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**SUBSTITUTE SENATE BILL 5256**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

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

Read first time February 5, 1991.

1 AN ACT Relating to franchise investment protection; amending RCW  
2 19.100.010, 19.100.020, 19.100.030, 19.100.040, 19.100.070, 19.100.080,  
3 19.100.100, 19.100.140, 19.100.160, 19.100.170, 19.100.180, 19.100.220,  
4 and 19.100.240; and adding new sections to chapter 19.100 RCW.

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

6 **Sec. 1.** RCW 19.100.010 and 1979 c 158 s 83 are each amended to  
7 read as follows:

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

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

13 (2) (~~"Community interest" means a continuing financial interest~~  
14 ~~between the franchisor and franchisee in the operation of the franchise~~  
15 ~~business.~~) "Affiliate" means a person controlling, controlled by, or

1 under common control with another person, every officer or director of  
2 such person, and every person occupying a similar status or performing  
3 similar functions.

4 (3) "Director" means the director of licensing.

5 (4) "Franchise" means:

6 (a) An ~~((oral or written contract or))~~ agreement, ~~((either~~

7 ~~expressed))~~ express or implied, ~~((in))~~ oral or written, by which:

8 (i) A person ~~((grants to another person, a license to use a trade~~  
9 name,)) is granted the right to engage in the business of offering,  
10 selling, or distributing goods or services under a marketing plan  
11 prescribed or suggested in substantial part by the grantor or its  
12 affiliate;

13 (ii) The operation of the business is substantially associated with  
14 a trademark, service mark, trade ~~((mark, logotype or related~~  
15 characteristic in which there is a community interest in the business  
16 of offering, selling, distributing goods or services at wholesale or  
17 retail, leasing, or otherwise and in which the franchisee)) name,  
18 advertising, or other commercial symbol designating, owned by, or  
19 licensed by the grantor or its affiliate; and

20 (iii) The person pays, agrees to pay, or is required to pay,  
21 directly or indirectly, a franchise fee~~((: PROVIDED, That none of~~  
22 the)).

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

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

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

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

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

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

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

9       (c) Sales techniques;

10       (d) Promotional or advertising materials or cooperative  
11 advertising;

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

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

16       (6) "Bank credit card plan" means a credit card plan in which the  
17 issuer of credit cards ~~((as defined by RCW 9.26A.010(1)))~~ is a national  
18 bank, state bank, trust company or any other banking institution  
19 subject to the supervision of the supervisor of banking of this state  
20 or any parent or subsidiary of such bank.

21       ~~((6))~~ (7) "Franchisee" means a person to whom a franchise is  
22 offered or granted.

23       ~~((7))~~ (8) "Franchisor" means a person who grants a franchise to  
24 another person.

25       ~~((8) "Area franchise" means any contract or agreement between a~~  
26 ~~franchisor or subfranchisor whereby the subfranchisor is granted the~~  
27 ~~right to))~~ (9) "Subfranchise" means an agreement, express or implied,  
28 oral or written, by which a person pays or agrees to pay, directly or  
29 indirectly, a franchisor or affiliate for the right to grant, sell or

1 negotiate the sale of (~~franchises in the name or on behalf of the~~  
2 ~~franchisor~~) a franchise.

3 (~~(9)~~) (10) "Subfranchisor" means a person to whom (~~an area~~  
4 ~~franchise~~) a subfranchise is granted.

5 (~~(10)~~) (11) "Franchise broker (~~or selling agent~~)" means a  
6 person who directly or indirectly engages in the business of the offer  
7 or sale of franchises. The term does not include a franchisor,  
8 subfranchisor, or their officers, directors, or employees.

9 (~~(11)~~) (12) "Franchise fee" means any fee or charge that a  
10 franchisee or subfranchisor is required to pay or agrees to pay for the  
11 right to enter into a business or to continue a business under a  
12 franchise agreement, including, but not limited to, the payment either  
13 in lump sum or by installments of an initial capital investment fee,  
14 any fee or charges based upon a percentage of gross or net sales  
15 whether or not referred to as royalty fees, any payment for the  
16 mandatory purchase of goods or services or any payment for goods or  
17 services available only from the franchisor, or any training fees or  
18 training school fees or charges; however, the following shall not be  
19 considered payment of a franchise fee: (a) the purchase or agreement  
20 to purchase goods at a bona fide wholesale price; (b) the purchase or  
21 agreement to purchase goods by consignment; if, and only if the  
22 proceeds remitted by the franchisee from any such sale shall reflect  
23 only the bona fide wholesale price of such goods; (c) a bona fide loan  
24 to the franchisee from the franchisor; (d) the purchase or agreement to  
25 purchase goods at a bona fide retail price subject to a bona fide  
26 commission or compensation plan that in substance reflects only a bona  
27 fide wholesale transaction; (e) the purchase or lease or agreement to  
28 purchase or lease supplies or fixtures necessary to enter into the  
29 business or to continue the business under the franchise agreement at  
30 their fair market or rental value; (f) the purchase or lease or

1 agreement to purchase or lease real property necessary to enter into  
2 the business or to continue the business under the franchise agreement  
3 at the fair market or rental value; (g) amounts paid for trading stamps  
4 redeemable in cash only; (h) amounts paid for trading stamps to be used  
5 as incentives only and not to be used in, with, or for the sale of any  
6 goods.

