; however, the following shall not be considered payment of a
5 franchise fee: (a) the purchase or agreement to purchase goods at a
6 bona fide wholesale price; (b) the purchase or agreement to purchase
7 goods by consignment; if, and only if the proceeds remitted by the
8 franchisee from any such sale shall reflect only the bona fide
9 wholesale price of such goods; (c) a bona fide loan to the franchisee
10 from the franchisor; (d) the purchase or agreement to purchase goods at
11 a bona fide retail price subject to a bona fide commission or
12 compensation plan that in substance reflects only a bona fide wholesale
13 transaction; (e) the purchase or lease or agreement to purchase or
14 lease supplies or fixtures necessary to enter into the business or to
15 continue the business under the franchise agreement at their fair
16 market or rental value; (f) the purchase or lease or agreement to
17 purchase or lease real property necessary to enter into the business or
18 to continue the business under the franchise agreement at the fair
19 market or rental value; (g) amounts paid for trading stamps redeemable
20 in cash only; (h) amounts paid for trading stamps to be used as
21 incentives only and not to be used in, with, or for the sale of any
22 goods.

23 (12) "Person" means a natural person, corporation, partnership,
24 trust, or other entity and in the case of an entity, it shall include
25 any other entity which has a majority interest in such an entity or
26 effectively controls such other entity as well as the individual
27 officers, directors, and other persons in act of control of the
28 activities of each such entity.

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

1 (14) "Sale or sell" includes every contract of sale, contract to
2 sell, or disposition of a franchise.

3 (15) "Offer or offer to sell" includes every attempt or offer to
4 dispose of or solicitation of an offer to buy a franchise or an
5 interest in a franchise.

6 **Sec. 2.** RCW 19.100.020 and 1971 ex.s. c 252 s 2 are each amended
7 to read as follows:

8 (1) It is unlawful for any franchisor or subfranchisor to sell or
9 offer to sell any franchise in this state unless the offer of the
10 franchise has been registered under this chapter or exempted under RCW
11 19.100.030.

12 (2) For the purpose of this section, an offer to sell a franchise
13 is made in this state when: (a) The offer is directed by the offeror
14 into this state from within or outside this state and is received where
15 it is directed, (b) the offer originates from this state and violates
16 the franchise or business opportunity law of the state or foreign
17 jurisdiction into which it is directed, (c) the offeree is a resident
18 of this state, or (d) the franchise business that is the subject of the
19 offer is to be located or operated, wholly or partly, in this state.

20 (3) For the purpose of this section, a sale of any franchise is
21 made in this state when: (a) An offer to sell is accepted in this
22 state, (b) an offer originating from this state is accepted and
23 violates the franchise or business opportunity law of the state or
24 foreign jurisdiction in which it is accepted, (c) the purchaser of the
25 franchise is a resident of this state, or (d) the franchise business
26 that is the subject of the sale is to be located or operated, wholly or
27 partly, in this state.

28 (4) For the purpose of this section, an offer to sell is not made
29 in this state solely because the offer appears: (a) In a newspaper or

1 other publication of general and regular circulation if the publication
2 has had more than two-thirds of its circulation outside this state
3 during the twelve months before the offer is published, or (b) in a
4 broadcast or transmission originating outside this state.

5 **Sec. 3.** RCW 19.100.030 and 1972 ex.s. c 116 s 2 are each amended
6 to read as follows:

7 The registration requirements of this chapter shall not apply to:

8 (1) ~~((A))~~ The offer or sale or transfer of a franchise by a
9 franchisee ((whether voluntary or involuntary if such sale is an
10 isolated sale)) who is not an affiliate of the franchisor for the
11 franchisee's own account if the franchisee's entire franchise is sold
12 and the sale is not effected by or through the franchisor. A sale is
13 not effected by or through a franchisor merely because a franchisor has
14 a right to approve or disapprove the sale or requires payment of a
15 reasonable transfer fee.

16 (2) ~~((Any transaction))~~ The offer or sale of a franchise by an
17 executor, administrator, sheriff, marshal, receiver, trustee in
18 bankruptcy, guardian, ((or)) conservator, or pursuant to a court-
19 approved offer or sale, on behalf of a person other than the franchisor
20 or the estate of the franchisor.

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

27 (4) ~~((Any))~~ The offer or sale of a franchise by a franchisor:

28 (a) Who has ~~((disclosed))~~ delivered in writing to each prospective
29 franchisee, at least ~~((forty-eight hours))~~ ten business days prior to

1 the execution by the prospective franchisee of any binding franchise or
2 other agreement, or at least ~~((forty-eight hours))~~ ten business days
3 prior to the receipt of any consideration, ~~((the following information:~~

4 ~~(i) The name of the franchisor and the name under which the~~
5 ~~franchisor is doing or intends to do business.~~

6 ~~(ii) The franchisor's principal business address and the name and~~
7 ~~address of his agent in the state of Washington authorized to receive~~
8 ~~process.~~

