

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5256

Chapter 226, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

FRANCHISE INVESTMENT PROTECTION

EFFECTIVE DATE: 7/28/91

Passed by the Senate April 22, 1991
Yeas 39 Nays 7

 JOEL PRITCHARD
President of the Senate

Passed by the House April 17, 1991
Yeas 95 Nays 0

 JOE KING
**Speaker of the
House of Representatives**

Approved May 16, 1991, with
the exception of section 15,
which is vetoed.

 BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
ENGROSSED SUBSTITUTE SENATE BILL 5256
as passed by the Senate and the House
of Representatives on the dates hereon
set forth.

 GORDON A. GOLOB
Secretary

FILED

May 16, 1991 - 10:50 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5256

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

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 franchisees.

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))~~ six 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 one
5 hundred dollars for the original filing and one hundred dollars for
6 each annual renewal.

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

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

15 **Sec. 15 was vetoed, see message at end of chapter.*

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

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

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

28 (2) Has willfully violated or willfully failed to comply with any
29 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.

Passed the Senate April 22, 1991.

Passed the House April 17, 1991.

Approved by the Governor May 16, 1991, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 15,
3 Engrossed Substitute Senate Bill No. 5256 entitled:

4 "AN ACT Relating to franchise investment protection."

5 Washington State's Franchise Investment Protection Act is an
6 important consumer protection statute that, through protection of

1 franchisees, has fostered a healthy business environment for reputable
2 franchisors. Section 15 of this act would reduce the statute of
3 limitations to only one year for an action by a franchisee for
4 rescission based on a failure of a franchisor to register. Further, the
5 statute of limitations would be reduced to three years for all other
6 actions under RCW 19.100.190. Currently, the statute of limitations
7 may vary between two and six years depending on judicial
8 interpretation.

9 While I agree that providing greater certainty in the limitation of
10 actions is desirable, the original Washington State Bar Association
11 Franchise Act Revision Committee's recommendation provided for a more
12 reasonable statute of limitation of two years for failure to register
13 and four years for other actions. This initial recommendation was
14 modified by the Legislature.

15 A veto of section 15 is necessary to assure continued consumer
16 protection. Some problems with franchise agreements may not arise
17 during the first year. Experience has shown that franchisors who fail
18 to register often have the weakest franchises to sell and do not
19 provide the disclosures required by the Franchise Investment Protection
20 Act, thus exposing the purchaser to unnecessary risk. Also, the one
21 year statute of limitations could provide an incentive to unscrupulous
22 franchisors to sell unregistered franchises hoping the year will pass
23 before discovery of a problem and the franchisee's claim, however
24 valid, will be barred from legal action.

25 With the exception of section 15, Engrossed Substitute Senate Bill
26 No. 5256 is approved."