7 ~~((12))~~ (13) "Person" means a natural person, corporation,  
8 partnership, trust, or other entity and in the case of an entity, it  
9 shall include any other entity which has a majority interest in such an  
10 entity or effectively controls such other entity as well as the  
11 individual officers, directors, and other persons in act of control of  
12 the activities of each such entity.

13 ~~((13))~~ (14) "Publish" means publicly to issue or circulate by  
14 newspaper, mail, radio, or television or otherwise to disseminate to  
15 the public.

16 ~~((14))~~ (15) "Sale or sell" includes every contract of sale,  
17 contract to sell, or disposition of a franchise.

18 ~~((15))~~ (16) "Offer or offer to sell" includes every attempt or  
19 offer to dispose of or solicitation of an offer to buy a franchise or  
20 an interest in a franchise.

21 **Sec. 2.** RCW 19.100.020 and 1971 ex.s. c 252 s 2 are each amended  
22 to read as follows:

23 (1) It is unlawful for any franchisor or subfranchisor to sell or  
24 offer to sell any franchise in this state unless the offer of the  
25 franchise has been registered under this chapter or exempted under RCW  
26 19.100.030.

27 (2) For the purpose of this section, an offer to sell a franchise  
28 is made in this state when: (a) The offer is directed by the offeror  
29 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 is a resident  
4 of this state, or (d) the franchise business that is the subject of the  
5 offer is to be located or operated, wholly or partly, in this state.

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

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

20 **Sec. 3.** RCW 19.100.030 and 1972 ex.s. c 116 s 2 are each amended  
21 to read as follows:

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

23 (1) ~~((A))~~ The offer or sale or transfer of a franchise by a  
24 franchisee (~~whether voluntary or involuntary if such sale is an~~  
25 isolated sale)) who is not an affiliate of the franchisor for the  
26 franchisee's own account if the franchisee's entire franchise is sold  
27 and the sale is not effected by or through the franchisor. A sale is  
28 not effected by or through a franchisor merely because a franchisor has  
29 a right to approve or disapprove the sale or requires payment of a

1 reasonable transfer fee. Such right to approve or disapprove the sale  
2 shall be exercised in a reasonable manner.

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

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

14 (4) ~~((Any))~~ The offer or sale of a franchise by a franchisor:

15 (a) Who has ~~((disclosed))~~ delivered in writing to each prospective  
16 franchisee, at least ~~((forty-eight hours))~~ ten business days prior to  
17 the execution by the prospective franchisee of any binding franchise or  
18 other agreement, or at least ~~((forty-eight hours))~~ ten business days  
19 prior to the receipt of any consideration, ~~((the following information:~~

20 (i) ~~The name of the franchisor and the name under which the~~  
21 ~~franchisor is doing or intends to do business.~~

22 (ii) ~~The franchisor's principal business address and the name and~~  
23 ~~address of his agent in the state of Washington authorized to receive~~  
24 ~~process.~~

25 (iii) ~~The business form of the franchisor whether corporate,~~  
26 ~~partnership, or otherwise.~~

27 (iv) ~~A statement of when, where, and how long the franchisor has:~~

28 (A) ~~Conducted a business of the type to be operated by the~~  
29 ~~franchisees;~~

30 (B) ~~Has granted franchises for such business; and~~

1       ~~(C) Has granted franchises in other lines of business.~~

2       ~~(v) A copy of the typical franchise contract or agreement proposed~~  
3 ~~for use including all amendments thereto.~~

4       ~~(vi) A statement of the franchise fee charged, the proposed~~  
5 ~~application of the proceeds of such fee by the franchisor, and the~~  
6 ~~formula by which the amount of the fee is determined if the fee is not~~  
7 ~~the same in all cases; a statement indicating whether and under what~~  
8 ~~conditions all or part of the initial franchise fee may be returned to~~  
9 ~~the franchisee; and a statement of the estimated total investment to be~~  
10 ~~made by the franchisee for:~~

11       ~~(A) The initial franchise fee and other fees, whether payable in~~  
12 ~~one sum or in installments;~~

13       ~~(B) Fixed assets other than real property and leases for real~~  
14 ~~property, whether or not financed by contract or installment purchase,~~  
15 ~~leasing or otherwise;~~

16       ~~(C) Working capital, deposits and prepaid expenses;~~

17       ~~(D) Real property, whether or not financed by contract or~~  
18 ~~installment purchase or otherwise, and leases for real property; and~~

19       ~~(E) All other goods and services which the franchisee will be~~  
20 ~~required to purchase or lease.~~

21       ~~(vii) A statement describing a payment of fees other than franchise~~  
22 ~~fees that the franchisee is required to pay to the franchisor including~~  
23 ~~royalties and payments or fees which the franchisor collects in whole~~  
24 ~~or in part on behalf of a third party or parties.~~

25       ~~(viii) A statement of the conditions under which the franchise~~  
26 ~~agreement may be terminated or renewed or renewal refused.~~

27       ~~(ix) A statement of the conditions under which the franchise may be~~  
28 ~~sold, transferred, or assigned.~~

29       ~~(x) A statement of the conditions imposed by the franchisor whether~~  
30 ~~by the terms of the franchise agreement or by other device or practice~~