9 ~~(iii) The business form of the franchisor whether corporate,~~
10 ~~partnership, or otherwise.~~

11 ~~(iv) A statement of when, where, and how long the franchisor has:~~

12 ~~(A) Conducted a business of the type to be operated by the~~
13 ~~franchisees;~~

14 ~~(B) Has granted franchises for such business; and~~

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

16 ~~(v) A copy of the typical franchise contract or agreement proposed~~
17 ~~for use including all amendments thereto.~~

18 ~~(vi) A statement of the franchise fee charged, the proposed~~
19 ~~application of the proceeds of such fee by the franchisor, and the~~
20 ~~formula by which the amount of the fee is determined if the fee is not~~
21 ~~the same in all cases; a statement indicating whether and under what~~
22 ~~conditions all or part of the initial franchise fee may be returned to~~
23 ~~the franchisee; and a statement of the estimated total investment to be~~
24 ~~made by the franchisee for:~~

25 ~~(A) The initial franchise fee and other fees, whether payable in~~
26 ~~one sum or in installments;~~

27 ~~(B) Fixed assets other than real property and leases for real~~
28 ~~property, whether or not financed by contract or installment purchase,~~
29 ~~leasing or otherwise;~~

30 ~~(C) Working capital, deposits and prepaid expenses;~~

1 ~~(D) Real property, whether or not financed by contract or~~
2 ~~installment purchase or otherwise, and leases for real property; and~~

3 ~~(E) All other goods and services which the franchisee will be~~
4 ~~required to purchase or lease.~~

5 ~~(vii) A statement describing a payment of fees other than franchise~~
6 ~~fees that the franchisee is required to pay to the franchisor including~~
7 ~~royalties and payments or fees which the franchisor collects in whole~~
8 ~~or in part on behalf of a third party or parties.~~

9 ~~(viii) A statement of the conditions under which the franchise~~
10 ~~agreement may be terminated or renewed or renewal refused.~~

11 ~~(ix) A statement of the conditions under which the franchise may be~~
12 ~~sold, transferred, or assigned.~~

13 ~~(x) A statement of the conditions imposed by the franchisor whether~~
14 ~~by the terms of the franchise agreement or by other device or practice~~
15 ~~whereby the franchisee is required to purchase services, supplies,~~
16 ~~products, fixtures, or other goods relating to the establishment or~~
17 ~~operation of the franchise business from the franchisor or his designee~~
18 ~~together with a statement of whether and of the means by which the~~
19 ~~franchisor derives income from such purchases.~~

20 ~~(xi) A statement of any restriction or condition imposed by the~~
21 ~~franchisor whether by the terms of the franchise agreement or by other~~
22 ~~device or practice whereby the franchisee is limited and/or required in~~
23 ~~the goods or services offered by him.~~

24 ~~(xii) A statement of the terms and conditions of any financing~~
25 ~~arrangements when offered directly or indirectly by the franchisor or~~
26 ~~his agent or affiliate.~~

27 ~~(xiii) A statement of any intent of the franchisor to sell, assign,~~
28 ~~or discount to a third party any note, contract, or other obligation of~~
29 ~~the franchisee in whole or in part.~~

1 ~~(xiv) A copy of any statement of estimated or projected franchisee~~
2 ~~sales or earnings prepared for presentation to prospective franchisees~~
3 ~~or other persons together with a statement immediately following such~~
4 ~~statement setting forth the data upon which the estimations or~~
5 ~~projections are based and explaining clearly the manner and extent to~~
6 ~~which such data relates to the actual operations of businesses~~
7 ~~conducted by the franchisor or its franchisees.~~

8 ~~(xv) A statement of business failures of franchisees, resales to~~
9 ~~the franchisor, sales of the franchise to others, and transfers in the~~
10 ~~state of Washington during the two year period preceding the date of~~
11 ~~the statement.~~

12 ~~(xvi) A statement describing the training program, supervision, and~~
13 ~~assistance the franchisor has and will provide the franchisee.~~

14 ~~(xvii) A statement as to whether or not franchisees are granted a~~
15 ~~specific area or territory within which the franchisor agrees not to~~
16 ~~operate or grant additional franchises for the operation of the~~
17 ~~franchise business or in which the franchisor will operate or grant~~
18 ~~franchises for the operation of no more than a specified number of~~
19 ~~additional franchise businesses.~~

20 ~~(xviii) A list of the names, addresses and telephone numbers of all~~
21 ~~operating franchise businesses under franchise agreement with the~~
22 ~~franchisor located in the state of Washington.~~

23 ~~(xix) A statement explaining the terms and effects of any covenant~~
24 ~~not to compete which is or will be included in the franchise or other~~
25 ~~agreement to be executed by the franchisee.~~

26 ~~(xx) A statement setting forth such additional information and such~~
27 ~~comments and explanations relative to the information contained in the~~
28 ~~disclosure statement as the franchisor may desire to present))~~
29 ~~whichever occurs first, an offering circular complying with guidelines~~
30 ~~adopted by rule of the director. The director shall be guided in~~

