
HOUSE BILL 2277

State of Washington 52nd Legislature 1992 Regular Session

By Representatives Heavey, Locke, Wilson, Franklin and Paris

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Commerce & Labor.

1 AN ACT Relating to franchise investment protection; and amending
2 RCW 19.100.030 and 19.100.040.

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

4 **Sec. 1.** RCW 19.100.030 and 1991 c 226 s 3 are each amended to read
5 as follows:

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

7 (1) The offer or sale or transfer of a franchise by a franchisee
8 who is not an affiliate of the franchisor for the franchisee's own
9 account if the franchisee's entire franchise is sold and the sale is
10 not effected by or through the franchisor. A sale is not effected by
11 or through a franchisor merely because a franchisor has a right to
12 approve or disapprove the sale or requires payment of a reasonable
13 transfer fee. Such right to approve or disapprove the sale shall be
14 exercised in a reasonable manner.

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

5 (3) The offer or sale of a franchise to a bank, savings
6 institution, trust company, insurance company, investment company as
7 defined in the Investment Company Act of 1940, pension or profit
8 sharing trust, or other financial institution or institutional buyer or
9 to a broker dealer where the purchaser is acting for itself or in some
10 fiduciary capacity.

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

12 (a) Who has delivered in writing to each prospective franchisee, at
13 least ten business days prior to the execution by the prospective
14 franchisee of any binding franchise or other agreement, or at least ten
15 business days prior to the receipt of any consideration, whichever
16 occurs first, an offering circular complying with guidelines adopted by
17 rule of the director. The director shall be guided in adopting such a
18 rule by the guidelines for the preparation of the Uniform Franchise
19 Offering Circular adopted by the North American Securities
20 Administrators Association, Inc., or its successor, as such guidelines
21 may be revised from time to time. If the offering circular is not in
22 the primary language of the prospective franchisee, the following
23 statement, in both the language of the offering circular and in the
24 primary language of the prospective franchisee, must be attached to the
25 franchise offering circular: "I recognize that this agreement affects
26 my legal rights concerning the franchise relationship. I am advised to
27 seek the advice of an attorney who speaks my language or an attorney
28 with an interpreter who speaks my language. I recognize that I have
29 ten business days to seek the advice of an attorney prior to the
30 signing of a binding agreement or the receipt of any consideration by

1 the franchisor." The attached statement must be signed and dated by
2 the prospective franchisee; and

3 (b) Who either:

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

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

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

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

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

28 (B) Has granted and grants no more than three franchises for
29 franchise businesses to be situated within the state of Washington; and

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

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

5 (iii) Does not charge a franchise fee, as defined in RCW 19.100.010
6 (12), in excess of five hundred dollars; and

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

12 (5) The offer or sale of a franchise to an accredited investor, as
13 defined by rule adopted by the director. The director shall be guided
14 in adopting such a rule by the rules defining accredited investor
15 promulgated by the federal securities and exchange 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. 2.** RCW 19.100.040 and 1991 c 226 s 4 are each amended to read
23 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 (a) A copy of the franchisor's or subfranchisor's offering circular
29 which shall be prepared in compliance with guidelines adopted by rule

1 of the director. The director shall be guided in adopting such rule by
2 the guidelines for the preparation of the Uniform Franchise Offering
3 Circular adopted by the North American Securities Administrators
4 Association, Inc., or its successor, as such guidelines may be revised
5 from time to time. If the offering circular is not in the primary
6 language of the prospective franchisee, the following statement, in
7 both the language of the offering circular and in the primary language
8 of the prospective franchisee, must be attached to the franchise
9 offering circular: "I recognize that this agreement affects my legal
10 rights concerning the franchise relationship. I am advised to seek the
11 advice of an attorney who speaks my language or an attorney with an
12 interpreter who speaks my language. I recognize that I have ten
13 business days to seek the advice of an attorney prior to the signing of
14 a binding agreement or the receipt of any consideration by the
15 franchisor." The attached statement must be signed and dated by the
16 prospective franchisee;

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

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

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

20 (e) The applicable filing fee; and

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

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

28 When the person filing the application for registration is a
29 subfranchisor, the application shall also include the same information
30 concerning the subfranchisor as is required from the franchisor

1 pursuant to this section.