1 ~~whereby the franchisee is required to purchase services, supplies,~~  
2 ~~products, fixtures, or other goods relating to the establishment or~~  
3 ~~operation of the franchise business from the franchisor or his designee~~  
4 ~~together with a statement of whether and of the means by which the~~  
5 ~~franchisor derives income from such purchases.~~

6 ~~(xi) A statement of any restriction or condition imposed by the~~  
7 ~~franchisor whether by the terms of the franchise agreement or by other~~  
8 ~~device or practice whereby the franchisee is limited and/or required in~~  
9 ~~the goods or services offered by him.~~

10 ~~(xii) A statement of the terms and conditions of any financing~~  
11 ~~arrangements when offered directly or indirectly by the franchisor or~~  
12 ~~his agent or affiliate.~~

13 ~~(xiii) A statement of any intent of the franchisor to sell, assign,~~  
14 ~~or discount to a third party any note, contract, or other obligation of~~  
15 ~~the franchisee in whole or in part.~~

16 ~~(xiv) A copy of any statement of estimated or projected franchisee~~  
17 ~~sales or earnings prepared for presentation to prospective franchisees~~  
18 ~~or other persons together with a statement immediately following such~~  
19 ~~statement setting forth the data upon which the estimations or~~  
20 ~~projections are based and explaining clearly the manner and extent to~~  
21 ~~which such data relates to the actual operations of businesses~~  
22 ~~conducted by the franchisor or its franchisees.~~

23 ~~(xv) A statement of business failures of franchisees, resales to~~  
24 ~~the franchisor, sales of the franchise to others, and transfers in the~~  
25 ~~state of Washington during the two year period preceding the date of~~  
26 ~~the statement.~~

27 ~~(xvi) A statement describing the training program, supervision, and~~  
28 ~~assistance the franchisor has and will provide the franchisee.~~

29 ~~(xvii) A statement as to whether or not franchisees are granted a~~  
30 ~~specific area or territory within which the franchisor agrees not to~~

1 ~~operate or grant additional franchises for the operation of the~~  
2 ~~franchise business or in which the franchisor will operate or grant~~  
3 ~~franchises for the operation of no more than a specified number of~~  
4 ~~additional franchise businesses.~~

5 ~~(xviii) A list of the names, addresses and telephone numbers of all~~  
6 ~~operating franchise businesses under franchise agreement with the~~  
7 ~~franchisor located in the state of Washington.~~

8 ~~(xix) A statement explaining the terms and effects of any covenant~~  
9 ~~not to compete which is or will be included in the franchise or other~~  
10 ~~agreement to be executed by the franchisee.~~

11 ~~(xx) A statement setting forth such additional information and such~~  
12 ~~comments and explanations relative to the information contained in the~~  
13 ~~disclosure statement as the franchisor may desire to present))~~  
14 whichever occurs first, an offering circular complying with guidelines  
15 adopted by rule of the director. The director shall be guided in  
16 adopting such a rule by the guidelines for the preparation of the  
17 Uniform Franchise Offering Circular adopted by the North American  
18 Securities Administrators Association, Inc., or its successor, as such  
19 guidelines may be revised from time to time; and

20 (b) Who either:

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

28 (B) Has had at least twenty-five franchisees conducting business at  
29 all times during the five-year period immediately preceding the offer  
30 or sale or has conducted business which is the subject of the franchise

1 continuously for not less than five years preceding the offer or sale  
2 or if any corporation which owns at least eighty percent of the  
3 franchisor, has had at least twenty-five (~~franchises~~ ~~[franchisees]~~)  
4 franchisees conducting business at all times during the five-year  
5 period immediately preceding the offer or sale or such corporation has  
6 conducted business which is the subject of the franchise continuously  
7 for not less than five years preceding the offer or sale; and

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

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

13 (ii) (A) Has (~~and is offering for sale fewer than ten franchises~~)  
14 no outstanding franchises granted for businesses located or to be  
15 located outside the state of Washington; and

16 (B) Has granted and grants no more than three franchises for  
17 franchise businesses to be situated within the state of Washington  
18 (~~under franchise agreement~~); and

19 (~~(B) does not advertise, using radio, television, newspaper,~~  
20 ~~magazine, billboard, or other advertising medium the principal office~~  
21 ~~of which is located in the state of Washington or Oregon, concerning~~  
22 ~~the sale of or offer to sell franchises)); and~~

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

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

27 (iii) (~~(A)~~) Does not charge a franchise fee, as defined in RCW  
28 19.100.010(~~(11)~~) (12), in excess of (~~fifteen~~) five hundred dollars  
29 (~~per year, and~~

1       ~~(B) does not advertise, using radio, television, newspaper,~~  
2 ~~magazine, billboard, or other advertising medium, the principal office~~  
3 ~~of which is located in the state of Washington or Oregon, concerning~~  
4 ~~the sale of or offer to sell franchises)); and~~

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

10       (5) ~~((Neither the registration requirements nor the provisions of~~  
11 ~~RCW 19.100.180(2), as now or hereafter amended, shall apply to any~~  
12 ~~franchisor:~~

13       ~~(a) Who meets the tests and requirements set forth in subsections~~  
14 ~~(4)(a), (4)(b)(i)(A), 4(b)(i)(B), and 4(c) of this section; and~~