1 adopting such a rule by the guidelines for the preparation of the
2 Uniform Franchise Offering Circular adopted by the North American
3 Securities Administrators Association, Inc., or its successor, as such
4 guidelines may be revised from time to time; and

5 (b) Who either:

6 (i) (A) Has a net worth on a consolidated basis, according to its
7 most recent audited financial statement, of not less than five million
8 dollars or who has a net worth, according to its most recent audited
9 financial statement, of not less than one million dollars and is at
10 least eighty percent owned by a corporation which has a net worth on a
11 consolidated basis, according to its most recent audited financial
12 statement, of not less than five million dollars; and

13 (B) Has had at least twenty-five franchisees conducting business at
14 all times during the five-year period immediately preceding the offer
15 or sale or has conducted business which is the subject of the franchise
16 continuously for not less than five years preceding the offer or sale
17 or if any corporation which owns at least eighty percent of the
18 franchisor, has had at least twenty-five (~~franchises~~ {franchisees})
19 franchisees conducting business at all times during the five-year
20 period immediately preceding the offer or sale or such corporation has
21 conducted business which is the subject of the franchise continuously
22 for not less than five years preceding the offer or sale; and

23 (C) Requires an initial investment by the franchisee of more than
24 one hundred thousand dollars; and

25 (D) Files annually with the director a statement prescribed by rule
26 of the director giving notice of such claim, and pays a filing fee as
27 set forth in RCW 19.100.240; or

28 (ii) (A) Has ((and is offering for sale fewer than ten franchises))
29 no outstanding franchises granted for businesses located or to be
30 located outside the state of Washington; and

1 (B) Has granted and grants no more than three franchises for
2 franchise businesses to be situated within the state of Washington
3 ((under franchise agreement)); and

4 ~~((B) does not advertise, using radio, television, newspaper,~~
5 ~~magazine, billboard, or other advertising medium the principal office~~
6 ~~of which is located in the state of Washington or Oregon, concerning~~
7 ~~the sale of or offer to sell franchises)); and~~

8 (C) Does not publish an advertisement or engage in general
9 solicitation for the franchise offering; and

10 (D) The buyer is represented or advised in the transaction by
11 independent legal counsel or certified public accountant; or

12 (iii) ~~((A))~~ Does not charge a franchise fee, as defined in RCW
13 19.100.010(11), in excess of ((fifteen)) five hundred dollars ((per
14 year, and

15 ~~(B) does not advertise, using radio, television, newspaper,~~
16 ~~magazine, billboard, or other advertising medium, the principal office~~
17 ~~of which is located in the state of Washington or Oregon, concerning~~
18 ~~the sale of or offer to sell franchises)); and~~

19 (c) Who has not been found by a court of competent jurisdiction to
20 have been in violation of this chapter, chapter 19.86 RCW, or any of
21 the various federal statutes dealing with the same or similar matters,
22 within seven years of any sale or offer to sell franchise business
23 under franchise agreement in the state of Washington.

24 (5) ~~((Neither the registration requirements nor the provisions of~~
25 ~~RCW 19.100.180(2), as now or hereafter amended, shall apply to any~~
26 ~~franchisor;~~

27 ~~(a) Who meets the tests and requirements set forth in subsections~~
28 ~~(4)(a), (4)(b)(i)(A), 4(b)(i)(B), and 4(c) of this section; and~~

1 ~~(b) Who is engaged in the business of renting or leasing motor~~
2 ~~vehicles through an interdependent system of direct and franchised~~
3 ~~operations in interstate commerce in twenty or more states; and~~

4 ~~(c) Who is subject to the jurisdiction of the federal trade~~
5 ~~commission and the federal anti-trust laws.~~

6 ~~Any franchisor or subfranchisor who claims an exemption under~~
7 ~~subsection 4(a) and 4(b)(i) of this section shall file with the~~
8 ~~director a statement giving notice of such claim and setting forth the~~
9 ~~name and address of franchisor or subfranchisor and the name under~~
10 ~~which the franchisor or subfranchisor is doing or intends to do~~
11 ~~business.))~~ The offer or sale of a franchise to an accredited
12 investor, as defined by rule adopted by the director. The director
13 shall be guided in adopting such a rule by the rules defining
14 accredited investor promulgated by the federal securities and exchange
15 commission.

16 (6) The offer or sale of an additional franchise to an existing
17 franchisee of the franchisor for the franchisee's own account that is
18 substantially the same as the franchise that the franchisee has
19 operated for at least two years at the time of the offer or sale,
20 provided the prior sale to the franchisee was pursuant to a franchise
21 offering that was registered in the state of Washington.

