
HOUSE BILL 2235

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Kirby and Bailey; by request of Department of Financial Institutions

Prefiled 01/06/12. Read first time 01/09/12. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to franchise investment protection; and amending
2 RCW 19.100.010, 19.100.020, 19.100.030, 19.100.040, 19.100.070,
3 19.100.080, 19.100.090, 19.100.184, 19.100.130, and 19.100.248.

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

5 **Sec. 1.** RCW 19.100.010 and 1994 c 92 s 3 are each amended to read
6 as follows:

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

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

12 (2) "Affiliate" means a person controlling, controlled by, or under
13 common control with another person, every officer or director of such
14 person, and every person occupying a similar status or performing
15 similar functions.

16 (3) "Director" means the director of financial institutions.

17 (4) "Franchise" means:

18 (a) An agreement, express or implied, oral or written, by which:

1 (i) A person is granted the right to engage in the business of
2 offering, selling, or distributing goods or services under a marketing
3 plan prescribed or suggested in substantial part by the grantor or its
4 affiliate;

5 (ii) The operation of the business is substantially associated with
6 a trademark, service mark, trade name, advertising, or other commercial
7 symbol designating, owned by, or licensed by the grantor or its
8 affiliate; and

9 (iii) The person pays, agrees to pay, or is required to pay,
10 directly or indirectly, a franchise fee.

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

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

16 (ii) Actions or transactions otherwise permitted, prohibited or
17 regulated under laws administered by the insurance commissioner of this
18 state;

19 (iii) Any motor vehicle dealer franchise subject to the provisions
20 of chapter 46.70 RCW.

21 (5) "Marketing plan" means a plan or system concerning an aspect of
22 conducting business. A marketing plan may include one or more of the
23 following:

24 (a) Price specifications, special pricing systems or discount
25 plans;

26 (b) Sales or display equipment or merchandising devices;

27 (c) Sales techniques;

28 (d) Promotional or advertising materials or cooperative
29 advertising;

30 (e) Training regarding the promotion, operation, or management of
31 the business; or

32 (f) Operational, managerial, technical, or financial guidelines or
33 assistance.

34 (6) "Bank credit card plan" means a credit card plan in which the
35 issuer of credit cards is a national bank, state bank, trust company or
36 any other banking institution subject to the supervision of the
37 director of financial institutions of this state or any parent or
38 subsidiary of such bank.

1 (7) "Franchisee" means a person to whom a franchise is offered or
2 granted.

3 (8) "Franchisor" means a person who grants a franchise to another
4 person.

5 (9) "Subfranchise" means an agreement, express or implied, oral or
6 written, by which a person pays or agrees to pay, directly or
7 indirectly, a franchisor or affiliate for the right to grant, sell or
8 negotiate the sale of a franchise.

9 (10) "Subfranchisor" means a person to whom a subfranchise is
10 granted.

11 (11) "Franchise broker" means a person who directly or indirectly
12 engages in the business of the offer or sale of franchises. The term
13 does not include a franchisor, subfranchisor, or their officers,
14 directors, or employees.

15 (12) "Franchise fee" means any fee or charge that a franchisee or
16 subfranchisor is required to pay or agrees to pay for the right to
17 enter into a business or to continue a business under a franchise
18 agreement, including, but not limited to, the payment either in lump
19 sum or by installments of an initial capital investment fee, any fee or
20 charges based upon a percentage of gross or net sales whether or not
21 referred to as royalty fees, any payment for the mandatory purchase of
22 goods or services or any payment for goods or services available only
23 from the franchisor, or any training fees or training school fees or
24 charges; however, the following shall not be considered payment of a
25 franchise fee: (a) the purchase or agreement to purchase goods at a
26 bona fide wholesale price; (b) the purchase or agreement to purchase
27 goods by consignment; if, and only if the proceeds remitted by the
28 franchisee from any such sale shall reflect only the bona fide
29 wholesale price of such goods; (c) a bona fide loan to the franchisee
30 from the franchisor; (d) the purchase or agreement to purchase goods at
31 a bona fide retail price subject to a bona fide commission or
32 compensation plan that in substance reflects only a bona fide wholesale
33 transaction; (e) the purchase or lease or agreement to purchase or
34 lease supplies or fixtures necessary to enter into the business or to
35 continue the business under the franchise agreement at their fair
36 market or rental value; (f) the purchase or lease or agreement to
37 purchase or lease real property necessary to enter into the business or
38 to continue the business under the franchise agreement at the fair

1 market or rental value; (g) amounts paid for trading stamps redeemable
2 in cash only; (h) amounts paid for trading stamps to be used as
3 incentives only and not to be used in, with, or for the sale of any
4 goods.