15       ~~(b) Who is engaged in the business of renting or leasing motor~~  
16 ~~vehicles through an interdependent system of direct and franchised~~  
17 ~~operations in interstate commerce in twenty or more states; and~~

18       ~~(c) Who is subject to the jurisdiction of the federal trade~~  
19 ~~commission and the federal anti-trust laws.~~

20       Any franchisor or subfranchisor who claims an exemption under  
21 subsection 4(a) and 4(b)(i) of this section shall file with the  
22 director a statement giving notice of such claim and setting forth the  
23 name and address of franchisor or subfranchisor and the name under  
24 which the franchisor or subfranchisor is doing or intends to do  
25 business.)) The offer or sale of a franchise to an accredited  
26 investor, as defined by rule adopted by the director. The director  
27 shall be guided in adopting such a rule by the rules defining  
28 accredited investor promulgated by the federal securities and exchange  
29 commission.

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

7       **Sec. 4.** RCW 19.100.040 and 1972 ex.s. c 116 s 3 are each amended  
8 to read as follows:

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

13       ~~((1) The name of the franchisor and the name under which the~~  
14 ~~franchisor is doing or intends to do business.~~

15       ~~(2) The franchisor's principal business address and the name and~~  
16 ~~address of his agent in the state of Washington authorized to receive~~  
17 ~~process.~~

18       ~~(3) The business form of the franchisor whether corporate,~~  
19 ~~partnership, or otherwise.~~

20       ~~(4) Such other information concerning the identity and business~~  
21 ~~experience of persons affiliated with the franchisor including~~  
22 ~~franchise brokers as the director may by rule prescribe.~~

23       ~~(5) A statement whether any person identified in the application~~  
24 ~~for registration:~~

25       ~~(a) Has been found guilty of a felony or held liable in a civil~~  
26 ~~action by final judgment if such civil action involved fraud,~~  
27 ~~embezzlement, fraudulent conversion, or misappropriation of property,~~  
28 ~~within ten years of the date of such application; or~~

1       ~~(b) Is subject to any currently effective order of the securities~~  
2 ~~and exchange commission or the securities administrator of any state~~  
3 ~~denying registration to or revoking or suspending the registration of~~  
4 ~~such person as a securities broker or dealer or investment advisor or~~  
5 ~~is subject to any currently effective order of any national security~~  
6 ~~association or national securities exchange (as defined in the~~  
7 ~~Securities & Exchange Act of 1934) suspending or expelling such person~~  
8 ~~from membership of such association or exchange; or~~

9       ~~(c) Is subject to any currently effective order or ruling of the~~  
10 ~~Federal Trade Commission pertaining to any franchise granted by~~  
11 ~~franchisor or is subject to any currently effective order relating to~~  
12 ~~business activity as a franchisor as a result of an action brought by~~  
13 ~~the attorney general's office or by any public agency or department.~~

14       ~~Such statement shall set forth the court, the date of conviction or~~  
15 ~~judgment, any penalty imposed, or damages assessed or the date, nature,~~  
16 ~~and issue of such order.~~

17       ~~(6) A statement of when, where, and how long the franchisor has:~~

18       ~~(a) Conducted a business of the type to be operated by the~~  
19 ~~franchisees;~~

20       ~~(b) Has granted franchises for such business; and~~

21       ~~(c) Has granted franchises in other lines of business.~~

22       ~~(7) A financial statement of the franchisor. The director may~~  
23 ~~describe:~~

24       ~~(a) Form and content of the financial statements required under~~  
25 ~~this law;~~

26       ~~(b) The circumstances under which consolidated financial statements~~  
27 ~~can be filed; and~~

28       ~~(c) The circumstances under which financial statements shall be~~  
29 ~~audited by independent, certified public accountants.~~

1       ~~(8) A copy of the typical franchise contract or agreement proposed~~  
2 ~~for use including all amendments thereto.~~

3       ~~(9) A statement of the franchise fee charged, the proposed~~  
4 ~~application of the proceeds of such fee by the franchisor, and the~~  
5 ~~formula by which the amount of the fee is determined if the fee is not~~  
6 ~~the same in all cases; a statement indicating whether and under what~~  
7 ~~conditions all or part of the initial franchise fee may be returned to~~  
8 ~~the franchisee; and a statement of the estimated total investment to be~~  
9 ~~made by the franchisee for:~~

10       ~~(a) The initial franchise fee and other fees, whether payable in~~  
11 ~~one sum or in installments;~~

12       ~~(b) Fixed assets other than real property and leases for real~~  
13 ~~property, whether or not financed by contract or installment purchase,~~  
14 ~~leasing or otherwise;~~

15       ~~(c) Working capital, deposits and prepaid expenses;~~

16       ~~(d) Real property, whether or not financed by contract or~~  
17 ~~installment purchase or otherwise, and leases for real property; and~~

18       ~~(e) All other goods and services which the franchisee will be~~  
19 ~~required to purchase or lease.~~

20       ~~(10) A statement describing a payment of fees other than franchise~~  
21 ~~fees that the franchisee is required to pay to the franchisor including~~  
22 ~~royalties and payments or fees which the franchisor collects in whole~~  
23 ~~or in part on behalf of a third party or parties.~~

24       ~~(11) A statement of the conditions under which the franchise~~  
25 ~~agreement may be terminated or renewed or renewal refused.~~

26       ~~(12) A statement of the conditions under which the franchise may be~~  
27 ~~sold, transferred, or assigned.~~

28       ~~(13) A statement of the conditions imposed by the franchisor~~  
29 ~~whether by the terms of the franchise agreement or by other device or~~  
30 ~~practice whereby the franchisee is required to purchase services,~~

1 supplies, products, fixtures, or other goods relating to the  
2 establishment or operation of the franchise business from the  
3 franchisor or his designee together with a statement of whether and of  
4 the means by which the franchisor derives income from such purchases.