22 **Sec. 4.** RCW 19.100.040 and 1972 ex.s. c 116 s 3 are each amended
23 to read as follows:

24 (1) The application for registration of the offer, signed by the
25 franchisor, subfranchisor, or by any person on whose behalf the
26 offering is to be made, must be filed with the director and shall
27 contain:

28 ~~((1) The name of the franchisor and the name under which the~~
29 ~~franchisor is doing or intends to do business.~~

1 ~~(2) The franchisor's principal business address and the name and~~
2 ~~address of his agent in the state of Washington authorized to receive~~
3 ~~process.~~

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

6 ~~(4) Such other information concerning the identity and business~~
7 ~~experience of persons affiliated with the franchisor including~~
8 ~~franchise brokers as the director may by rule prescribe.~~

9 ~~(5) A statement whether any person identified in the application~~
10 ~~for registration:~~

11 ~~(a) Has been found guilty of a felony or held liable in a civil~~
12 ~~action by final judgment if such civil action involved fraud,~~
13 ~~embezzlement, fraudulent conversion, or misappropriation of property,~~
14 ~~within ten years of the date of such application; or~~

15 ~~(b) Is subject to any currently effective order of the securities~~
16 ~~and exchange commission or the securities administrator of any state~~
17 ~~denying registration to or revoking or suspending the registration of~~
18 ~~such person as a securities broker or dealer or investment advisor or~~
19 ~~is subject to any currently effective order of any national security~~
20 ~~association or national securities exchange (as defined in the~~
21 ~~Securities & Exchange Act of 1934) suspending or expelling such person~~
22 ~~from membership of such association or exchange; or~~

23 ~~(c) Is subject to any currently effective order or ruling of the~~
24 ~~Federal Trade Commission pertaining to any franchise granted by~~
25 ~~franchisor or is subject to any currently effective order relating to~~
26 ~~business activity as a franchisor as a result of an action brought by~~
27 ~~the attorney general's office or by any public agency or department.~~

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

1 ~~(6) A statement of when, where, and how long the franchisor has:~~

2 ~~(a) Conducted a business of the type to be operated by the~~
3 ~~franchisees;~~

4 ~~(b) Has granted franchises for such business; and~~

5 ~~(c) Has granted franchises in other lines of business.~~

6 ~~(7) A financial statement of the franchisor. The director may~~
7 ~~describe:~~

8 ~~(a) Form and content of the financial statements required under~~
9 ~~this law;~~

10 ~~(b) The circumstances under which consolidated financial statements~~
11 ~~can be filed; and~~

12 ~~(c) The circumstances under which financial statements shall be~~
13 ~~audited by independent, certified public accountants.~~

14 ~~(8) A copy of the typical franchise contract or agreement proposed~~
15 ~~for use including all amendments thereto.~~

16 ~~(9) A statement of the franchise fee charged, the proposed~~
17 ~~application of the proceeds of such fee by the franchisor, and the~~
18 ~~formula by which the amount of the fee is determined if the fee is not~~
19 ~~the same in all cases; a statement indicating whether and under what~~
20 ~~conditions all or part of the initial franchise fee may be returned to~~
21 ~~the franchisee; and a statement of the estimated total investment to be~~
22 ~~made by the franchisee for:~~

23 ~~(a) The initial franchise fee and other fees, whether payable in~~
24 ~~one sum or in installments;~~

25 ~~(b) Fixed assets other than real property and leases for real~~
26 ~~property, whether or not financed by contract or installment purchase,~~
27 ~~leasing or otherwise;~~

28 ~~(c) Working capital, deposits and prepaid expenses;~~

29 ~~(d) Real property, whether or not financed by contract or~~
30 ~~installment purchase or otherwise, and leases for real property; and~~

1 ~~(e) All other goods and services which the franchisee will be~~
2 ~~required to purchase or lease.~~

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

7 ~~(11) A statement of the conditions under which the franchise~~
8 ~~agreement may be terminated or renewed or renewal refused.~~

9 ~~(12) A statement of the conditions under which the franchise may be~~
10 ~~sold, transferred, or assigned.~~

11 ~~(13) A statement of the conditions imposed by the franchisor~~
12 ~~whether by the terms of the franchise agreement or by other device or~~
13 ~~practice whereby the franchisee is required to purchase services,~~
14 ~~supplies, products, fixtures, or other goods relating to the~~
15 ~~establishment or operation of the franchise business from the~~
16 ~~franchisor or his designee together with a statement of whether and of~~
17 ~~the means by which the franchisor derives income from such purchases.~~

18 ~~(14) A statement of any restriction or condition imposed by the~~
19 ~~franchisor whether by the terms of the franchise agreement or by other~~
20 ~~device or practice whereby the franchisee is limited and/or required in~~
21 ~~the goods and services offered by him.~~

22 ~~(15) A statement of the terms and conditions of any financing~~
23 ~~arrangements when offered directly or indirectly by the franchisor or~~
24 ~~his agent or affiliate.~~

25 ~~(16) A statement of any intent of the franchisor to sell, assign,~~
26 ~~or discount to a third party any note, contract, or other obligation of~~
27 ~~the franchisee in whole or in part.~~

28 ~~(17) A copy of any statement of estimated or projected franchisee~~
29 ~~sales or earnings prepared for presentation to prospective franchisees~~
30 ~~or other persons, together with a statement immediately following such~~

