

SENATE BILL REPORT

ESSB 5256

AS PASSED SENATE, MARCH 4, 1991

Brief Description: Providing franchise investment protection.

SPONSORS: Senate Committee on Law & Justice (originally sponsored by Senators Nelson, A. Smith and Newhouse).

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5256 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Jack Brummel (786-7428)

Hearing Dates: January 29, 1991; February 4, 1991

HOUSE COMMITTEE ON COMMERCE & LABOR

HOUSE COMMITTEE ON REVENUE

BACKGROUND:

Franchising is a contractual method for marketing and distributing the goods or services of a company (the franchisor) through a dedicated or restricted network of distributors (franchisees). Under the terms of a franchise contract, a franchisor grants the right and license to a franchisee to market a product or service using the trademark and/or business system developed by the franchisor. The most commonly recognized criteria in the United States for determining whether a business arrangement is a franchise is the Federal Trade Commission 1978 regulatory rule.

The Washington Franchise Investment Protection Act of 1972 regulates franchises in Washington through disclosure requirements, the delineation of rights and prohibited acts, and mandatory registration of offerings, brokers, and agents. The Washington State Bar Association has suggested that the public would be better served if the Washington act conformed more clearly to the regulations of the Federal Trade Commission and uniform acts proposed by the North American Securities Administrators Association and the National Conference of Commissioners on Uniform State Laws.

SUMMARY:

The Franchise Investment Protection Act is amended. The definition of "franchise" is narrowed. Franchise sales agents working for franchisors or franchise brokers are no longer

required to register under the act. Washington franchisors are allowed to offer franchises for sale in other states without registering in this state, unless the offer violates the franchise law of the other state. The disclosure statements specified by the act are eliminated and replaced with a requirement to follow regulations based on the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association.

Franchisors who give notice to the Department of Licensing that they have a net worth of at least \$5,000,000, at least 25 franchisees, and require an initial investment by franchisees of more than \$100,000, are exempt from the registration requirements if they pay a filing fee to the department. The fee for filing a notice of claim of exemption is \$50 for the original filing and \$50 for each annual renewal.

The maximum number of franchises which a small franchisor may grant and be exempt from registration requirements, if there is no advertisement for franchisees, is reduced from nine to three. The buyer from such a small franchisor must now have the advice of a certified public accountant or attorney.

Franchises involving renting or leasing motor vehicles are now subject to the act.

The maximum franchise fee which a franchisor may charge and be exempt from the registration requirement of the act is reduced from \$1,500 to \$500.

The length of time required between the delivery of a franchise offering circular and the sale of the franchise is expanded from 48 hours to 10 days.

Negotiations of the terms and conditions of a franchise are specifically allowed when initiated by the franchisee.

There is a statute of limitations of one year on actions for failure to register and three years for other actions under the act.

The Director of the Department of Licensing may deny, suspend, or revoke a franchise broker's registration or any exemptions from registration in the case of certain violations or wrongdoing.

Appropriation: none

Revenue: yes

Fiscal Note: requested January 23, 1991

TESTIMONY FOR:

The bill brings Washington in line with Federal Trade Commission rules, minimizes disincentives to franchise, makes the law predictable, but doesn't change the basic structure of regulation.

TESTIMONY AGAINST:

The bill is worthy of support but needs a few amendments.

TESTIFIED: Mike Stevenson, Securities Division, DOL (con); Kent Carlson, Gary Duvall, WSBA (pro); Tim Hamilton, Automotive United Trades Organization (pro)

HOUSE AMENDMENT(S):

The filing fee for application for registration on the sale of franchise is raised from \$500 to \$600. The annual fee for large franchisors claiming an exemption from the registration requirements is raised from \$50 to \$100.