5 (14) A statement of any restriction or condition imposed by the  
6 franchisor whether by the terms of the franchise agreement or by other  
7 device or practice whereby the franchisee is limited and/or required in  
8 the goods and services offered by him.

9 (15) A statement of the terms and conditions of any financing  
10 arrangements when offered directly or indirectly by the franchisor or  
11 his agent or affiliate.

12 (16) A statement of any intent of the franchisor to sell, assign,  
13 or discount to a third party any note, contract, or other obligation of  
14 the franchisee in whole or in part.

15 (17) A copy of any statement of estimated or projected franchisee  
16 sales or earnings prepared for presentation to prospective franchisees  
17 or other persons, together with a statement immediately following such  
18 statement setting forth the data upon which the estimations or  
19 projections are based and explaining clearly the manner and extent to  
20 which such data relates to the actual operations of businesses  
21 conducted by the franchisor or its franchisees.

22 (18) A statement of business failures of franchisees, resales to  
23 the franchisor, sales of the franchise to others, and transfers in the  
24 state of Washington during the two year period preceding the date of  
25 the statement.

26 (19) A statement describing the training program, supervision, and  
27 assistance the franchisor has and will provide the franchisee.

28 (20) Such other information as the director may reasonably require.



1       ~~(21) A list of the names, addresses and telephone numbers of all~~  
2 ~~operating franchise businesses under franchise agreement with the~~  
3 ~~franchisor located in the state of Washington.~~

4       ~~(22) A statement explaining the terms and effects of any covenant~~  
5 ~~not to compete which is or will be included in the franchise or other~~  
6 ~~agreement to be executed by the franchisee.~~

7       ~~(23) A statement setting forth such additional information and such~~  
8 ~~comments and explanations relative to the information contained in the~~  
9 ~~disclosure statement as the franchisor may desire to present.~~

10       ~~(24)) (a) A copy of the franchisor's or subfranchisor's offering~~  
11 ~~circular which shall be prepared in compliance with guidelines adopted~~  
12 ~~by rule of the director. The director shall be guided in adopting such~~  
13 ~~rule by the guidelines for the preparation of the Uniform Franchise~~  
14 ~~Offering Circular adopted by the North American Securities~~  
15 ~~Administrators Association, Inc., or its successor, as such guidelines~~  
16 ~~may be revised from time to time;~~

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

1 concerning the subfranchisor as is required from the franchisor  
2 pursuant to this section.

3 **Sec. 5.** RCW 19.100.070 and 1972 ex.s. c 116 s 5 are each amended  
4 to read as follows:

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

10 (2) Registration of a franchise offer may be renewed for additional  
11 periods of one year each, unless the director by rule or order  
12 specifies a different period, by filing with the director no later than  
13 fifteen business days prior to the expiration thereof a renewal  
14 application containing such information as the director may require to  
15 indicate any substantial changes in the information contained in the  
16 original application (~~((for a))~~) or the previous renewal application and  
17 payment of the (~~((prescribed))~~) prescribed fee.

18 (3) If a material adverse change in the condition of the franchisor  
19 or the subfranchisor or any material change in the information  
20 contained in its offering circular should occur (~~((during any year, a~~  
21 ~~supplemental report shall be filed))~~) the franchisor or subfranchisor  
22 shall so amend the registration on file with the director as soon as  
23 reasonably possible and in any case, before the further sale of any  
24 franchise.

25 **Sec. 6.** RCW 19.100.080 and 1972 ex.s. c 116 s 6 are each amended  
26 to read as follows:

27 (~~Any person offering for sale or selling a franchise within this~~  
28 ~~state, whether or not one or more franchises will be located within~~

1 ~~this state, must present to the prospective franchisee or his~~  
2 ~~representative, at least forty eight hours prior))~~ It is unlawful for  
3 any person to sell a franchise that is registered or required to be  
4 registered under this chapter without first delivering to the offeree,  
5 at least ten business days prior to the execution by the offeree of any  
6 binding franchise or other agreement, or at least ten business days  
7 prior to the receipt of any consideration, whichever occurs first, a  
8 copy of the offering circular required under RCW 19.100.040, with any  
9 addition or amendment to the offering circular required by RCW  
10 19.100.070, together with a copy of the proposed agreements relating to  
11 the sale of the franchise((, copies of the materials specified in RCW  
12 19.100.030(4)(a) and all supplemental reports of the franchisor and the  
13 subfranchisor on file with the director)).

14 **Sec. 7.** RCW 19.100.100 and 1971 ex.s. c 252 s 10 are each amended  
15 to read as follows:

16 No person((s)) shall publish in this state any advertisements  
17 offering a franchise subject to the registration requirements of this  
18 law unless a true copy of the advertisement has been filed in the  
19 office of the director at least seven days prior to the publication or  
20 such shorter period as the director by rule or order may allow.