1 ~~statement setting forth the data upon which the estimations or~~
2 ~~projections are based and explaining clearly the manner and extent to~~
3 ~~which such data relates to the actual operations of businesses~~
4 ~~conducted by the franchisor or its franchisees.~~

5 ~~(18) A statement of business failures of franchisees, resales to~~
6 ~~the franchisor, sales of the franchise to others, and transfers in the~~
7 ~~state of Washington during the two year period preceding the date of~~
8 ~~the statement.~~

9 ~~(19) A statement describing the training program, supervision, and~~
10 ~~assistance the franchisor has and will provide the franchisee.~~

11 ~~(20) Such other information as the director may reasonably require.~~

12 ~~(21) A list of the names, addresses and telephone numbers of all~~
13 ~~operating franchise businesses under franchise agreement with the~~
14 ~~franchisor located in the state of Washington.~~

15 ~~(22) A statement explaining the terms and effects of any covenant~~
16 ~~not to compete which is or will be included in the franchise or other~~
17 ~~agreement to be executed by the franchisee.~~

18 ~~(23) A statement setting forth such additional information and such~~
19 ~~comments and explanations relative to the information contained in the~~
20 ~~disclosure statement as the franchisor may desire to present.~~

21 ~~(24)))~~ (a) A copy of the franchisor's or subfranchisor's offering
22 circular which shall be prepared in compliance with guidelines adopted
23 by rule of the director. The director shall be guided in adopting such
24 rule by the guidelines for the preparation of the Uniform Franchise
25 Offering Circular adopted by the North American Securities
26 Administrators Association, Inc., or its successor, as such guidelines
27 may be revised from time to time;

28 (b) A copy of all agreements to be proposed to franchisees;

29 (c) A consent to service of process as required by RCW 19.100.160;

30 (d) The application for registration of a franchise broker, if any;

1 (e) The applicable filing fee; and

2 (f) Such other information as the director determines, by rule or
3 order, to be necessary or appropriate to facilitate the administration
4 of this chapter.

5 (2) The director may require the filing of financial statements of
6 the franchisor or subfranchisor audited by an independent certified
7 public accountant and prepared in accordance with generally accepted
8 accounting principles.

9 When the person filing the application for registration is a
10 subfranchisor, the application shall also include the same information
11 concerning the subfranchisor as is required from the franchisor
12 pursuant to this section.

13 **Sec. 5.** RCW 19.100.070 and 1972 ex.s. c 116 s 5 are each amended
14 to read as follows:

15 (1) A franchise offering shall be deemed duly registered, and a
16 claim of exemption under RCW 19.100.030(4)(b)(i) shall be duly filed,
17 for a period of one year from the effective date of registration or
18 filing unless the director by rule or order specifies a different
19 period.

20 (2) Registration of a franchise offer may be renewed for additional
21 periods of one year each, unless the director by rule or order
22 specifies a different period, by filing with the director no later than
23 fifteen business days prior to the expiration thereof a renewal
24 application containing such information as the director may require to
25 indicate any substantial changes in the information contained in the
26 original application (~~((for a))~~) or the previous renewal application and
27 payment of the (~~((prescribed))~~) prescribed fee.

28 (3) If a material adverse change in the condition of the franchisor
29 or the subfranchisor or any material change in the information

1 contained in its offering circular should occur (~~during any year, a~~
2 ~~supplemental report shall be filed~~) the franchisor or subfranchisor
3 shall so amend the registration on file with the director as soon as
4 reasonably possible and in any case, before the further sale of any
5 franchise.

6 **Sec. 6.** RCW 19.100.080 and 1972 ex.s. c 116 s 6 are each amended
7 to read as follows:

8 (~~Any person offering for sale or selling a franchise within this~~
9 ~~state, whether or not one or more franchises will be located within~~
10 ~~this state, must present to the prospective franchisee or his~~
11 ~~representative, at least forty-eight hours prior~~) It is unlawful for
12 any person to sell a franchise that is registered or required to be
13 registered under this chapter without first delivering to the offeree,
14 at least ten business days prior to the execution by the offeree of any
15 binding franchise or other agreement, or at least ten business days
16 prior to the receipt of any consideration, whichever occurs first, a
17 copy of the offering circular required under RCW 19.100.040, with any
18 addition or amendment to the offering circular required by RCW
19 19.100.070, together with a copy of the proposed agreements relating to
20 the sale of the franchise(~~(, copies of the materials specified in RCW~~
21 ~~19.100.030(4)(a) and all supplemental reports of the franchisor and the~~
22 ~~subfranchisor on file with the director~~)).

23 **Sec. 7.** RCW 19.100.100 and 1971 ex.s. c 252 s 10 are each amended
24 to read as follows:

25 No person(~~s~~) shall publish in this state any advertisements
26 offering a franchise subject to the registration requirements of this
27 law unless a true copy of the advertisement has been filed in the

1 office of the director at least seven days prior to the publication or
2 such shorter period as the director by rule or order may allow.

