

RCW 19.100.010 Definitions. When used in this chapter, unless the context otherwise requires:

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

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

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

(4) "Director" means the director of financial institutions.

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

(6) "Franchise" means:

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

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

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

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

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

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

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

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

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

(8) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) The purchase or agreement to purchase

goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

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

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

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

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

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

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

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

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

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

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

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

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

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

(18) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or

indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(19) "Subfranchisor" means a person to whom a subfranchise is granted. [2012 c 121 § 1; 1994 c 92 § 3; 1991 c 226 § 1; 1979 c 158 § 83; 1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Emergency—Effective date—1972 ex.s. c 116: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 1, 1972." [1972 ex.s. c 116 § 17.]