21 **Sec. 8.** RCW 19.100.140 and 1972 ex.s. c 116 s 9 are each amended  
22 to read as follows:

23 (1) It is unlawful for any ((person)) franchise broker to offer to  
24 sell or sell a franchise ((which is subject to the registration  
25 requirements of RCW 19.100.040)) in this state unless ((he)) the  
26 franchise broker is registered under this chapter. It is unlawful for  
27 any franchisor, subfranchisor, or franchisee((, except if the  
28 transaction is exempt under RCW 19.100.030)) to employ a franchise

1 broker (~~or selling agent~~) unless ((he)) the franchise broker is  
2 registered.

3 (2) The franchise broker (~~or selling agent may~~) shall apply for  
4 registration by filing with the director an application together with  
5 a consent to service of process in such form as the director shall  
6 prescribe and payment of the fee prescribed in RCW 19.100.240.

7 (3) The application shall contain whatever information the director  
8 requires concerning such matters as:

9 (a) The applicant's form and place of organization.

10 (b) The applicant's proposed method of doing business.

11 (c) The qualifications and business history of the applicant.

12 (d) Any injunction or administrative order or conviction of a  
13 misdemeanor involving a security or any aspect of the securities  
14 business and any conviction of a felony; and

15 (e) The applicant's financial condition and history.

16 **Sec. 9.** RCW 19.100.160 and 1971 ex.s. c 252 s 16 are each amended  
17 to read as follows:

18 Any person who is engaged or hereafter engaged directly or  
19 indirectly in the sale or offer to sell a franchise or a subfranchise  
20 or in business dealings concerning a franchise, either in person or in  
21 any other form of communication, shall be subject to the provisions of  
22 this chapter, shall be amenable to the jurisdiction of the courts of  
23 this state and shall be amenable to the service of process under RCW  
24 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of  
25 a franchise under this law (by other than a Washington corporation)  
26 shall file with the director in such form as he by rule prescribed, an  
27 irrevocable consent appointing the director or his successor in office  
28 to be his attorney, to receive service or any lawful process in any  
29 noncriminal suit, action, or proceeding against him or his successors,

1 executor, or administrator which arises under this law or any rule or  
2 order hereunder after the consent has been filed, with the same force  
3 and validity as if served personally on the person filing consent. A  
4 person who has filed such a consent in connection with a previous  
5 registration under this law need not file another. Service may be made  
6 by leaving a copy of the process in the office of the director but it  
7 is not as effective unless:

8 (1) The plaintiff, who may be the director, in a suit, action, or  
9 proceeding instituted by him forthwith sends notice of the service and  
10 a copy of the process by registered or certified mail to the defendant  
11 or respondent at his last address on file with the director; and

12 (2) The plaintiff's affidavit of compliance with this section is  
13 filed in the case on or before the return day of the process, if any,  
14 or within such further times the court allows.

15 **Sec. 10.** RCW 19.100.170 and 1971 ex.s. c 252 s 17 are each amended  
16 to read as follows:

17 It is unlawful for any person in connection with the offer, sale,  
18 or purchase of any franchise or subfranchise in this state directly or  
19 indirectly:

20 (1) To make any untrue statement of a material fact in any  
21 application, notice, or report filed with the director under this law  
22 or willfully to omit to state in any application, notice or report, any  
23 material fact which is required to be stated therein or fails to notify  
24 the director of any material change as required by RCW 19.100.070(3).

25 (2) To sell or offer to sell (~~a franchise in this state~~) by means  
26 of any written or oral communication which includes an untrue statement  
27 of a material fact or omits to state a material fact necessary in order  
28 to make the statements made in light of the circumstances under which  
29 they were made not misleading.

1 (3) To employ any device, scheme, or artifice to defraud.

2 (4) To engage in any act, practice, or course of business which  
3 operates or would operate as a fraud or deceit upon any person.

4 (5) To violate any order of the director.

5 **Sec. 11.** RCW 19.100.180 and 1980 c 63 s 1 are each amended to read  
6 as follows:

7 Without limiting the other provisions of this chapter, the  
8 following specific rights and prohibitions shall govern the relation  
9 between the franchisor or subfranchisor and the franchisees:

10 (1) The parties shall deal with each other in good faith.

11 (2) For the purposes of this chapter and without limiting its  
12 general application, it shall be an unfair or deceptive act or practice  
13 or an unfair method of competition and therefore unlawful and a  
14 violation of this chapter for any person to:

15 (a) Restrict or inhibit the right of the franchisees to join an  
16 association of franchisees.

17 (b) Require a franchisee to purchase or lease goods or services of  
18 the franchisor or from approved sources of supply unless and to the  
19 extent that the franchisor satisfies the burden of proving that such  
20 restrictive purchasing agreements are reasonably necessary for a lawful  
21 purpose justified on business grounds, and do not substantially affect  
22 competition: PROVIDED, That this provision shall not apply to the  
23 initial inventory of the franchise. In determining whether a  
24 requirement to purchase or lease goods or services constitutes an  
25 unfair or deceptive act or practice or an unfair method of competition  
26 the courts shall be guided by the decisions of the courts of the United  
27 States interpreting and applying the anti-trust laws of the United  
28 States.