3 **Sec. 8.** RCW 19.100.140 and 1972 ex.s. c 116 s 9 are each amended
4 to read as follows:

5 (1) It is unlawful for any (~~person~~) franchise broker to offer to
6 sell or sell a franchise (~~which is subject to the registration~~
7 ~~requirements of RCW 19.100.040~~) in this state unless ((he)) the
8 franchise broker is registered under this chapter. It is unlawful for
9 any franchisor, subfranchisor, or franchisee(~~, except if the~~
10 ~~transaction is exempt under RCW 19.100.030~~) to employ a franchise
11 broker (~~or selling agent~~) unless ((he)) the franchise broker is
12 registered.

13 (2) The franchise broker (~~or selling agent may~~) shall apply for
14 registration by filing with the director an application together with
15 a consent to service of process in such form as the director shall
16 prescribe and payment of the fee prescribed in RCW 19.100.240.

17 (3) The application shall contain whatever information the director
18 requires concerning such matters as:

19 (a) The applicant's form and place of organization.

20 (b) The applicant's proposed method of doing business.

21 (c) The qualifications and business history of the applicant.

22 (d) Any injunction or administrative order or conviction of a
23 misdemeanor involving a security or any aspect of the securities
24 business and any conviction of a felony; and

25 (e) The applicant's financial condition and history.

26 **Sec. 9.** RCW 19.100.160 and 1971 ex.s. c 252 s 16 are each amended
27 to read as follows:

1 Any person who is engaged or hereafter engaged directly or
2 indirectly in the sale or offer to sell a franchise or a subfranchise
3 or in business dealings concerning a franchise, either in person or in
4 any other form of communication, shall be subject to the provisions of
5 this chapter, shall be amenable to the jurisdiction of the courts of
6 this state and shall be amenable to the service of process under RCW
7 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of
8 a franchise under this law (by other than a Washington corporation)
9 shall file with the director in such form as he by rule prescribed, an
10 irrevocable consent appointing the director or his successor in office
11 to be his attorney, to receive service or any lawful process in any
12 noncriminal suit, action, or proceeding against him or his successors,
13 executor, or administrator which arises under this law or any rule or
14 order hereunder after the consent has been filed, with the same force
15 and validity as if served personally on the person filing consent. A
16 person who has filed such a consent in connection with a previous
17 registration under this law need not file another. Service may be made
18 by leaving a copy of the process in the office of the director but it
19 is not as effective unless:

20 (1) The plaintiff, who may be the director, in a suit, action, or
21 proceeding instituted by him forthwith sends notice of the service and
22 a copy of the process by registered or certified mail to the defendant
23 or respondent at his last address on file with the director; and

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

27 **Sec. 10.** RCW 19.100.170 and 1971 ex.s. c 252 s 17 are each amended
28 to read as follows:

1 It is unlawful for any person in connection with the offer, sale,
2 or purchase of any franchise or subfranchise in this state directly or
3 indirectly:

4 (1) To make any untrue statement of a material fact in any
5 application, notice, or report filed with the director under this law
6 or willfully to omit to state in any application, notice or report, any
7 material fact which is required to be stated therein or fails to notify
8 the director of any material change as required by RCW 19.100.070(3).

9 (2) To sell or offer to sell (~~a franchise in this state~~) by means
10 of any written or oral communication which includes an untrue statement
11 of a material fact or omits to state a material fact necessary in order
12 to make the statements made in light of the circumstances under which
13 they were made not misleading.

14 (3) To employ any device, scheme, or artifice to defraud.

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

17 (5) To violate any order of the director.

18 **Sec. 11.** RCW 19.100.180 and 1980 c 63 s 1 are each amended to read
19 as follows:

20 Without limiting the other provisions of this chapter, the
21 following specific rights and prohibitions shall govern the relation
22 between the franchisor or subfranchisor and the franchisees:

23 (1) The parties shall deal with each other in good faith.

24 (2) For the purposes of this chapter and without limiting its
25 general application, it shall be an unfair or deceptive act or practice
26 or an unfair method of competition and therefore unlawful and a
27 violation of this chapter for any person to:

28 (a) Restrict or inhibit the right of the franchisees to join an
29 association of franchisees.

1 (b) Require a franchisee to purchase or lease goods or services of
2 the franchisor or from approved sources of supply unless and to the
3 extent that the franchisor satisfies the burden of proving that such
4 restrictive purchasing agreements are reasonably necessary for a lawful
5 purpose justified on business grounds, and do not substantially affect
6 competition: PROVIDED, That this provision shall not apply to the
7 initial inventory of the franchise. In determining whether a
8 requirement to purchase or lease goods or services constitutes an
9 unfair or deceptive act or practice or an unfair method of competition
10 the courts shall be guided by the decisions of the courts of the United
11 States interpreting and applying the anti-trust laws of the United
12 States.

