

HOUSE BILL REPORT

SB 6172

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to franchise investment protection.

Brief Description: Revising franchise investment protection provisions.

Sponsors: Senators Benton, Hobbs, Prentice, Keiser, Fain and Chase; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Business & Financial Services: 2/16/12 [DP].

Brief Summary of Bill

- Modifies terminology and deadlines in the Franchise Investment Protection Act.
- Requires notice of alterations to a franchise agreement.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 12 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hudgins, Hurst, Kretz, Pedersen, Rivers and Ryu.

Staff: Alexa Silver (786-7190).

Background:

A franchise is an agreement that grants the right to engage in a business under a marketing plan prescribed by the franchisor, the operation of which is substantially associated with a particular trade name or symbol.

The Franchise Investment Protection Act regulates the sale of franchises and the registration of franchisors. To sell or offer to sell a franchise, the franchisor must be registered with the Department of Financial Institutions (Department). An exception to the registration

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requirement applies where the franchisor meets certain requirements and delivers an offering circular to the prospective franchisee at least 10 business days prior to execution of the agreement. The offering circular must comply with the Department's guidelines, which are based on the North American Securities Administrators Association's Uniform Franchise Offering Circular. A franchise offering remains registered for one year and may be renewed by filing a renewal application 15 business days before the expiration of the registration.

It is unlawful for a person to sell a franchise that is registered or required to be registered without delivering the offering circular to the franchisee at least 10 business days prior to execution of the agreement.

The Director of the Department (Director) has the authority to issue a stop order to suspend or revoke a registration statement. The applicant has 15 days to request a hearing on entry of the stop order. In addition, the Director may issue a cease and desist order if it appears a person has violated or is about to violate the Franchise Investment Protection Act. The order becomes final if the person does not request a hearing within 15 days of receiving notice.

A Federal Trade Commission (FTC) rule adopted in 2007, which applies to the offer or sale of a franchise to be located in the United States, uses terminology and deadlines that differ from Washington law.

Summary of Bill:

The term "disclosure document" is substituted for the term "offering circular." The Department's guidelines for preparation of the disclosure document must be based on guidelines of either the FTC or the North American Securities Administrators Association. The term "prospective franchisee" is substituted throughout the law for the term "offeree." Definitions are provided for the terms "file," "record," and "prospective franchisee."

To qualify for an exception from registration, a franchisor must deliver a disclosure document to the prospective franchisee 14 calendar days prior to execution of the agreement. A franchisor may renew the registration by filing an application 20 calendar days before expiration of the registration.

A franchisor must furnish a prospective franchisee with a copy of the disclosure document at least 14 calendar days prior to payment or execution of a binding agreement. It is unlawful for the franchisor to unilaterally and materially alter the terms and conditions of a franchise agreement without furnishing the prospective franchisee with a copy of the revisions at least seven calendar days before he or she signs the agreement. Changes that arise out of negotiations initiated by the prospective franchisee do not trigger this period.

A person has 20 calendar days to request a hearing on a stop order or a cease and desist order.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill makes several technical amendments to the franchise act. The sale of franchises is regulated federally by the FTC through its franchise rule. The primary purpose of the bill is to align the terminology and filing and delivery deadlines of the state franchise act with the federal rule. The bill was circulated to interested persons, and the Department received no objections.

(Opposed) None.

Persons Testifying: Bill Beatty, Department of Financial Institutions.

Persons Signed In To Testify But Not Testifying: None.