5 (13) "Person" means a natural person, corporation, partnership,
6 trust, or other entity and in the case of an entity, it shall include
7 any other entity which has a majority interest in such an entity or
8 effectively controls such other entity as well as the individual
9 officers, directors, and other persons in act of control of the
10 activities of each such entity.

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

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

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

18 (17) "File," "filed," or "filing," except in the phrase "filed with
19 and subject to the approval of the superior court," means the receipt
20 under this chapter of a record by the director or a designee of the
21 director.

22 (18) "Record" means information that is inscribed on a tangible
23 medium or that is stored in an electronic or other medium and is
24 retrievable in perceivable form.

25 (19) "Prospective franchisee" means any person, including any
26 agent, representative, or employee, who approaches or is approached by
27 a franchise seller to discuss the possible establishment of a franchise
28 relationship.

29 **Sec. 2.** RCW 19.100.020 and 1991 c 226 s 2 are each amended to read
30 as follows:

31 (1) It is unlawful for any franchisor or subfranchisor to sell or
32 offer to sell any franchise in this state unless the offer of the
33 franchise has been registered under this chapter or exempted under RCW
34 19.100.030.

35 (2) For the purpose of this section, an offer to sell a franchise
36 is made in this state when: (a) The offer is directed by the offeror
37 into this state from within or outside this state and is received where

1 it is directed, (b) the offer originates from this state and violates
2 the franchise or business opportunity law of the state or foreign
3 jurisdiction into which it is directed, (c) the (~~offeree~~) prospective
4 franchisee is a resident of this state, or (d) the franchise business
5 that is the subject of the offer is to be located or operated, wholly
6 or partly, in this state.

7 (3) For the purpose of this section, a sale of any franchise is
8 made in this state when: (a) An offer to sell is accepted in this
9 state, (b) an offer originating from this state is accepted and
10 violates the franchise or business opportunity law of the state or
11 foreign jurisdiction in which it is accepted, (c) the purchaser of the
12 franchise is a resident of this state, or (d) the franchise business
13 that is the subject of the sale is to be located or operated, wholly or
14 partly, in this state.

15 (4) For the purpose of this section, an offer to sell is not made
16 in this state solely because the offer appears: (a) In a newspaper or
17 other publication of general and regular circulation if the publication
18 has had more than two-thirds of its circulation outside this state
19 during the twelve months before the offer is published, or (b) in a
20 broadcast or transmission originating outside this state.

21 **Sec. 3.** RCW 19.100.030 and 1991 c 226 s 3 are each amended to read
22 as follows:

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

24 (1) The offer or sale or transfer of a franchise by a franchisee
25 who is not an affiliate of the franchisor for the franchisee's own
26 account if the franchisee's entire franchise is sold and the sale is
27 not effected by or through the franchisor. A sale is not effected by
28 or through a franchisor merely because a franchisor has a right to
29 approve or disapprove the sale or requires payment of a reasonable
30 transfer fee. Such right to approve or disapprove the sale shall be
31 exercised in a reasonable manner.

32 (2) The offer or sale of a franchise by an executor, administrator,
33 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
34 conservator, or pursuant to a court-approved offer or sale, on behalf
35 of a person other than the franchisor or the estate of the franchisor.

36 (3) The offer or sale of a franchise to a bank, savings
37 institution, trust company, insurance company, investment company as

1 defined in the Investment Company Act of 1940, pension or profit
2 sharing trust, or other financial institution or institutional buyer or
3 to a broker dealer where the purchaser is acting for itself or in some
4 fiduciary capacity.