1 (c) Discriminate between franchisees in the charges offered or made  
2 for royalties, goods, services, equipment, rentals, advertising  
3 services, or in any other business dealing, unless and to the extent  
4 that the franchisor satisfies the burden of proving that any  
5 classification of or discrimination between franchisees is: (i)  
6 Reasonable, ((is)) (ii) based on franchises granted at materially  
7 different times and such discrimination is reasonably related to such  
8 difference in time, or is based on other proper and justifiable  
9 distinctions considering the purposes of this chapter, and (iii) is not  
10 arbitrary. However, nothing in (c) of this subsection precludes  
11 negotiation of the terms and conditions of a franchise at the  
12 initiative of the franchises.

13 (d) Sell, rent, or offer to sell to a franchisee any product or  
14 service for more than a fair and reasonable price.

15 (e) Obtain money, goods, services, anything of value, or any other  
16 benefit from any other person with whom the franchisee does business on  
17 account of such business unless such benefit is disclosed to the  
18 franchisee.

19 (f) If the franchise provides that the franchisee has an exclusive  
20 territory, which exclusive territory shall be specified in the  
21 franchise agreement, for the franchisor or subfranchisor to compete  
22 with the franchisee in an exclusive territory or to grant competitive  
23 franchises in the exclusive territory area previously granted to  
24 another franchisee.

25 (g) Require franchisee to assent to a release, assignment,  
26 novation, or waiver which would relieve any person from liability  
27 imposed by this chapter, except as otherwise permitted by RCW  
28 19.100.220.

29 (h) Impose on a franchisee by contract, rule, or regulation,  
30 whether written or oral, any standard of conduct unless the person so

1 doing can sustain the burden of proving such to be reasonable and  
2 necessary.

3 (i) Refuse to renew a franchise without fairly compensating the  
4 franchisee for the fair market value, at the time of expiration of the  
5 franchise, of the franchisee's inventory, supplies, equipment, and  
6 furnishings purchased from the franchisor, and good will, exclusive of  
7 personalized materials which have no value to the franchisor, and  
8 inventory, supplies, equipment and furnishings not reasonably required  
9 in the conduct of the franchise business: PROVIDED, That compensation  
10 need not be made to a franchisee for good will if (i) the franchisee  
11 has been given one year's notice of nonrenewal and (ii) the franchisor  
12 agrees in writing not to enforce any covenant which restrains the  
13 franchisee from competing with the franchisor: PROVIDED FURTHER, That  
14 a franchisor may offset against amounts owed to a franchisee under this  
15 subsection any amounts owed by such franchisee to the franchisor.

16 (j) Terminate a franchise prior to the expiration of its term  
17 except for good cause. Good cause shall include, without limitation,  
18 the failure of the franchisee to comply with lawful material provisions  
19 of the franchise or other agreement between the franchisor and the  
20 franchisee and to cure such default after being given written notice  
21 thereof and a reasonable opportunity, which in no event need be more  
22 than thirty days, to cure such default, or if such default cannot  
23 reasonably be cured within thirty days, the failure of the franchisee  
24 to initiate within thirty days substantial and continuing action to  
25 cure such default: PROVIDED, That after three willful and material  
26 breaches of the same term of the franchise agreement occurring within  
27 a twelve-month period, for which the franchisee has been given notice  
28 and an opportunity to cure as provided in this subsection, the  
29 franchisor may terminate the agreement upon any subsequent willful and  
30 material breach of the same term within the twelve-month period without



1 providing notice or opportunity to cure: PROVIDED FURTHER, That a  
2 franchisor may terminate a franchise without giving prior notice or  
3 opportunity to cure a default if the franchisee: (i) Is adjudicated a  
4 bankrupt or insolvent; (ii) makes an assignment for the benefit of  
5 creditors or similar disposition of the assets of the franchise  
6 business; (iii) voluntarily abandons the franchise business; or (iv) is  
7 convicted of or pleads guilty or no contest to a charge of violating  
8 any law relating to the franchise business. Upon termination for good  
9 cause, the franchisor shall purchase from the franchisee at a fair  
10 market value at the time of termination, the franchisee's inventory and  
11 supplies, exclusive of (i) personalized materials which have no value  
12 to the franchisor; (ii) inventory and supplies not reasonably required  
13 in the conduct of the franchise business; and (iii), if the franchisee  
14 is to retain control of the premises of the franchise business, any  
15 inventory and supplies not purchased from the franchisor or on his  
16 express requirement: PROVIDED, That a franchisor may offset against  
17 amounts owed to a franchisee under this subsection any amounts owed by  
18 such franchisee to the franchisor.

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.100  
20 RCW to read as follows:

21 This chapter does not preclude negotiation of the terms and  
22 conditions of a franchise at the initiative of the franchisee, provided  
23 that such negotiated terms and conditions do not violate any provision  
24 of this chapter. After the initial offer to a franchisee using the  
25 offering circular required by RCW 19.100.030, 19.100.040, or 19.100.070  
26 a franchisor need not provide an amended offering circular to that  
27 franchisee by reason of a change in the terms and conditions of a  
28 franchise being negotiated at the initiative of that franchisee or  
29 amend the registration by reason of such change.

1       **Sec. 13.** RCW 19.100.220 and 1972 ex.s. c 116 s 14 are each amended  
2 to read as follows:

3       (1) In any proceeding under this chapter, the burden of proving an  
4 exception from a definition or an exemption from ~~((definition))~~  
5 registration is upon the person claiming it.