13 (c) Discriminate between franchisees in the charges offered or made
14 for royalties, goods, services, equipment, rentals, advertising
15 services, or in any other business dealing, unless and to the extent
16 that the franchisor satisfies the burden of proving that any
17 classification of or discrimination between franchisees is: (i)
18 Reasonable, ((is)) (ii) based on franchises granted at materially
19 different times and such discrimination is reasonably related to such
20 difference in time, or is based on other proper and justifiable
21 distinctions considering the purposes of this chapter, and (iii) is not
22 arbitrary. However, nothing in (c) of this subsection precludes
23 negotiation of the terms and conditions of a franchise.

24 (d) Sell, rent, or offer to sell to a franchisee any product or
25 service for more than a fair and reasonable price.

26 (e) Obtain money, goods, services, anything of value, or any other
27 benefit from any other person with whom the franchisee does business on
28 account of such business unless such benefit is disclosed to the
29 franchisee.

1 (f) If the franchise provides that the franchisee has an exclusive
2 territory, which exclusive territory shall be specified in the
3 franchise agreement, for the franchisor or subfranchisor to compete
4 with the franchisee in an exclusive territory or to grant competitive
5 franchises in the exclusive territory area previously granted to
6 another franchisee.

7 (g) Require franchisee to assent to a release, assignment,
8 novation, or waiver which would relieve any person from liability
9 imposed by this chapter, except as otherwise permitted by this chapter.

10 (h) Impose on a franchisee by contract, rule, or regulation,
11 whether written or oral, any standard of conduct unless the person so
12 doing can sustain the burden of proving such to be reasonable and
13 necessary.

14 (i) Refuse to renew a franchise without fairly compensating the
15 franchisee for the fair market value, at the time of expiration of the
16 franchise, of the franchisee's inventory, supplies, equipment, and
17 furnishings purchased from the franchisor, and good will, exclusive of
18 personalized materials which have no value to the franchisor, and
19 inventory, supplies, equipment and furnishings not reasonably required
20 in the conduct of the franchise business: PROVIDED, That compensation
21 need not be made to a franchisee for good will if (i) the franchisee
22 has been given one year's notice of nonrenewal and (ii) the franchisor
23 agrees in writing not to enforce any covenant which restrains the
24 franchisee from competing with the franchisor: PROVIDED FURTHER, That
25 a franchisor may offset against amounts owed to a franchisee under this
26 subsection any amounts owed by such franchisee to the franchisor.

27 (j) Terminate a franchise prior to the expiration of its term
28 except for good cause. Good cause shall include, without limitation,
29 the failure of the franchisee to comply with lawful material provisions
30 of the franchise or other agreement between the franchisor and the

1 franchisee and to cure such default after being given written notice
2 thereof and a reasonable opportunity, which in no event need be more
3 than thirty days, to cure such default, or if such default cannot
4 reasonably be cured within thirty days, the failure of the franchisee
5 to initiate within thirty days substantial and continuing action to
6 cure such default: PROVIDED, That after three willful and material
7 breaches of the same term of the franchise agreement occurring within
8 a twelve-month period, for which the franchisee has been given notice
9 and an opportunity to cure as provided in this subsection, the
10 franchisor may terminate the agreement upon any subsequent willful and
11 material breach of the same term within the twelve-month period without
12 providing notice or opportunity to cure: PROVIDED FURTHER, That a
13 franchisor may terminate a franchise without giving prior notice or
14 opportunity to cure a default if the franchisee: (i) Is adjudicated a
15 bankrupt or insolvent; (ii) makes an assignment for the benefit of
16 creditors or similar disposition of the assets of the franchise
17 business; (iii) voluntarily abandons the franchise business; or (iv) is
18 convicted of or pleads guilty or no contest to a charge of violating
19 any law relating to the franchise business. Upon termination for good
20 cause, the franchisor shall purchase from the franchisee at a fair
21 market value at the time of termination, the franchisee's inventory and
22 supplies, exclusive of (i) personalized materials which have no value
23 to the franchisor; (ii) inventory and supplies not reasonably required
24 in the conduct of the franchise business; and (iii), if the franchisee
25 is to retain control of the premises of the franchise business, any
26 inventory and supplies not purchased from the franchisor or on his
27 express requirement: PROVIDED, That a franchisor may offset against
28 amounts owed to a franchisee under this subsection any amounts owed by
29 such franchisee to the franchisor.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.100
2 RCW to read as follows:

3 This chapter does not preclude negotiation of the terms and
4 conditions of a franchise at the initiative of the franchisee. After
5 the initial offer to a franchisee using the offering circular required
6 by RCW 19.100.030, 19.100.040, or 19.100.070 a franchisor need not
7 provide an amended offering circular to that franchisee by reason of a
8 change in the terms and conditions of a franchise being negotiated at
9 the initiative of that franchisee or amend the registration by reason
10 of such change.