5 (4) The offer or sale of a franchise by a franchisor:

6 (a) Who has delivered in writing to each prospective franchisee, at
7 least (~~(ten-business))~~ fourteen calendar days prior to the execution by
8 the prospective franchisee of any binding franchise or other agreement,
9 or at least (~~(ten-business))~~ fourteen calendar days prior to the
10 receipt of any consideration, whichever occurs first, (~~(an-offering~~
11 ~~circular))~~ a disclosure document complying with guidelines adopted by
12 rule of the director. The director shall be guided in adopting such a
13 rule by the guidelines for the preparation of the (~~(Uniform Franchise~~
14 ~~Offering Circular))~~ disclosure document adopted by the federal trade
15 commission or the North American Securities Administrators Association,
16 Inc., or its successor, as such guidelines may be revised from time to
17 time; and

18 (b) Who either:

19 (i)(A) Has a net worth on a consolidated basis, according to its
20 most recent audited financial statement, of not less than five million
21 dollars or who has a net worth, according to its most recent audited
22 financial statement, of not less than one million dollars and is at
23 least eighty percent owned by a corporation which has a net worth on a
24 consolidated basis, according to its most recent audited financial
25 statement, of not less than five million dollars; and

26 (B) Has had at least twenty-five franchisees conducting business at
27 all times during the five-year period immediately preceding the offer
28 or sale or has conducted business which is the subject of the franchise
29 continuously for not less than five years preceding the offer or sale
30 or if any corporation which owns at least eighty percent of the
31 franchisor, has had at least twenty-five franchisees conducting
32 business at all times during the five-year period immediately preceding
33 the offer or sale or such corporation has conducted business which is
34 the subject of the franchise continuously for not less than five years
35 preceding the offer or sale; and

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

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

4 (ii)(A) Has no outstanding franchises granted for businesses
5 located or to be located outside the state of Washington; and

6 (B) Has granted and grants no more than three franchises for
7 franchise businesses to be situated within the state of Washington; 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) Does not charge a franchise fee, as defined in RCW
13 19.100.010(12), in excess of five hundred dollars; and

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

19 (5) The offer or sale of a franchise to an accredited investor, as
20 defined by rule adopted by the director. The director shall be guided
21 in adopting such a rule by the rules defining accredited investor
22 promulgated by the federal securities and exchange commission.

23 (6) The offer or sale of an additional franchise to an existing
24 franchisee of the franchisor for the franchisee's own account that is
25 substantially the same as the franchise that the franchisee has
26 operated for at least two years at the time of the offer or sale,
27 provided the prior sale to the franchisee was pursuant to a franchise
28 offering that was registered in the state of Washington.

29 **Sec. 4.** RCW 19.100.040 and 1991 c 226 s 4 are each amended to read
30 as follows:

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

35 (a) A copy of the franchisor's or subfranchisor's (~~offering~~
36 ~~circular~~) disclosure document which shall be prepared in compliance
37 with guidelines adopted by rule of the director. The director shall be

1 guided in adopting such rule by the guidelines for the preparation of
2 the ((~~Uniform Franchise Offering Circular~~)) disclosure document adopted
3 by the federal trade commission or the North American Securities
4 Administrators Association, Inc., or its successor, as such guidelines
5 may be revised from time to time;

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

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

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

9 (e) The applicable filing fee; and

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

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

17 When the person filing the application for registration is a
18 subfranchisor, the application shall also include the same information
19 concerning the subfranchisor as is required from the franchisor
20 pursuant to this section.

21 **Sec. 5.** RCW 19.100.070 and 1991 c 226 s 5 are each amended to read
22 as follows:

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

28 (2) Registration of a franchise offer may be renewed for additional
29 periods of one year each, unless the director by rule or order
30 specifies a different period, by filing with the director no later than
31 ((~~fifteen business~~)) twenty calendar days prior to the expiration
32 thereof a renewal application containing such information as the
33 director may require to indicate any substantial changes in the
34 information contained in the original application or the previous
35 renewal application and payment of the prescribed fee.