6       (2) Any agreement, condition, stipulation or provision, including  
7 a choice of law provision, purporting to bind any person ~~((acquiring a~~  
8 ~~franchise at the time of entering into a franchise or other agreement))~~  
9 to waive compliance with any provision of this chapter or any rule or  
10 order hereunder is void. A release or waiver executed by any person  
11 pursuant to a negotiated settlement in connection with a bona fide  
12 dispute between a franchisee and a franchisor, arising after their  
13 franchise agreement has taken effect, in which the person giving the  
14 release or waiver is represented by independent legal counsel, is not  
15 an agreement prohibited by this subsection.

16       (3) This chapter represents a fundamental policy of the state of  
17 Washington.

18       **Sec. 14.** RCW 19.100.240 and 1971 ex.s. c 252 s 24 are each amended  
19 to read as follows:

20       The director shall charge and collect fees fixed by this section.  
21 All fees collected under this chapter shall be deposited in the state  
22 treasury and shall not be refundable except as herein provided:

23       (1) The fee for filing an application for registration on the sale  
24 of franchise under RCW 19.100.040 is five hundred dollars;

25       (2) The fee for filing an application for renewal of a registration  
26 under RCW 19.100.070 is one hundred dollars;

27       (3) The fee for filing an amendment to the application filed under  
28 RCW 19.100.040 is one hundred dollars;

1 (4) The fee for registration of a franchise broker (~~or selling~~  
2 agent)) shall be fifty dollars for original registration and twenty-  
3 five dollars for each annual renewal;

4 (5) The fee for filing a notice of claim of exemption is fifty  
5 dollars for the original filing and fifty dollars for each annual  
6 renewal.

7 NEW SECTION. Sec. 15. A new section is added to chapter 19.100  
8 RCW to read as follows:

9 An action for rescission under RCW 19.100.190 for failure to  
10 register may not be commenced more than one year after the act or  
11 transaction on which the action is based. Any other action under RCW  
12 19.100.190 may not be commenced more than three years after the cause  
13 of action accrues.

14 NEW SECTION. Sec. 16. A new section is added to chapter 19.100  
15 RCW to read as follows:

16 The director may by order deny, suspend, or revoke registration of  
17 any franchise broker if the director finds that the order is in the  
18 public interest and that the applicant or registrant, or any partner,  
19 officer, or director of the applicant or registrant:

20 (1) Has filed an application for registration as a franchise broker  
21 under RCW 19.100.140 which, as of its effective date, or as of any date  
22 after filing in the case of an order denying effectiveness, was  
23 incomplete in any material respect or contained any statement which  
24 was, in the light of the circumstances under which it was made, false  
25 or misleading with respect to any material fact;

26 (2) Has willfully violated or willfully failed to comply with any  
27 provision of this chapter;

1 (3) Has been convicted, within the past five years of any  
2 misdemeanor involving a franchise, or any felony involving moral  
3 turpitude;

4 (4) Is permanently or temporarily enjoined by any court of  
5 competent jurisdiction from engaging in or continuing any aspect of the  
6 franchise  
7 industry;

8 (5) Is the subject of an order of the director denying, suspending,  
9 or revoking registration as a franchise broker;

10 (6) Has engaged in dishonest or unethical practices in the  
11 franchise industry;

12 (7) Is insolvent, either in the sense that his or her liabilities  
13 exceed his or her assets or in the sense that he or she cannot meet his  
14 or her obligations as they mature.

15 The director may by order summarily postpone or suspend  
16 registration pending final determination of any proceeding under this  
17 section.

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.100  
19 RCW to read as follows:

20 The director may by order deny, suspend, or revoke any exemption  
21 from registration otherwise available under RCW 19.100.030 for the  
22 offer or sale of the franchise if he or she finds that the order is in  
23 the public interest and that:

24 (1) Any provision of this chapter or any rule or order or condition  
25 lawfully imposed under this chapter has been violated or is about to be  
26 violated in connection with the offering by the franchisor, any  
27 partner, officer, or director of a franchisor, or any person occupying  
28 a similar status or performing similar functions or any person directly

1 or indirectly controlled by the franchisor, or any franchise broker  
2 offering or selling the offering;

3 (2) The franchise offering is the subject of a permanent or  
4 temporary injunction of a court of competent jurisdiction entered under  
5 any federal or state act applicable to the offering; but (a) the  
6 director may not enter an order of revocation or suspension under this  
7 subsection more than one year from the date of the injunction relied  
8 on, and (b) the director may not enter an order under this subsection  
9 on the basis of an injunction unless that injunction was based on facts  
10 that currently constitute a ground for an order under this section;

11 (3) The franchisor's enterprise or method of business includes or  
12 would include activities which are illegal where performed;

13 (4) The offering has worked or tended to work or would tend to work  
14 a fraud on purchasers;

15 (5) The franchisor has failed to pay the required filing fee for a  
16 claim of exemption but the director may enter only a denial order under  
17 this subsection and shall vacate such order when the deficiency has  
18 been corrected;

19 (6) The franchisor has made a claim of exemption which is  
20 incomplete in a material respect or contains any statement which in the  
21 light of the circumstances under which it was made is false or  
22 misleading with respect to any material fact.