11 **Sec. 13.** RCW 19.100.220 and 1972 ex.s. c 116 s 14 are each amended
12 to read as follows:

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

16 (2) Any agreement, condition, stipulation or provision, including
17 a choice of law provision, purporting to bind any person ((acquiring a
18 franchise at the time of entering into a franchise or other agreement))
19 to waive compliance with any provision of this chapter or any rule or
20 order hereunder is void. A release or waiver executed by any person
21 pursuant to a negotiated settlement in connection with a bona fide
22 dispute between a franchisee and a franchisor, in which the person
23 giving the release or waiver is represented by independent legal
24 counsel, is not an agreement prohibited by this subsection.

25 (3) This chapter represents a fundamental policy of the state of
26 Washington.

27 **Sec. 14.** RCW 19.100.240 and 1971 ex.s. c 252 s 24 are each amended
28 to read as follows:

1 The director shall charge and collect fees fixed by this section.
2 All fees collected under this chapter shall be deposited in the state
3 treasury and shall not be refundable except as herein provided:

4 (1) The fee for filing an application for registration on the sale
5 of franchise under RCW 19.100.040 is five hundred dollars;

6 (2) The fee for filing an application for renewal of a registration
7 under RCW 19.100.070 is one hundred dollars;

8 (3) The fee for filing an amendment to the application filed under
9 RCW 19.100.040 is one hundred dollars;

10 (4) The fee for registration of a franchise broker (~~or selling~~
11 ~~agent~~) shall be fifty dollars for original registration and twenty-
12 five dollars for each annual renewal;

13 (5) The fee for filing a notice of claim of exemption is fifty
14 dollars for the original filing and twenty-five dollars for each annual
15 renewal.

16 NEW SECTION. Sec. 15. A new section is added to chapter 19.100
17 RCW to read as follows:

18 An action for rescission under RCW 19.100.190 for failure to
19 register may not be commenced more than one year after the act or
20 transaction on which the action is based. Any other action under RCW
21 19.100.190 may not be commenced more than three years after the cause
22 of action accrues.

23 NEW SECTION. Sec. 16. A new section is added to chapter 19.100
24 RCW to read as follows:

25 The director may by order deny, suspend, or revoke registration of
26 any franchise broker if the director finds that the order is in the
27 public interest and that the applicant or registrant, or any partner,
28 officer, or director of the applicant or registrant:

1 (1) Has filed an application for registration as a franchise broker
2 under RCW 19.100.140 which, as of its effective date, or as of any date
3 after filing in the case of an order denying effectiveness, was
4 incomplete in any material respect or contained any statement which
5 was, in the light of the circumstances under which it was made, false
6 or misleading with respect to any material fact;

7 (2) Has willfully violated or willfully failed to comply with any
8 provision of this chapter;

9 (3) Has been convicted, within the past five years of any
10 misdemeanor involving a franchise, or any felony involving moral
11 turpitude;

12 (4) Is permanently or temporarily enjoined by any court of
13 competent jurisdiction from engaging in or continuing any aspect of the
14 franchise
15 industry;

16 (5) Is the subject of an order of the director denying, suspending,
17 or revoking registration as a franchise broker;

18 (6) Has engaged in dishonest or unethical practices in the
19 franchise industry;

20 (7) Is insolvent, either in the sense that his or her liabilities
21 exceed his or her assets or in the sense that he or she cannot meet his
22 or her obligations as they mature.

23 The director may by order summarily postpone or suspend
24 registration pending final determination of any proceeding under this
25 section.

26 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.100
27 RCW to read as follows:

28 The director may by order deny, suspend, or revoke any exemption
29 from registration otherwise available under RCW 19.100.030 for the

1 offer or sale of the franchise if he or she finds that the order is in
2 the public interest and that:

3 (1) Any provision of this chapter or any rule or order or condition
4 lawfully imposed under this chapter has been violated or is about to be
5 violated in connection with the offering by the franchisor, any
6 partner, officer, or director of a franchisor, or any person occupying
7 a similar status or performing similar functions or any person directly
8 or indirectly controlled by the franchisor, or any franchise broker
9 offering or selling the offering;

10 (2) The franchise offering is the subject of a permanent or
11 temporary injunction of a court of competent jurisdiction entered under
12 any federal or state act applicable to the offering; but (a) the
13 director may not enter an order of revocation or suspension under this
14 subsection more than one year from the date of the injunction relied
15 on, and (b) the director may not enter an order under this subsection
16 on the basis of an injunction unless that injunction was based on facts
17 that currently constitute a ground for an order under this section;

18 (3) The franchisor's enterprise or method of business includes or
19 would include activities which are illegal where performed;

20 (4) The offering has worked or tended to work or would tend to work
21 a fraud on purchasers;

22 (5) The franchisor has failed to pay the required filing fee for a
23 claim of exemption but the director may enter only a denial order under
24 this subsection and shall vacate such order when the deficiency has
25 been corrected;

26 (6) The franchisor has made a claim of exemption which is
27 incomplete in a material respect or contains any statement which in the
28 light of the circumstances under which it was made is false or
29 misleading with respect to any material fact.