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

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

5 **Sec. 6.** RCW 19.100.080 and 1991 c 226 s 6 are each amended to read
6 as follows:

7 (1) It is unlawful for any person to sell a franchise that is
8 registered or required to be registered under this chapter without
9 first (~~delivering~~) furnishing to the (~~offeree~~) prospective
10 franchisee a copy of the franchisor's current disclosure document, as
11 described in RCW 19.100.040 and 19.100.070, at least (~~ten business~~)
12 fourteen calendar days prior to the execution by the (~~offeree~~)
13 prospective franchisee of any binding franchise or other agreement, or
14 at least (~~ten business~~) fourteen calendar days (~~prior to the receipt~~
15 of any consideration, whichever occurs first, a copy of the offering
16 circular required under RCW 19.100.040, with any addition or amendment
17 to the offering circular required by RCW 19.100.070, together with a
18 copy of the proposed agreements relating to the sale of the franchise))
19 before the prospective franchisee signs a binding agreement with, or
20 makes any payment to, the franchisor or an affiliate in connection with
21 the proposed franchise sale.

22 (2) It is unlawful for any franchisor to alter unilaterally and
23 materially the terms and conditions of the basic franchise agreement or
24 any related agreements attached to the disclosure document without
25 furnishing the prospective franchisee with a copy of each revised
26 agreement at least seven calendar days before the prospective
27 franchisee signs the revised agreement. Changes to an agreement that
28 arise out of negotiations initiated by the prospective franchisee do
29 not trigger this seven calendar day period.

30 **Sec. 7.** RCW 19.100.090 and 1971 ex.s. c 252 s 9 are each amended
31 to read as follows:

32 (1) Neither (a) the fact that application for registration under
33 this law has been filed nor (b) the fact that such registration has
34 become effective constitutes a finding by the director that any
35 document filed under this law is true, complete, or not misleading.
36 Neither any such fact or the fact that an exemption is available for a

1 transaction means that the director has passed in any way on the merit
2 or qualifications of or recommended or given approval to any person,
3 franchise, or transaction.

4 (2) It is unlawful to make or cause to be made to any prospective
5 (~~(purchaser or offeree)~~) franchisee any representation inconsistent
6 with this section.

7 **Sec. 8.** RCW 19.100.184 and 1991 c 226 s 12 are each amended to
8 read as follows:

9 This chapter does not preclude negotiation of the terms and
10 conditions of a franchise at the initiative of the franchisee, provided
11 that such negotiated terms and conditions do not violate any provision
12 of this chapter. After the initial offer to a franchisee using the
13 (~~(offering circular)~~) disclosure document required by RCW 19.100.030,
14 19.100.040, or 19.100.070 a franchisor need not provide an amended
15 (~~(offering circular)~~) disclosure document to that franchisee by reason
16 of a change in the terms and conditions of a franchise being negotiated
17 at the initiative of that franchisee or amend the registration by
18 reason of such change.

19 **Sec. 9.** RCW 19.100.130 and 2011 c 336 s 560 are each amended to
20 read as follows:

21 Upon the entry of a stop order under any part of RCW 19.100.120,
22 the director shall promptly notify the applicant that the order has
23 been entered and that the reasons therefor and that within fifteen days
24 after receipt of a written request, the matter will be set down for
25 hearing. If no hearing is requested within (~~(fifteen)~~) twenty calendar
26 days and none is ordered by the director, the director shall enter his
27 or her written findings of fact and conclusions of law and the order
28 will remain in effect until it is modified or vacated by the director.
29 If a hearing is requested or ordered, the director after notice of an
30 opportunity for hearings to the issuer and to the applicant or
31 registrant shall enter his or her written findings of fact and
32 conclusions of law and may modify or vacate the order. The director
33 may modify or vacate a stop order if he or she finds that the
34 conditions which prompted his or her entry have changed or that it is
35 otherwise in the public interest to do so.

1 **Sec. 10.** RCW 19.100.248 and 1979 ex.s. c 13 s 4 are each amended
2 to read as follows:

3 If it appears to the director that a person has engaged or is about
4 to engage in an act or practice constituting a violation of a provision
5 of this chapter or a rule adopted or order issued under this chapter,
6 the director may, in the director's discretion, issue an order
7 directing the person to cease and desist from continuing the act or
8 practice. Reasonable notice of and opportunity for a hearing shall be
9 given. The director may issue a temporary order pending the hearing,
10 which shall remain in effect until ten days after the hearing is held
11 and which shall become final if the person to whom notice is addressed
12 does not request a hearing within ((fifteen)) twenty calendar days
13 after the receipt of the notice.

--- END ---